

(2017) 04 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 6152 of 2011 (O&M) and Civil Revision 7242 of 2013 (O&M)

Jammu and Kashmir Bank Limited

APPELLANT

Vs

Amrit Pal Singh

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13(3)(iv), Section 15

Citation : (2017) 1 RCRRent 545

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

Bench : Single Bench

Advocate : Aalok Jagga, Advocate, for the Petitioner-Tenant; Divanshu Jain, Advocate, for the Respondent-Landlord

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J. (Oral)—The present order shall dispose of Civil Revision Nos. 6152 of 2011 and 7242 of 2013 filed by the petitioner-bank.

2. In the Civil Revision No. 6152 of 2011 (hereinafter referred to as "first petition"), the issue is of mesne profits on account of an eviction order passed on 14.08.2010 (Annexure P-12) on the ground of bonafide requirement of the respondent-landlord, in an eviction petition filed on 12.02.2007 (Annexure P-8). The Appellate Authority had fixed the mesne profits @ Rs. 50,000/- per month vide order dated 14.10.2010 (Annexure P-13) of the premises which were SCO No.129 & 130, Sector 17-C, Chandigarh.

3. Civil Revision No. 8239 of 2010 was preferred by the landlord for reconsideration of the mesne profits, which was allowed on 21.02.2011 (Annexure P-14). to decide the application for mesne profits after taking into account the evidence led by both the parties in that regard. It was further directed that the Appellate Authority shall pass a speaking order on the basis of the evidence made available. The petitioner-bank was to keep on paying Rs.

50,000/- per month as damages to the petitioner.

4. The fresh order was passed by the Appellate Authority on 14.09.2011 (Annexure P-1), whereby the Appellate Authority had fixed a sum of Rs. 5 lakhs per month as mesne profits and the tenant was directed to pay the same from the date of the ejectment order dated 14.08.2010 (Annexure P-12).

5. The first petition was filed challenging the order dated 14.09.2011 (Annexure P-1), which was admitted on 14.10.2011 and no stay was granted. Thereafter, the bank had filed SLP No.31444 of 2011, whereby vide order dated 28.11.2011, the Apex Court had stayed the order dated 14.09.2011 passed by the Appellate Authority and had directed the bank to pay the mesne profits @ Rs. 50,000/- per month only. Eventually, the Apex Court on 28.01.2013 made the said order absolute and directed this Court to dispose of the application within six months from the date of the receipt of the copy of this order.

6. In the meantime, Appellate Authority also vide order dated 26.10.2013 upheld the eviction order dated 14.08.2010 leading to the filing of Civil Revision No.7242 of 2013 (hereinafter referred to as "second petition"), in which dispossession was stayed.

7. In the first petition, an application bearing CM-3056-CII- 2014 was filed, which was allowed on 08.07.2014 and it was directed that the amount of mesne profits which stand deposited be disbursed to the respondent-landlord without prejudice to his rights which would be determined during the course of the hearing. The main case was directed to be heard within 3 months.

8. The bank aggrieved against the said order filed SLP No.20700 of 2014 and the said order was stayed on 14.08.2014. Thereafter, on 31.10.2014, the bank vacated the premises in question. The above mentioned i.e. SLP No.20700 of 2014 was disposed of on 13.04.2015 with request to this Court to dispose of the revision petition.

9. Resultantly, on 13.05.2015, the second petition whereby the eviction orders were sought to be challenged on merits was disposed of as having been rendered infructuous, since the premises in question had been vacated. It is, however, to be noted that the mesne profits in the first petition had been assessed @ Rs. 2.50 lakhs per month w.e.f. 15.08.2010 till 26.10.2013 when the ejectment order was passed. Thereafter, the mesne profits was fixed @ Rs. 3 lakhs per month after the appellate order was passed, in view of the findings having been recorded in the first petition, wherein the history of the relationship of the landlord and tenant was recorded and also that the bank had hired another premises vide registered lease deed for 15 years at the rate of annual rent of Rs. 53,39,966/-.

