

(2003) 04 P&H CK 0133
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2090 of 1994

Nirmal Devi @ Nirmal Kanta and Others	APPELLANT
Vs	
Lala Bhola Nath Trust (Regd.) and Others	RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13, 13(2)

Citation : (2004) 136 PLR 264

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

Bench : Single Bench

Advocate : Ravinder Chopra and Naresh Manchanda, for the Appellant; S.C. Chhabra, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This is tenants' petition filed under Sub-section (5) of Section 15 of the East Punjab Urban Rent Restriction Act, 1949 (for brevity, the Act), challenging the order of the learned Appellate Authority dated 1st March, 1994 reversing the judgment dated 19th December, 1989 passed by the Rent Controller. The Rent Controller in his judgment had non suited the landlord-respondent on the ground that the petition filed by Shri Tilak Raj Jaiswal who is the head trustee of Lala Bhola Nath Trust, had no authority to file the ejectment petition seeking eviction of the tenant-petitioner. The eviction of the tenant-petitioner was sought on the following three grounds:-

- (i) That respondent No. 2 Ram Dayal had sublet the demised premises to the tenant-petitioner who had further sublet the same to Sham Lal and Company. It was alleged that respondent No. 3 Sham Lal and Company was in actual physical possession;
- (ii) That the tenant-petitioner without the permission of the landlord-respondent had made material additions or alterations in the demised premises by constructing a wooden kiosk, a verandah in the open courtyard and divided the

verandah into two cabins and store etc.; and

(iii) That the tenant-petitioner as well as respondent Nos. 2 and 3 had not paid rent of the demised premises from 1st August, 1985 till the date of filing the application.

2. The Rent Controller came to the conclusion that Shri Tilak Raj as a head trustee was not competent to file the ejectment petition and the same was bad for non-joining the other trustees as party. He further found that there was no relationship of landlord and tenant between Bhola Nath Trust landlord-respondent and respondent No. 1. It has further been held by the Rent Controller that the tenant-petitioner was in unauthorised occupation of the demised property and he did not have any relationship of landlord and tenant with the trust-respondent No. 1. On the issue of material alterations and additions, the Rent Controller found that the same were made without consent of the respondent-landlord which have certainly impaired the value and utility of the demised premises.

3. The Appellate Authority on the appeal filed by the landlord-respondent found that Shri Tilak Raj the head trustee was authorised and had locus standi to file the ejectment petition and supervise the trust property vide Resolution Ex.A11. The Appellate Authority placed reliance on a judgment of this Court in *Jawahar Lal v. Dev Raj and Anr.* (1981) R.C.J. 507. Even before me, on this issue, learned counsel for the tenant-petitioner has conceded the legal position.

4. On the issue of relationship of landlord and tenant, the learned Appellate Authority found that Ram Dayal tenant-respondent has been proved to be the tenant. Primarily reliance has been placed on Exs.A3 to A9 which were the counterfoils of the rent receipts issued either by Thakur Parshad or by Tilak Raj. Those counterfoils were proved by Tilak Raj, AW1 who had produced the originals. It has also been found by the Appellate Authority that the tenant-petitioner was sublettee of Ram Dayal, tenant-respondent No. 2 and tenant-respondent No. 3 was sublettee of tenant-petitioner. The findings in this regard as recorded by the Appellate Authority read as under: -

"6.....To prove the tenancy of Ram Dayal respondent No. 1 the applicant has produced copies of the counter foils Ex. A3 to A9 proved by Tilak Raj AW1 from the original. From these counter foils, it is proved that Thakur Parshad had issued receipts in favour of Ram Dayal for receiving rent from him in respect of the premises in dispute. From these documents it is proved that Ram Dayal was inducted as tenant in the premises in dispute by Thakur Parshad and contention of Ram Dayal that he was personal servant of Thakur Parshad and not tenant in the premises in dispute is not believable. On the other hand, the respondents have failed to produce any record or document to prove that either of them was ever inducted as tenant by the Trust in the premises in dispute. Therefore, it can not be said that Mewa Ram respondent No. 2 and Sham Lal respondent No. 3 had over taken the premises in dispute from the Trust applicant-appellant.

