

(2003) 03 P&H CK 0099
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 597 of 1958

Bhagwat Sarup alias Bhagat Ram and Others	APPELLANT
Vs	
Salag Ram and Others	RESPONDENT

Date of Decision : 05-03-2003

Acts Referred:

Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 13, 15(6)

Citation : (2003) 134 PLR 557 : (2003) 1 RCR(Rent) 704

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : M.L. Sarin and Hemant Sarin, for the Appellant; P.C. Mehta and Sandeep Bansal, for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This petition filed by landlord-petitioner under sub Section 6 of Sections 15 of the Haryana Urban (Control of Rent And Eviction) Act, 1973 is directed against the judgment dated 1.12.1984 passed by the Appellate Authority, Karnal reversing the findings of facts recorded by the Rent Controller, Kar-nal. The Rent Controller in his order dated 14.6.1983 came to the conclusion that the tenant-respondent No. 1 has not sub letted the premises to respondent Nos. 3 and 4 and, therefore, the application was dismissed on that score. Further on the ground of non payment of rent from 1.5.1978 to 31.4.1981 the ejectment of the tenant-respondents was ordered. However, the Appellate Authority reversed the finding holding that the tenant-respondents were not in arrears of rent as it is proved on record that the whole payment of rent has been made and the landlord-petitioner has failed to prove that the rent was due to him. The findings of facts on the question of sub letting were affirmed by the Appellate Authority. Feeling aggrieved, the landlord-petitioner has filed the instant petition.

2. On the basis of rent note dated 30.12.1969 and according to the averments made in the ejectment petition the demised premises were rented out to tenant-respondent No. I Salig Ram (who has died during the pendency of the instant

petition) @ Rs. 35/-p.m. It has further been averred in the ejectment petition that Salig Ram, tenant-respondent No. 1 sublet the same to one Om Parkash who further rented out the aforesaid premises to respondent Nos. 3 and 4. In the written statement filed by tenant-respondents No. 1 Salig Ram, the fact of tenancy has been admitted. However, in the written statement filed by respondent Nos. 3 and 4 the claim of the landlord-petitioner has been registered asserting that respondent No. 3 is a direct tenant under the landlord-petitioner. The landlord-petitioner also filed replication. On the basis of the pleadings of the parties, the following issues were framed.

"1. Whether the respondents are liable to be ejected on the grounds mentioned in the petition OPA.

2. Whether the application is bad for mis-joinder of parties? OPR (3&4)

3. Whether the petition is not maintainable in the present form? OPR.

4. Whether the petition is mala fide and is not maintainable for the reasons mentioned in the preliminary objections? OPR.

5. Relief.

3. On Issue No. 1, the Rent Controller returned the finding that no case for ejectment on the ground of Sub letting was made out and declined the ejectment of respondent Nos. 3 and 4 on that basis. However, on the ground of non payment of rent it was held that respondent Nos. 3 and 4 have not paid the arrears of rent to the petitioner from 1.5.1978 to 30.4.1981. It was further held that even arrears of rent has not been tendered after notice of the ejectment petition, The ground of material impairment of the utility of the demised premises also did not find favour with the Rent Controller.

4. The learned Appellate Authority, Kamal reversed the findings even with regard to arrears of rent and allowed the appeal filed by the tenant respondents No. 3 and 4 holding that they were not liable to be ejected on the ground that they were in arrears of rent. However, the appeal filed by the landlord-petitioner was dismissed. The view of the Appellate Authority with regard to arrears of rent are as under:

"Further question to be seen is whether the appellants were in arrears of rent or had paid rent till August, 1981 as stated by them. Sh. Shanti Sarup had claimed arrears of rent for the period 1.5.1978 to 31.4.1981 @ Rs. 30/- p.m. alongwith interest. The appellants in their written statement had stated that they were direct tenants under Shanti Sarup and had paid rent till 31.8.1981. The initial burden of this issue was on the respondents No. 1 to 3. AW1 Bhagwat Sarup respondent No. 2 did not state in his statement at all that Salig Ram respondent No. 4 was in arrears of rent for the period 1.5.1978 to 31.4.1981. He did not plead the ground of non payment of rent in his statement at all. RW 1 Krishan Dutt appellant in his statement categorically stated that they had already paid rent till August, 1981 and no receipt was issued by Shanti Sarup predecessor in

interest of respondent No. 1 to 3. No suggestion was put up to RW1 that in fact he had not paid rent upto August, 1981. In such circumstances, the version of RW1 had to be presumed to be correct. It has been stated in *Ganpat Rat Khosla v. Kishan Lal and Ors.* (1958)60 P.L.R. 349 that a party should put to his opponents witness so much of the case as concerns that witness and on failure to do so, it shall be presumed that the witnesses account had been accepted. Therefore, in view of the un rebutted statement of RW1 it shall be presumed that rent had been paid upto August, 1981 and since AW1 had not stated anything about the rent due so, it shall be presumed that no rent was due."