10. Counsel for the landlord has submitted that at that point of time an application CM-11495-CII-2014 had also been filed claiming the mesne profits from 26.10.2013, since the earlier mesne profits were only till the decision of the

appellate order. It is, accordingly, the case of the landlord that the bifurcation at different rates was accordingly done by this Court and higher mesne profit after the passing of the appellate order was granted till the vacation of premises. The matter was then taken by the bank to the Apex Court in Civil Appeal Nos.6582 and 6583 of 2016 which were allowed on 20.07.2016 and the order passed in both the civil revisions was set aside and the case was sent back for fresh consideration to be decided within six months from the date of the order. Pending disposal of the revisions the amount which was lying deposited was to continue to be deposited and was to await the decision of this Court. It is in such circumstances, the matter is now again placed before this Court.

11. The dispute inter se pertains to the entitlement of the landlord to seek eviction on the ground of bonafide requirement in spite of the fact that he had agreed that there was a lease agreement for 15 years starting from 01.01.2000 vide Ex.R-7. The said lease agreement is being denied by the landlord. On the contrary, it is the case of the bank that once there was enhancement done as per the said agreement as the tenancy was of the year 1976 @ Rs. 8,596/- per month, which was enhanced to Rs. 25,000/- per month, the ejectment could not be sought in view of the proviso of Section 13 (3) (iv) of the East Punjab Urban Rent Restriction Act, 1949 (for short "the Act"). It was also the case of the bank that a loan agreement as such had been entered into between the parties on 13.12.2006 and there was a deed of assignment also and the repayment was to be adjusted against the loan. The relevant part of Section 13 the Act reads as under:-

"13. Eviction of tenants.-- (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, [or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended].

x x

(3) (a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession--

(i) in the case of a residential building if--

(a) he requires it for his own occupation;

(b) he is not occupying another residential building, in the urban area concerned; and

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;

x x

3 (iv) Provided that where the tenancy is for a specified period agreed upon

between the landlord and the tenant, the landlord {shall not, except under subparagraph (i-a), be entitled} to apply under this sub-section before the expiry of such period:

12. The circumstances in which, the Rent Controller vide its impugned order dated 14.10.2010 had gone on to hold that the execution of lease deed was not established and Ex.R-7 could not be taken as a lease deed are to be noticed. The original having not been produced and not having been registered could not have been relied upon. The affidavit (Ex.R-8) which had been executed by the landlord in support of that agreement, which was sought to be relied upon by the bank that there was an admission that agreement was there was rejected on the ground the said documents were never put to the petitioner in his cross-examination and were later produced by the bank official in their evidence. There was no admission of this document, specially keeping in view the fact that the original had not been produced. It was also noticed that an application for secondary evidence was declined on 16.07.2010 and, therefore, no permission was granted to produce photocopy of the document and could not be relied upon. Even reference to the contradictory statement of the bank witnesses was made to when the said document was got attested from the Notary and by the Oath Commissioner which were taken into consideration to hold that the execution of the document was not established. Resultantly, the protection under Section 53-A of Transfer of Property Act was held not available with the bank, specially keeping in view the fact that no suit for specific performance had been filed for getting the lease deed executed in terms of the agreement and the time had also expired. Resultantly, it was held that document could not be relied upon and the eviction order was, thus, passed on the ground of bonafide requirement by rejecting the defence of the bank. It is further noticed that the increase was not exactly in terms of agreement and, therefore, the document could not be relied upon.

13. Since, the matter has been remanded for reconsideration, by the Apex Court arguments were heard at length by this Court, since, counsel for the bank had argued that there was an admission as such by the landlord and he had sought the benefit of the lease agreement and the enhancement by taking the loan and, therefore, the findings recorded were not justified. Resultantly, the eviction order could not have been passed prior to the expiry of the 15 years. It is, accordingly, contended that if that was so, then the mesne profits fixation would also be decided in its favour once the ejectment order goes and, therefore, the claim of the landlord to claim mesne profits from the date of ejectment would also evaporate if the ejectment is set aside on the legal issue, since eviction could not be sought for before the period agreed between the parties as per the alleged lease deed and in view of the proviso of Section 13 (3) (iv) of the Act, reproduced above.