Therefore, from the evidence on the record it is proved that Ram Dayal was tenant in the premises in dispute and as respondent Nos. 2 and 3 have failed to prove that they are in possession of the premises in dispute in their own right as tenant, it is proved that Ram Dayal respondent No. 1 sublet the premises in dispute to Mewa Ram Respondent No. 2 and Mewa Ram Respondent No. 2 has shared the premises in dispute with Sham Lal respondent No. 3 for running liquor vend Khokha. Thus, respondent Nos. 2 and 3 are proved sublettee of Ram Dayal original tenant of the premises in dispute. [Emphasis (in italics) added]

*** ** Here the learned counsel for the respondent has argued that Tilak Raj one of the trustees only has filed ejectment petition against the respondents while all the trustees should have been made party to the ejectment petition. Therefore, as Tilak Raj alone has no locus standi to file ejectment petition, the ejectment petition is bad for non joinder of necessary parties. But according to the latest law laid down by the Hon'ble Madras High Court in Kamuthi Madalaichamy Vs. Thangarathina Nadar, it is not necessary to implead co trustees as party to the case when the premises are leased out to tenant by a trustee..."

5. On the basis of the aforementioned findings of subletting and also non-payment of rent, the Appellate Authority ordered ejectment of the tenant-petitioner and tenant-respondent Nos. 2 and 3. The Appellate Authority had given a period of six months from the date of its order i.e. 1st March, 1994 to the tenant-petitioner, tenant-respondent Nos. 2 and 3, to hand over the vacant possession to the landlord-respondent No. 1. However, the revision petition was admitted by this Court on 3rd August, 1994 and dispossession of the tenant-petitioner was stayed till further orders which is in operation till today.

6. Shri Ravinder Chopra, learned counsel for the tenant-petitioner has argued that the Appellate Authority has failed to record any cogent reasons while reversing the findings of the Rent Controller to conclude that the relationship of landlord and tenant existed between the landlord-respondent No. 1 and tenant-respondent No. 2 Ram Dayal. The learned counsel has submitted that the counterfoils of the rent receipts produced by Shri Tilak Raj, representing the landlord-respondent No. 1 are not signed by the tenant-respondent Ram Dayal and those rent receipts are pieces of self-serving statements. The learned counsel has maintained that in the absence of any entry with regard to the receipts of rent and passing of the rent receipts in the book of accounts, these receipts could not be relied upon to conclude that Ram Dayal tenant-respondent No. 2 was a tenant with the landlord-respondent No. 1. Apart from the counterfoils Exs.A2 to A9, there is no document showing the relationship of landlord and tenant between landlord-respondent No. 1 and tenant-respondent No. 2.

7. The learned counsel has further argued that even the Rent Controller committed a grave error in law by reaching the conclusion that the tenant-petitioner was in unauthorised, possession. According to the learned counsel, the