5. On the question of sub letting the Appellate Authority affirmed the findings recorded by the Rent Controller and primary reliance was placed on objection petition marked "A" which was exhibited as Ex.PA. The question considered by the Appellate Authority in this regard is as to whether the tenant respondent Nos. 3 and 4 could be considered a direct tenant under the landlord-petitioner or they have taken the demised shop on rent from tenant-respondent No. 2 Om Parkash. Placing reliance on the assessment register and the objection petition filed by the landlord-petitioner on a judgment of this Court in the case of *Ram Parkash and Anr. v. Labhu Ram* 1981(1) R.L.R. 214, the Appellate Authority held as under:

"Now the question to be seen is whether the appellants are proved to be direct tenants previously under Sh. Shanti Sarup and now under the respondents No. 1 to 3 or they had taken the demised shop on rent from Om Parkash RW5. Inder Pal house tax Clerk, Municipal Committee, Karnal stated that he had brought the summoned record. He next stated that according to the Assessment Registrar for the year 1979-80 the rental value of property No. 533/529 sector No. XVII was assessed at Rs. 2400/- and notice was given to the owner Shanti Sarup who had filed objection petition stating that Krishan Dutt was a tenant under him at a monthly rent of Rs. 40/- Shanti Parsad at a monthly rent of Rs. 50/- and one Durga Dass at a monthly rent of Rs. 40/-. He further stated that his objection petition was accepted and rental value was assessed Rs. 1560/-. In cross-examination he stated that objection petition Mark A was not signed by Shanti Sarup in his presence and he did not know who had written it but he had received the objection petition from Shanti Sarup and he had signed at the back in his presence. It has been stated in *Ram Parkash and Anr. v. Labhu Ram* 1981(1) R.L.R. 214, that proceedings before Rent Controller are of summary nature and Evidence Act is not applicable to such proceedings. The very fact that Shanti Sarup had himself presented objection petition Mark A before RW5 Inder Pal house tax clerk and also signed on the back of the objection petition shows that Shanti Sarup had filed objection petition Mark A. The signatures on the back of objection petition Mark A of Shanti Sarup which he had made before RW5 Inder Pal House Tax Clerk tallied with his signatures on the objection petition. Therefore, objection petition Mark A is admissible in evidence and it is admitted as Ex.PA."

6. Sh. M.L. Sarin, learned senior counsel for the landlord-petitioner has argued

that the objection petition Mark "A" cannot be exhibited as Ex.P.A. by the Appellate Authority because the signatures of the landlord-petitioner i.e. Shanti Sarup have not been proved and the document cannot be accepted in evidence without being proved that the landlord-petitioner Shanti Sarup has signed the same. The learned counsel has further submitted that judgment of this Court in Ram Parkash's case (supra) relied upon by the learned Appellate Authority stands specifically overruled by a Division Bench of this Court in the case of Ram Krishan v. Santra Devi (1986)89 P.L.R. 417. According to the view now taken by the Division Bench, the Indian Evidence Act, 1872 (for brevity the 1872 Act) is applicable to the proceedings before the Rent Controller in the States of Punjab and Haryana because in both the states the Rent Tribunals acts like Civil Courts in matters like summoning and attendance of witnesses, enquiries and hearing of parties. The earlier view taken in Ram Parkash's case (supra) that the proceedings before the Rent Tribunals are summary in nature and the 1872 Act is not applicable was specifically overruled.

7. According to the learned counsel if document mark "A" which is exhibited as "PA" is ignored then it has to be concluded that the demised shop was first given on rent to the tenant-respondent No. 1 Salig Ram who rented out the same to tenant-respondents No. 3 and 4. Substantiating his argument further, learned counsel has pointed out that the landlord-petitioner in his ejectment petition had specifically made these averments and in the reply filed by the tenant-respondent No. 1 these averments were admitted. Learned counsel has further submitted that once Salig Ram tenant respondent No. 1 who is father of tenant respondent nos. 3 and 4 has admitted the relationship of landlord and tenant between the parties and there is a rent note also Ex.PA showing that tenant-respondents No. 1 was given the demised shop on rent @ Rs. 35/- p.m. then no contrary view could have been taken. He has also referred to document Ex.A3 dated 9.4.1971 which shows that tenant-respondent No. 1 rented out the shop in dispute further to tenant respondent No. 2 on a monthly rent of Rs. 50/-. In these circumstances, the learned counsel has pointed out that respondent Nos. 3 and 4 were under an obligation to explain as to how they have acquired possession of the demised shop. For this proposition, the learned counsel has placed reliance on two judgments of the Supreme Court in the case namely Nihal Chand Rameshwar Dass and Anr. v. Vinod Rastogi and Ors. J.T. 1999(4) S.C. 113 and M/s. Bharat Sales Ltd. Vs. Life Insurance Corporation of India, .