14. A perusal of the evidence on record would go on to show that the counsel for the landlord is well justified to point out from the evidence that when the

affidavit Ex.R1/A was tendered by the bank witness, namely, Satish Chander Sharma, RW-1 alongwith the document Ex.R-1 to Ex.R-9, the documents had been objected to at that point of time by the counsel on 18.05.2010. A perusal of the cross-examination of Mr. Gyanendra Kaul-RW-2, Bank Manager conducted on 02.06.2010 would go on to show that he had admitted that he had not brought the original of Ex.R-7 as he was not in the branch now a days. He had also admitted that the original of the document was retained by the bank after attesting and on 03.08.2000 it was got attested from notary and the document was taken by the landlord on 31.07.2000.

15. Similarly, on 02.06.2010, the other bank official, namely, Satish Chander Sharma, RW-1 had admitted that the original of Ex.R-7 and R-8 had been lost, since 2006 when it had been sent to the Court through some Peon. He had also admitted that Ex.R-7 and Ex.R-8 were neither executed in his presence nor attested in his presence. The factum of lease deed having not been registered with the Sub-Registrar had also been admitted. The fact that he never dealt with the file of tenanted premises and never asked the owner to get the lease deed in question registered has come on record.

16. It is also pertinent to notice that the landlord while appearing as PW-1 had tendered his affidavit dated 31.10.2007 alongwith Ex.P-1 to P-4 which had been objected to. It was his categorical case that no lease agreement was entered into between the parties on 31.07.2000. As per his cross-examination conducted on 25.02.2008, only a rent deed had been entered into. The cross-examination had been deferred for 29.04.2008. The landlord remained present, thereafter, on the said date and on 06.08.2008 also. On the said date costs of Rs. 1,000/- were imposed, since the counsel for the Bank was not available and the landlord was bound down for 28.08.2008. On the said date, his cross-examination was treated as "Nil" as none turned up to cross-examine him and on account of the non-payment of the costs. This aspect has not also been taken into consideration by the Appellate Authority, who proceeded on the basis that there is a lease deed as such and in the absence of it being registered was useless and void and could not be looked into for any purpose.

17. It is, thus, pertinent to notice that at that point of time an application for permission to lead secondary evidence had been filed on 02.06.2010 itself by the bank to prove Ex.R-7 and Ex.R-8 which were the alleged lease agreement and the affidavit. The said application was dismissed on 16.07.2010 by the Rent Controller that it was not correct that the documents had been admitted by the landlord and he was disputing the execution of the documents and it could not be said that they were admissible in evidence. The bank had alleged that it was not in its knowledge that in whose custody the documents were given and, therefore, loss of documents had to be specifically pleaded and proved and no such reason had been given. The authenticity of the attesting witness was to be examined at the final stage and resultantly it was noticed that the lease agreement was attested on 01.08.2000 and the affidavit on 02.08.2000 and it had been stated

that both documents were attested by the Notary and Oath Commissioner and not in the presence of the witnesses. Accordingly, it was held that the document is inadmissible as having not been registered. The original having not been produced, it could not be impounded and it was not properly stamped as per the provisions of the Indian Stamp Act, 1889 and, therefore, having not been registered it could only have been made original after imposing the penalty. In the absence of any written admission from the tenant, the application was, accordingly, dismissed.

18. The said order was never challenged, since admittedly eviction order was passed immediately a month later on 14.08.2010. It is settled principle that this Court while sitting in revisional jurisdiction is not to go into the evidence and it is for the Appellate Authority which is the final Court of fact to have examined all these facts in appeal which apparently from the impugned order dated 26.08.2013, it has failed to do so.