Rent Controller is not clothed with the power to issue a declaration stating that the tenant-petitioner is in unauthorised possession of the demised premises. The learned counsel has then pointed out that the tenant-petitioner had tendered rent, interest and costs on the first date of hearing but the landlord-respondent No. 1 refused to accept the same. He has referred to sub-para (ii) of the written statement filed by tenant-respondent No. 2 and sub-para (iii) of the written statement filed by the tenant-petitioner wherein it is averred that on 25th August, 1987, the tenant-petitioner offered rent alongwith interest and costs on the first date of hearing. He further claimed that the tenant-petitioner had also paid the arrears of house tax to the Ferozepur Cantt. Board. In support of his submissions, the learned counsel has placed reliance on a judgment of Delhi High Court in the case of Khushbir Singh v. Ajaib Singh. (1982) 2 RLR. 134 On the question of material alterations and additions, the learned counsel has placed reliance on a judgment of the Supreme Court in the case of Waryam Singh v. Baldev Singh. (2003)133 P.L.R. 154. The learned counsel has urged that once the best evidence has been withheld by the landlord-respondent which could have thrown light on the counterfoils produced as Exs.A2 to A9, an adverse inference is bound to be drawn against the landlord-respondent. In support of his submission, the learned counsel has placed reliance on a judgment of the Privy Council in the case of Ramanathan Chettiar v. M.Ar.Rm. Viswanathan Chettiar 1981 PC 48. He has also placed reliance on a judgment of the Supreme Court in the case of Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, and a number of judgments of the High Courts i.e. Official Receiver, Palghat District v. Kullinghat Itty's son AIR 1985 Ker 156 and Tolaram and Another Vs. Beenjraj and Others, and Dr. Harish Chandra Ray Vs. K.C. Singh, and argued that once the best evidence is withheld, then adverse inference against the party withholding the evidence must be drawn. He has also placed reliance on a judgment of the Supreme Court in Idandas v. Anand Ram Chander (1982)1 R.L.R. 285 to argue that the evidence of the counterfoils having not been signed by the tenant-respondent No. 2, cannot be used as admissions against him because it was neither signed by Shri Tilak Raj or by Thakur Parshad. Referring to para 6 of the aforementioned judgment, the learned counsel has emphasised that the Supreme Court in such circumstances have discarded such piece of evidence and the same cannot be taken into account.

8. Shri S.C. Chhabra, learned counsel for the landlord-respondent No. 1 has submitted that only the L.Rs. of sub-tenant Mewa Ram have filed the instant revision petition. Non-filing of revision petition to challenge the judgment of the Appellate Authority by tenant-respondent Nos. 2 and 3 would go a long way to show that they have accepted the findings of facts recorded by the Appellate Authority. The learned counsel has pointed out by referring to the written statement filed on behalf of tenant-respondent No. 2 Shri Ram Dayal on 28th November, 1987 and argued that it was in fact not filed by him and it does not even bear his signature on the verification. The learned counsel has maintained that in fact from the beginning , there is no contest offered by tenant-respondent

No. 2 Ram Dayal to the ejectment petition filed by landlord-respondent No. 1. The verification part of the written statement shows that the same has been signed by Pt. Santosh Kumar, Advocate as per instructions received: Referring to para 8 of the written statement, the learned counsel has further urged that tenant-respondent No. 2 had admitted that the tenant-petitioner was the actual tenant. The learned counsel has pointed out that the tenant-petitioner has admitted himself to be in possession of the demised premises by producing the licenses issued to him by the Excise and Taxation Department like Exs.R1 to R18. He has further pointed out that in the written statement filed by the tenant-petitioner as well as the tenant-respondent No. 3, it is admitted position that a platform was constructed on which wooden kiosk was placed by the firm tenant-respondent No. 3. He has then referred to the statement of Ram Sarup, RW2 and RW3 Ram Dayal himself to show that in fact Mewa Ram had appeared by impersonating Ram Dayal. As a matter of fact, Ram Dayal, RW3 has never appeared and it was Mewa Ram tenant-petitioner who appeared in the witness box. The document mark A produced by the tenant-petitioner had been found to be a forged document which could have shown Mewa Lal as tenant. The learned counsel further argued that despite service, tenant-respondent No. 2 has never appeared, and the statement made by tenant-petitioner lends support to the case of landlord-respondent No. 1. The learned counsel has pointed out that both the Courts below have concurrently found that there are material alterations and additions impairing the value and utility of the demised premises and this Court while exercising revisional jurisdiction, cannot interfere unless the findings are without evidence. In support of his submissions, the learned counsel has placed reliance on a judgment of this Court in Daulat Ram v. Girdhari Lal (1980)82 P.L.R. 182 Inder Singh v. Smt. Sudarshan Sood etc. (1980)82 P.L.R. 354 and Mulakh Raj Muni Lal Mahajan v. Shri Parmeshwari Dass and Anr. 1980(2) R.C.J. 196.

