
(2017) 03 P&H CK 0048
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 1884 of 2017

Baldev Singh

APPELLANT

Vs

Shree Sanatan Dharam Sabha

RESPONDENT

Date of Decision : 22-03-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
East Punjab Urban Rent Restriction Act, 1949 — Section 13
Punjab Religious Premises and Land (Eviction and Rent Recovery) Act, 1997 — Section 12, Section 2(d)

Citation : (2017) 2 LawHerald 1054 : (2017) 1 RCRRent 519

Hon'ble Judges : G.S. Sandhawalia, J.

Bench : Single Bench

Advocate : H.S. Jalal, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J. (Oral)—The present judgment shall dispose of two Civil Revision Petitions i.e. C.R. Nos. 1884 and 1922 of 2017 as common questions of facts and law are involved in both the cases. Reference is being made to C.R. No. 1884 of 2017, Baldev Singh v. Shree Sanatan Dharam Sabha and another.

2. Challenge in the present revision petition by the tenant is to the order of the Rent Controller dated 27.02.2017 (Annexure P-4) vide which his application for rejection of plaint under Order 7, Rule 11 CPC for lack of jurisdiction has been dismissed. The reasoning given by the Rent Controller is on the basis that under Section 2(d) of the Punjab Religious Premises and Land (Eviction and Rent Recovery) Act, 1997 (in short "the 1997 Act"), a religious institution would mean a gurudwara, temple, church, mosque, temple of Jains or Budhas registered under the Societies Registration Act, 1860 or established under any statute and includes any other place of worship by whatever name. The premises in question being shops as such, it was accordingly held that they would not be covered

under the definition of religious institutions and the fact that the landlord could approach the Authority under the said act was for the benefit of the said landlord and not for the tenant. Reliance was placed upon the judgment of this Court in *Jai Parkash Goyal v. Shri Gurudwara Singh Sabha Sahib Virajman Gurugranth Sahib, Kukarmajra and another*, 2009 (3) PLR 713 to hold that once the landlord had opted for his remedy under the East Punjab Urban Rent Restriction Act, 1949 (in short "the 1949 Act") on the ground that the tenants were statutory tenants, the plaint was not liable to be rejected.

3. It is settled principle that a plaint can only be rejected in exceptional circumstances. In *Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman v. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee*, 2012 (8) SCC 706 the principles regarding rejection of plaint were considered and it was held that it was the duty of the Court to scrutinize the averments/pleas in the plaint and the written statement is not to be taken into consideration to see whether the case falls within the ambit of Order 7, Rule 11 . Relevant observations read as under:

"It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the plaintiff fail to comply with the provisions of Rule 9, the Court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order 7, Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial. This position was explained by this Court in *Saleem Bhai & Ors. v. State of Maharashtra and Others*, (2003) 1 SCC 557, in which, while considering Order 7, Rule 11 of the Code, it was held as under:

"9. A perusal of Order 7, Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7, Rule 11 CPC at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7, Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court....."

It is clear that in order to consider Order 7, Rule 11 , the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in

the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in *Raptakos Brett & Co. Ltd. v. Ganesh Property* (1998) 7 SCC 184 and *Mayar (H.K.) Ltd. and Others v. Owners & Parties, Vessel M.V. Fortune Express and Others*, (2006) 3 SCC 100."

4. In the present case, as noticed the eviction is sought on various grounds which are available to the landlord including sub-letting and on bona fide requirement. It has been categorically averred that the shop in question is part of the bigger building which consists of 10 shops on the ground floor and the shops are unfit and unsafe for human habitation. Apart from that, material impairment and alteration had also been pleaded. Thus, the landlord is seeking eviction on various grounds for which it cannot seek eviction under the 1997 Act. The benefits which are accruable to the religious institutions are for eviction of the unauthorized occupants from religious premises and for certain incidental matters under the 1997 Act. Section 3 of the Act also talks about the persons who have unauthorisedly occupied any religious premises, whether before or after the commencement of the Act or sub let, in contravention of the terms of allotment, lease or grant, without the permission of the religious institutions. Protection has been granted under Section 12 that no court would have jurisdiction to entertain any suit or proceedings in respect of the eviction of any person who is in unauthorized occupation or for the recovery of the arrears of rent which are payable under Section 6 as arrears of land revenue or damages under sub-section (6).

5. In *Jai Parkash Goyal's* case (supra), it was noticed that the said provisions are for the benefit of the institutions and if the landlord chooses to forfeit his right and treats the tenant as a statutory tenant, the jurisdiction of the authorities under the 1949 Act could not be doubted. Resultantly, in the above said case, the eviction order was, thus, upheld and the argument raised by the tenant that on account of the bar under Section 12, the authorities would have no jurisdiction was rejected. The relevant portion reads thus:-

"8. The point, if at all, could be whether a landlord would be entitled to pursue both before the Rent Controller and before the Authority constituted under the Act of 1998. I have already referred to the fact that the counsel for the petitioner has made a statement giving up his right to prosecute before the competent authority under the Act and that he was pursuing the remedy only before the Rent Controller and the Authorities constituted under the Rent Restriction Act. Section 12 could not have operated at the time when the petition was filed in view of the stay of operation of the Act, but even if the eclipse that it might have caused has been subsequently removed, still the remedy under the Act itself is not completely wiped out. The Act itself does not contain any provisions with reference to abatement of proceedings taken before the Rent Controller. Section

12 only refers to the bar of proceedings against unauthorized occupants of any religious premises. The definition of "the person in unauthorized occupation" cannot be imported into the East Punjab Urban Rent Restriction Act, which does not treat a tenant as an unauthorized occupant and regards him only as a statutory tenant. The provisions of the East Punjab Urban Rent Restriction Act and the Act 4 of 1998 must, in my view, be so considered that the latter Act should be seen as a facilitative enactment for the benefit of the landlord against unauthorized occupants and not a piece of legislation granting any privilege to a tenant to plead that the action for ejectment must be made only by treating the tenant as an unauthorized occupant under Act 4 of 1998 and not under the Rent Control Act. The assumption of jurisdiction and the orders passed by the Authorities constituted under the East Punjab Urban Rent Restriction Act is, therefore, upheld."

Keeping in view the above, this Court is of the opinion that the action of the Rent Controller in rejecting the application filed by the tenant for dismissing the rent petition at the thresh hold was well justified. No interference is thus called for in revisional jurisdiction and the present revision petition is accordingly dismissed.