8. The learned counsel has also argued that entries in the house tax register cannot prima facie be taken to be the proof of fact that there is a relationship of landlord and tenant. Reliance has been placed on two judgments of this Court in the Cases of Jagan Nath v. Shanti Devi 1976 C.L.J. 312 and Jagdish Chander v. Ram Bilas 1988 H.R.R. 144. The learned counsel has also pointed out that burden of proof was to be discharged by the tenant-respondent No. 3 and 4 once it is admitted by the tenant-respondent No. 1 that he is a direct tenant under the landlord-petitioner. In this regard he has placed reliance on a judgment of the Supreme Court in the case of Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal

9. On the question of payment of rent, learned counsel has argued that in para 5(a) of the ejectment petition it has been specifically averred that tenant-respondent No. 1 has failed to pay the rent @ Rs. 35/- p.m. w.e.f. 1.5.1978 to 31.4.1981 which she was liable to pay alongwith interest @ 8 percent and municipal taxes. According to the learned counsel in order to avoid ejectment it was mandatory for the tenant-respondents to deposit the arrears of rent as demanded because the landlord who has falsely and illegally demanded the rent for the period has already been paid would face proceedings u/s 19(2) read with Clause (a) of Sub-section 1 of Section 6 of the Act which provides for punishment of imprisonment which may extend to two years with fine. According to the learned counsel, the tenant-respondents have failed to produce any documentary evidence to show the payment of rent and, therefore, in these circumstances the onus to prove the payment of arrears of rent was on the tenant-respondents. For this proposition, the learned counsel has placed reliance on a Division Bench judgment of this Court in the case of R.K. Mahajan v. Tarlok Singh 1984 R.L.R. 531. The learned counsel has also placed reliance on another judgment in the case of Sh. Bindra v. Piara Singh 1979(1) R.L.R. 638. On the basis of his afore-said submissions, the learned counsel has argued that the landlord-respondents are liable to be evicted and the findings recorded by the Appellate Authority on the not) payment of rent are liable to be reversed by restoring the findings recorded by the Rent Controller.

10. Sh. P.C.Mehta, learned counsel for the tenant-respondents No. 3 and 4 has argued that tenant-respondents No. 1 and 2 are in connivance with the landlord-petitioner and therefore the transaction in the shape of rent note produced between the landlord-petitioner and tenant-respondent No. 1. Ex.PA dated 30.12:1969 and rent note Ex.A3 between tenant-respondent No. 1 and tenant-respondent No. 2 Om Parkash are sham transactions. According to the learned counsel ordinarily a father would not make an admission against the interest of his son who succeeds in tenancy rights of his father.

11. I have thoughtfully considered the rival submissions made by the learned counsel for the parties and am of the view that this petition deserves to succeed because the Division Bench judgment in Ram Krishan's case (supra) on which reliance has been placed by the landlord-petitioner has overruled the judgment in the case of Ram Parkash's case (supra) which has been relied upon by the learned Appellate Authority in order to admit in evidence document marked A i.e. the objection petition purported to be filed by the landlord-petitioner admitting Krishan Dutt, tenant-respondent No. 3 to be a tenant under him on a monthly rent of Rs. 40/-. The document has been exhibited despite the fact that RW5 Inder Pal, House Tax Clerk of Municipal Committee, Karnal had stated that the objection petition mark "A" was not signed by Sh. Shanti Sarup in his presence nor he could depose as to who was the author of the objection petition. In these circumstances, the document mark "A" which is exhibited as PA could not be

relied upon as has been held by a Division Bench of this Court in the case of Ram Krishan (supra), The observations of the Division on the application of 1872 Act to the proceedings before the Rent Controller reads as under:

"There is no gain saying that the Rent Controller and the Appellate Authority under the Rent Restriction Acts, applicable to the States of Punjab and Haryana act like civil courts in several matters like the summoning and attendance of witnesses, enquiries and hearing of parties etc. They are indeed obliged to decide cases in judicial manner and undoubtedly they are covered by the definition of term "Court" as given in the Indian Evidence Act. It is also no doubt true that the Rent Controller and the Appellate Authority being persona designate are entitled to devise their own procedure within the confines of the relevant Rent Restriction Act and they can chalk out their own procedure which in law can be considered to be reasonable conducive to promote justice and, in this respect, they are not bound to strictly follow the dictates of the Code of Civil Procedure, but they being authorities legally competent to take evidence are certainly governed by the provisions of the Indian Evidence Act."