9. Having heard the learned counsel for the parties at considerable length and perusing the record with their assistance, I have reached the conclusion that this petition deserves to be dismissed. It is conceded position by the tenant-petitioner that Shri Tilak Raj, the head trustee of the landlord-trust is entitled to maintain the ejectment petition against tenant-petitioners-respondent Nos. 2 and 3. Even otherwise, it is now well-settled that any irregularity in the Resolution authorising a body like the landlord-trust, cannot be considered fatal to the suit. In United Bank of India v. Naresh Kumar and Ors. AIR 1997 S.C. 3 the suit of the Bank for recovery of loan was dismissed on the ground that the plaint was not signed and verified by a competent person. Rejecting such a plea for rejection of the plaint, their Lordships of the Supreme Court observed as under:-

"9. In cases like the present where suits are instituted or defended on- behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Code of Civil Procedure, to ensure that injustice is not done to

any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the CPC a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the CPC therefore, provides that in a suit by or against a corporation the Secretary or any Director or other Principal Officer of the Corporation who is unable to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6, Rule 14 together with Order 29, Rule 1 of the CPC it would appear that in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and dehors Order 29, Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint of the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6, Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the "pleadings on behalf of the company, for example, by the Board of Directors passing resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing or the pleadings by its officer."

10. The aforementioned observations of the Supreme Court have been followed by this Court in the case of Municipal Corporation Vs. Preet Builders Pvt. Ltd. and Others, .

11. It has also been established on record that Ram Dayal tenant-respondent No. 2 was tenant by virtue of statement made by Shri Tilak Raj who appeared as AW. 1 and also proved on record the counterfoils of the receipts signed by Tilak Raj himself and Exs. A3 and A4 which are signed by Thakur Dass, a trustee who was Incharge of the trust for collection of the rent at the relevant time. It is true that the counterfoils Exs.A3 to A12 are self-serving documents produced by the landlord-respondent. The authenticity of the aforementioned counterfoils has been accepted by virtue of the fact that Thakur Dass has died. This is legally sustainable in view of the general principles enshrined in Sub-sections (2) and (5) of Section 32 of the Indian Evidence Act, 1872. It is also patent that Ram Dayal tenant-respondent No. 2 despite service has failed to appear and the statement made by Mewa Ram, as the statement of Ram Dayal has actually been signed by Mewa Ram himself in Urdu when he appeared as RW3. It is conceded

by Shri Ravinder Chopra, learned counsel for the tenant-petitioner that there appears to be some clerical mistake in recording the name of Ram Dayal. It was claimed that Mewa Ram made an attempt to impersonate Ram Dayal. One thing is absolutely clear that Ram Dayal did not file any written statement duly verified by him nor he appeared as a witness to controvert the allegations made by the landlord-respondents in the ejectment petition. On the contrary, the tenant-petitioner made an unsuccessful attempt to produce a forged document mark A to establish himself as a tenant.

12. It is also established that the tenant-petitioner is in possession of the demised premises and no petition u/s 15(5) of the Act against the order of the Appellate Authority has been filed by tenant-respondent Nos. 2 and 3. Once it is established that Ram Dayal was the tenant, then whosoever is in possession of the demised premises is under an obligation to explain as to how he came in possession of the aforementioned premises. No explanation has come before the Courts below showing as to how the tenant-petitioner acquired possession except the bald claim that he in fact was the actual tenant of landlord-respondent No. 1 and his offer of payment of rent was declined. It has come on record in the pleadings of the parties that tenant-respondent No. 3 is the licensee of tenant-petitioner. In these circumstances, the only irresistible conclusion which can be recorded is that there was relationship of landlord and tenant between landlord-respondent No. 1 and the tenant-respondent No. 2. Tenant-respondent No. 2 sublet the demised premises to tenant-petitioner who further sublet a part of premises to tenant-respondent No. 3. It is well settled view consistently taken by the Supreme Court that a person who is in possession of the demised premises, must be presumed to be a sub-tenant under the tenancy of a tenant unless he establishes his possession by proving his status as a tenant. For this proposition of law reliance can be placed on the judgments of the Supreme Court in *Rajbir Kaur and Another Vs. S. Chokesiri and Co.*, and *Nihal Chand Rameshwar Dass and Another Vs. Vinod Rastogi and Others*, . In *Rajbir Kaur's* case observations of their Lordships which apply to this case reads as under:-

