
(2014) 04 SHI CK 0053
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 4119/2013

Rajesh Sharma

APPELLANT

Vs

Rakesh Prabhakar

RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 15
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 151
Contract Act, 1872 — Section 13(1)(e), 23
Himachal Pradesh Urban Rent Control Act, 1987 — Section 14
Transfer of Property Act, 1882 — Section 108

Citation : (2014) 04 SHI CK 0053

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Rajnish Lall, Advocates for the Appellant; P.S. Goverdhan, Advocates for the Respondent

Judgement

Rajiv Sharma, J.—This petition is directed against the order dated 12.3.2013 rendered by learned Rent Controller-II, Solan in M.A. No. 403/06/12 in Rent Petition No. 5/2 of 2010.

2. Key facts necessary for adjudication of the petition are that the respondent/landlord (hereinafter referred to as the "landlord" for the sake of convenience) entered into a lease agreement dated 27.05.2005 with the petitioner/tenant (hereinafter referred to as the "tenant" for the sake of convenience) qua the suit land, situated in Mauza Salogra, Tehsil and District Solan, H.P..

3. The landlord filed a petition under Section 14 of the H.P. Urban Rent Control Act, 1987 for eviction of the tenant on the ground of non-payment of rent and also that the tenant has ceased to occupy the rented premises. The tenant filed reply to the petition.

4. The issues were framed on 25.10.2010. The landlord had already led his evidence. The tenant failed to lead his evidence despite four opportunities

granted to him. He was also granted last opportunity to lead his evidence on 26.12.2011. However, he failed to do so. The tenant moved an application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure.

5. According to the averments contained in the application, the eviction petition could not be filed by the landlord till expiry of ten years as per the lease agreement dated 27.05.2005. The tenant also contended that the landlord could file a suit for recovery of rent.

6. The application was contested by the landlord. According to the landlord, the eviction petition under Section 14 of the H.P. Urban Rent Control Act was maintainable. The application has been filed by the tenant to delay the proceedings pending before the learned Rent Controller-II, Solan. The tenant has not paid rent as per the terms and conditions of the lease agreement. The rented premises were lying vacant and locked by the tenant and due to non-user of the premises, regular damage was caused to the premises. Learned Rent Controller-II, Solan, dismissed the application on 12.3.2013. Hence, this petition.

7. It is not in dispute that the provisions of the H.P. Urban Rent Control Act are applicable in the area, where the demised premises are situated, i.e. Mauza Salogra, Tehsil and District Solan. Any agreement, which is contrary to the H.P. Urban Rent Control Act, would be against the public policy. The landlord has never waived off his right to file the eviction petition against the tenant for non-payment of rent coupled with the fact that the tenant has ceased to occupy the rented premises. The issues have already been framed on 25.10.2010. The landlord has also led his evidence. Ample opportunity was granted to the tenant to lead his evidence, but he failed to do so.

8. In Madan Mohan Vs. Ram Chander Rao, , learned Single Judge of Allahabad High Court has held that the parties are not entitled to contract themselves out of the statute. Learned Single Judge has held as under:--

".....I have not the slightest doubt that the parties were not entitled to contract themselves out of the statute and to say in effect that the provisions of Section 73, Agra Tenancy Act, would not apply to them. It would be quite contrary to public policy to allow the provisions of Section 73 to be ignored by the plaintiff in this case. I hold that the parties were not entitled to contract themselves out of the statute and that therefore the plaintiff's claim must be examined with reference to the provisions of Section 73, Agra Tenancy Act. In effect it may be said that the Court below has disposed of this matter on a preliminary point....."