12. It is also pertinent to mention that the judgment in the case of Ram Parkash (supra) relied upon by the learned Appellate Authority has been specifically overruled in para 7 of the Division Bench judgment in the case of Ram Krishan (supra).

13. Once the document mark "A" which is exhibited as Ex.PA is to be read in evidence then the evidence left on record is the rent note Ex.A1 and A3 which have been amply proved by AW3 Diwan Chand attesting witness and Ram Lobhaya Document Writer. It is proved by document A1 that landlord-petitioner had given the demised shop to Salig Ram, tenant-respondent No. 1 @ Rs. Rs. 35/- p.m. as compensation for the use and occupation and Salig Ram has been described as a licensee. Even if it is assumed for the sake of arguments that tenant-respondent No. 1 was a licensee under the landlord-petitioner then he was not entitled to let it out to tenant-respondent No. 2 and the tenant-respondent Nos. 3 and 4 were under obligation to prove that they were direct tenants under the landlord-petitioner. These two documents, to my mind cannot be brushed aside for recording a finding that tenant-respondents No,3 and 4 are direct tenants under the landlord-petitioner. Therefore, f have no hesitation in concluding that the tenant-respondent No. 1 has sublet the demised shop to tenant-respondent No, 2 who has further sublet the same to tenant-respondents No. 3 and 4. It was the duty of the tenant-respondents No. 3 and 4 to explain as to how they have acquired the possession of the demised shop as admittedly they are in possession. The Supreme Court in Bharat Sates's case (supra) has observed that subletting can be inferred from the delivery of exclusive possession because it would be extremely difficult for the landlord to prove by direct evidence the fact of sub letting. The observations of their Lordships read as under:

"Sub tenancy or sub letting comes into existence when the tenant gives up

possession of the tenanted accommodation, wholly or in part and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession over the demised property. It is the actual physical and exclusive possession of that person, instead of the tenant which ultimately reveals to the landlord that the tenant to whom the property was let out has opted some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove by direct evidence, the contract or agreement or understanding between the tenant and the sub tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub let it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the Court is permitted to draw its own inference upon the facts of three cases proved at the trial, including the delivery of exclusive possession to infer that the premises were sub let."

14. To the same effect is the judgment of the Supreme Court in the case of M/s Nihal Chand (supra). Ordinarily findings of facts cannot be interfered with by this Court u/s 6 of Section 15 of the Act. However, in the present case this course has become inevitable because the document Mark "A" (Ex.PA) has to be excluded from consideration. In the absence of document Mark "A" which was exhibited as Ex.PA there is no evidence showing that respondent Nos. 3 and 4 are direct tenant of landlord-petitioner. Therefore, the findings on this issue have to be set aside.

15. On the question of non payment of rent also the onus would lie on the tenant who has claimed that the rent stood paid. However, it is equally true that the landlord is under an obligation to first allege that the rent has not been paid. Mere allegation in the plaint may not be enough in the absence of statement made by the landlord-petitioner while appearing as a witness, AW1 Bhagwat Sarup, landlord-petitioner has failed to state that the tenants were in arrears of rent for the period from 1.5.1978 to 31.4.1981. It is further clear no suggestion was put to tenant-respondent No. 2 when he appeared as RW1 in his cross-examination suggesting that he did not pay the rent upto August, 1981. The claim made in the pleadings which has not been substantiated by the oral statement made by the landlord-petitioner cannot be considered to be proved for

the reason that the landlord-petitioner has not been subjected to cross-examination on the claim made by him. Such a procedure is an essential characteristic of our adversary system and the same is so well entrenched that its violation results into excluding such pleadings from consideration. It is thus necessary for the claimant of a right to prove the necessary constituents of that right by leading cogent evidence. Therefore, I do not find any legal infirmity in the findings on the non payment of rent recorded by the learned Appellate Authority.

16. For the reasons recorded above, this petition succeeds and is allowed. The findings of the Courts below on the question of sub letting are set aside and it is held that tenant-respondent No. 1 without any authority sub let the demised shop to tenant-respondent No. 2 who is presumed to have further sublet the demised shop to tenant-respondents No. 3 and 4. Therefore, the tenant-respondent No. 3 and his wife respondent No. 4 are liable to be evicted from the demised shop. They are directed to hand over the vacant possession of the same to the landlord-petitioner within a period of two months from today. If the needful is not done then the landlord-petitioner shall be entitled to execute the decree of ejectment.