"If exclusive possession is established, and the version of the respondent as to the particulars and the incidents of the transaction is found unacceptable in the particular facts and circumstances of the case, it may not be impermissible for the Court to draw an inference that the transaction was entered into with monetary consideration in mind. It is open to the respondent to rebut this. Such transactions of subletting in the guise of licences are in their very nature, clandestine arrangements between the tenant and the sub and there cannot be direct evidence got. It is not uncommon, a matter for legitimate inference. The burden of making good a case of subletting is, of course, on the appellants, the burden of establishing facts and contentions which support the party's case is on the party who takes the risk of non-persuasion. If at the conclusion of the trial, a party has failed to establish these to the appropriate standard, he will lose. Though the burden of proof as a matter of law remains constant throughout a trial, the evidential burden which rests initially upon a party bearing the legal

burden, shifts according as the weight of the evidence adduced by the party during the trial. In the circumstances of the case, we think, that, appellants having been forced by the Courts below to have established exclusive possession of the ice-cream vendor or a part of their demised premises and the explanation of the transaction offered by the respondent having been found by the Courts below to be unsatisfactory and unacceptable, it was not impermissible for the Courts to draw an inference, having regard to the ordinary course of human conduct, that the transaction must have been entered into for monetary considerations. There is no explanation forthcoming from the respondent appropriate to the situation as found."

13. It has also been proved on record that there has been material alterations and additions in the demised premises impairing the value and utility. Once it is found that there is material alteration which has resulted in impairment of the value and utility of the demised premises then the view taken by the Supreme Court in *Vipin Kumar Vs. Roshan Lal Anand and Others*, and also *Gurbachan Singh and another Vs. Shivalak Rubber Industries and others*, would apply. In the later judgment, the Supreme Court has taken the view that impairment in the value and utility must be judged from the point of view of the landlord and no one else. If structural alterations and additions have been made in the demised premises without the consent of the landlord then it cannot be asserted that the alterations and additions have added to the value of the property and therefore, the demised premises cannot be got vacated. The findings concerning material alterations and additions impairing the value and utility of the demised premises have attained finality because the tenant-petitioner did not challenge those findings before the Appellate Authority. Therefore, it has to be concluded that there are material alterations and additions in the value and utility, of the demised premises. The fact that the tenant-petitioner alone is contesting the litigation, goes a long way to suggest that the version propounded by the landlord-respondent No. 1 in his ejectment petition has been accepted by the tenant-respondent Nos. 2 and 3, therefore, the instant petition is liable to be dismissed.

14. The argument of the learned counsel for the tenant-petitioner is that withholding of best evidence by the landlord-respondent must lead to an inference against him and it must be held that had the books of account been produced then it would have negated the claim of the landlord-respondent No. 1. From the perusal of both the judgments as well as of the record, I am of the considered view that such an argument would arise in a case where the books of account are admitted to be in possession of the party i.e., in possession of the landlord-respondent No. 1. Sh. Tilak Raj who had filed the ejectment petition on behalf of the trust, has categorically stated that he does not possess the books of account. Therefore, such an argument to my mind would not even arise on the facts of the present case. Moreover, the production of books of account was not a sine qua non for proving the relationship of landlord and tenant. I also do not feel persuaded by the argument of the learned counsel for the tenant-petitioner

that the Appellate Authority has not given any reason in support of its judgment while reversing the findings recorded by the Rent Controller. There is ample evidence on the record discussed by the Appellate Authority. It is true the Appellate Authority has not gone in minute details but it is not correct that reasons have not been given for supporting the findings recorded by the Appellate Authority.

15. For the reasons recorded above, this petition fails and the same is dismissed.