9. Their Lordships of Hon^{ble} Supreme Court in Waman Shrinivas Kini Vs. Ratilal Bhagwandas and Co., have held that Section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 prohibits subletting and makes it unlawful for a tenant to assign or to transfer his interest in the premises let to him. The non-obstante clause "Notwithstanding anything contained in any law" would mean that even if any other law allowed subletting, e.g. Section 108 of the

Transfer of Property Act, the sub-letting would, because of Section 15, would be unlawful. This would apply to contracts also as all contracts would fall under the provisions of law relating to contracts, i.e. Contract Act. An agreement entered into after the Act has come into force, contrary to the provisions of that Section would be unenforceable as being in contravention of the express provision of the Act, which prohibits it. Their Lordships have held as under:--

"7. This section prohibits sub-letting and makes it unlawful for a tenant to assign or to transfer his interest in the premises let to him. The non-obstante clause would mean that even if any other law allowed subletting, e.g., S. 108 of the Transfer of Property Act the sub-letting would, because of S. 15, be unlawful. This would apply to contracts also as all contracts would fall under the provisions of the law relating to contracts i.e. Contract Act. An agreement contrary to the provisions of that section (S. 15) would be unenforceable as being in contravention of the express provision of the Act which prohibits it. It is not permissible to any person to rely upon a contract the making of which the law prohibits. (S. 23 of the Contract Act.)

11. The appellant relied on the maxim *in pari delicto potior est conditio possidentis* to support his plea that the respondent could not enforce his right under S. 13(1)(e). But this maxim "must not be understood as meaning that where a transaction is vitiated by illegality the person left in possession of goods after its completion is a ways and of necessity entitled to keep them. Its true meaning is that, where the circumstances are such that the Court will refuse to assist either party, the consequence must, in fact, follow that the party in possession will not be disturbed". (Per Du Pareq L. J. in *Bowmakers Ltd., v. Barnet Instruments Ltd.*, 1945-I KB 65, 72. The respondent in the present case did not call upon the Court to enforce any agreement at all. When the instrument of lease was executed and possession given and subletting done it received its full effect; no aid of the Court was required to enforce it. The respondents' suit for ejectment was not brought for the enforcement of the agreement which recognised subletting but he asked the Court to enforce the right of eviction which flows directly from an infraction of a provision of the Act (S. 15) & for which the Act itself provides a remedy. There is thus a manifest distinction between this case where the plaintiff asked the Court to afford him a remedy against one who by contravening S. 15 of the Act has made himself liable to eviction and those cases where the Court was called upon to assist the plaintiff in enforcing an agreement the object of which was to do an illegal act. The respondent is only seeking to enforce his rights under the statute and the appellant cannot be permitted to assert in a Court of justice any right founded upon or growing out of an illegal transaction: *Gibbs and Sterret Manufacturing Co. v. Brucker*, (1884) 111 US 597, 601: 28 Law Ed 534, 535. In our opinion S. 15 of the Act is based on public policy and it has been held that if public policy demands it even an equal participant in the illegality is allowed relief by way of restitution or rescission, though not on the contract."

10. Their Lordships of Hon^{ble} Supreme Court in Murlidhar Aggarwal and Another Vs. State of Uttar Pradesh and Others, have held that an agreement in the lease deed, providing that the parties will never claim the benefit of the Act and that the provisions of the Act will not be applicable to the lease deed, is illegal in view of Section 23 of the Contract Act. Their Lordships have held as under:--

"19. The question for consideration is whether this clause is illegal. Clause 20 contains two provisions. The first provision is that the parties will never claim the benefit of the Act. The second provision is that the provisions of the Act will be inapplicable to the lease deed. The High Court has taken the view that clause 20 is illegal, and, therefore, the respondent was not precluded from contending that the suit was not maintainable.

34. The language of the section, as already stated, is prohibitive in character. It precludes a court from entertaining the suit. We think the High Court was right in its conclusion."

11. The impugned order dated 12.3.2013 passed by the learned Rent Controller, Solan, is in conformity with the law and there is no reason for this Court to interfere with the same.

12. Accordingly, in view of the observation and analysis, made hereinabove, there is no merit in the petition and the same is dismissed. Pending application(s), if any, also stand disposed of.