19. A perusal of the order which is now subject matter of challenge would go on to show that after reproducing the pleadings and noting the argument as such raised by from both sides, the judgments from both sides had been discussed and distinguished. The eviction order had been upheld without even referring to the evidence on record as to whether the documents actually stood proved or not and, therefore, the legal argument which is now sought to be raised by the bank that the petition could not have been preferred before the expiry of the 15 years was never properly appreciated and could not have been done until the factual matrix had been thrashed out.

20. The first appeal under the Rent Act is, thus, a valuable right , whereby the Appellate Authority is under a bounden duty to take into consideration the facts and then apply the legal position and application of mind had to be supported by reasons on all issues arising and the contentions put forth. The valuable right as such which had to be adjudicated upon by the first Appellate Court is missing in the present case. The judgment which had to deal with the process of reasoning arrived at by the Rent Controller and how it came to the conclusion and what was the facts of the case and what was the controversy, which was trying to be adjudicated upon by the Court. The manner in which the same has to be done, has not been properly redressed by the Appellate Authority, as discussed above. The specific defence of the Bank as noticed above was that the terms of the lease had been fixed and only after the expiry of 15 years which in the present case was 31.12.2014 the eviction petition was maintainable and issue No.4 was also to this extent the petition was immature (sic), the onus of which was on the respondents. Similarly, issue No.5, whereby the landlord was estopped by his own act and conduct and had not approached the Court with clean hands and its effect have not been redressed as such by the Appellate Authority, by merely holding that the lease deed as such was not registered and without examining the evidence in detail. Resultantly, procedural infirmity as such has occurred and the judgment suffer from a basic illegality, which cannot be cured.

21. The case law could have only been applied after the Appellate Authority had discussed the facts on merits and after taking into account the evidence on record. Resultantly, this Court is left with no other option, but to remand the matter to the Appellate Authority for fresh consideration. It is settled principle that this Court is not sitting as a Court of second appeal which would re-examine the evidence which was within the domain of the Appellate Authority. The said view has been laid by the Constitutional Bench of the the Apex Court in "Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh" 2014 (9) SCC 78. The relevant observations read as under:-

"45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re- appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/ Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re- assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

22. The said view has been followed and reiterated in "M/s Boorugu Mahadev & Sons & another v. Sirigiri Narasing Rao & others" (2016) 3 SCC 343 wherein the High Court had interfered with the findings of the fact and that reasoning was held to be not justified in view of the law laid down. The relevant observations read as under:

"21. Likewise, when we peruse the impugned order, we find, as rightly urged by the learned counsel for the appellants, that the High Court did not keep in mind the aforesaid principle of law laid down by the Constitution Bench in the case of Hindustan Petroleum Corporation Ltd. (supra) while deciding the revision petition and proceeded to decide the revision petition like the first appellate Court. The

High Court as is clear from the judgment probed in all the factual aspects of the case, undertook the appreciation of whole evidence and then reversed all the factual findings of the appellate Court and restored the order of the Rent Controller. This, in our view, was a jurisdictional error, which the High Court committed while deciding the revision petition and hence it deserves to be corrected in this appeal. In other words, the High Court should have confined its inquiry to examine as to whether any jurisdictional error was committed by the first appellate Court while deciding the first appeal. It was, however, not done and hence interference in this appeal is called for."

23. Counsels had also agreed to this proposal faced with the factual aspect that the Appellate Authority has not gone into the details of the evidence as such. Accordingly, both the revision petitions are allowed. The orders dated 26.10.2013 upholding the eviction order dated 14.08.2010 are set aside and similarly the order dated 14.09.2011 quantifying mesne profits @ Rs. 5 lakhs per month is also set aside.

24. The Appellate Authority shall re-decide the controversy in question, keeping in view the abovesaid observations and also whether agreement and affidavit stood proved in the facts and circumstances and could be taken into account. The Appellate Authority shall also decide the application for fixing the mesne profits, keeping in view the earlier directions issued by this Court in CR No.8239 of 2010, on the basis of the evidence, which had already come on record, in case the appeal filed by the bank is dismissed.

25. Parties through counsel to put in appearance before the District Judge, Chandigarh on 15.05.2017, for further allocation.