
(2014) 08 P&H CK 0069
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 5221 of 2014 (O&M)

Ram Niwas Aggarwal

APPELLANT

Vs

Jatinder Pal Singh and Others

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13
Transfer of Property Act, 1882 — Section 116

Citation : (2015) 177 PLR 455 : (2015) 1 RCR(Rent) 630

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Chetan Mittal, Sr. Advocate and Mohinder Nain, Advocates for the Appellant; Ravish Bansal, Advocates for the Respondent

Judgement

Rajiv Narain Raina, J.—The petitioner is the tenant in premises owned by the respondents which is a Shop-cum-Office in up market Sector 34-C, Chandigarh. He was inducted as a tenant on the ground floor of the demised premises on April 15, 1988 on a monthly rent of Rs. 6500/-. He was put in possession under a rent agreement executed by the parties. The respondents instituted a suit for possession by way of eviction of the petitioner in the Court of the Civil Judge (Junior Division), Chandigarh on December 18, 1990 and prayed for recovery of rent from July 1990 to November 1990. The East Punjab Urban Rent Restriction Act, 1949 (for short "the Act") as applicable to Chandigarh did not apply at the time since the building in question was exempted from the purview of the Act for a period of five years from the grant of sewerage connection duly sanctioned by the Estate Office, Chandigarh. While the suit was pending, the parties agreed to compromise the matter in writing in terms of a compromise deed (C-2) executed on January 23, 1999. It was agreed that the defendant would remain in possession of the ground floor of SCO No. 168 Sector 34-C, Chandigarh for a period of 10 years w.e.f. December 01, 1998 to November 20, 2008 during which period the petitioner agreed to pay the rent at rates specified in the compromise up to November 30, 2008 by which date the rent gradually rose to a monthly

rent of Rs. 18,619/- as on November 30, 2008 which was the exit terminus. One of the recitals at Sr. No. 6 was that a lease deed will be executed by the parties which shall be got registered. In is the common case that this did not happen but the tenancy continued in terms of rent agreement dated January 23, 1999. The compromise deed and the rent agreement were signed on the same day. In the fresh rent agreement parties agreed to renew the tenancy further in favour of the tenant but on novated terms and conditions by enhancing the rent from Rs. 6,500/- to Rs. 12,000/- per month. Therefore, the rent agreement dated April 15, 1988 was substituted by the fresh rent agreement (C-1) and with the change over the old rent payable was enhanced to Rs. 12,000/- per month for the period December 01, 1998 to November 30, 1999 in terms of the compromise (C-2). The 3rd recital fixed the tenancy period for 10 years commencing w.e.f. 1st December 1998. The 11th recital called upon the tenant after the expiry of the tenancy to hand over the physical and vacant possession of the demised premises to the landlord only. The 12th recital obligated the tenant to bear the expenses of registration charges of the rent agreement as well as on the stamp papers as noted above for executing the lease deed. But the rent agreement was not controverted to a lease deed for reasons best known to the parties.

2. It may be noted that the statements of the landlord and tenant before the Civil Court that passed the compromise decree was not placed on record of this petition though it was the most relevant and material record required in deciding this case.

3. Mr. Mohinder Nain, learned counsel appearing with the learned senior counsel has produced a photocopy of the statements made by the parties and the same are taken on record without any objection from the other side and are marked "A".

4. When both the compromise deed and the rent agreement were presented to the Court for giving effect to the compromise both the documents were duly exhibited on record. The rent agreement was described as Ex. C1 and the compromise deed as Ex. C2. The tenant and the landlord agreed to waive off mesne profits claimed by the landlord to buy peace and tranquillity of an assured period of the tenancy by the prudent policy of give and take. The suit was decreed in terms of the compromise which was made part of the decree sheet prepared on the same day i.e. 23rd January 1999. The learned Civil Judge (Junior Division) Chandigarh directed parties to remain bound by their statements recorded separately. The statement of the tenant reads:-

"I have compromised with the plaintiffs and executed a rent agreement by enhancing the rent to Rs. 12000/- p.m w.e.f. 1.12.98 and other terms and conditions are mentioned in the rent agreement which bears my signatures. Similarly I have also signed compromise deed. The suit may be disposed of in terms of the rent agreement and compromise deed which are Ex. C-1 and C-2.1 would remain in possession of the ground floor of H. No. 168, Sec. 34-C Chd. for a period of 10 yrs w.e.f. 1.12.98 to 30.11.2008. I handed over the rent for the

month of Dec. 1998 through cheque No. 0138006 of dtd. 7.12.98 @ Rs. 12,000/- p.m.

RO & AC

CJ (JD) 23.1.99."

The statement of Ranjit Singh for the landlords reads:-

"In view of the above statement and Ex. C-1 and Ex. C-2 the suit may be disposed of. The plaintiffs have relinquished their rights of claim damages/mesne profits and have received the agreed rent up to 30.11.98.

RO & AC

CJ(JD) 23.1.99."

5. This was the end of the suit. The petitioner became the judgment debtor and the respondents decree holders.

6. As time went, the tenant did not abide by the terms of the compromise and did not hand over the physical and vacant possession of the demised premises to the landlord in terms of the compromise which led to the filing of an execution application by the respondent decree holder. The petitioner judgment-debtor filed objections against the execution. The star argument raised by the objector was that though the period of tenancy was fixed at 10 years but the compromise deed and proposed lease deed/rent note did not record in words that the tenant will vacate the demised premises after the expiry of the period of the tenancy. The objector raised various disputes amongst which was with respect to adjustment of arrears of rent towards expenditure on repairs of the building incurred by the judgment-debtor. The judgment-debtor however tendered two cheques of April 2011 of Rs. 2 lacs each in favour of the landlord and an amount of Rs. 4 lacs saying that these amounts may be adjusted towards arrears of rent claiming them to be remaining unadjusted by the decree holder towards repairs. The judgment-debtor undertook before the Execution Court that if any amount of arrears of rent of the previous years remain unpaid or are found due in addition to Rs. 4 lacs he was prepared to pay the same on the next date of hearing.

7. The learned trial Court has dismissed the objections on July 5, 2014. The Court has reasoned that the tenancy was for a specific period and after the expiry of the period agreed to the objecting judgment-debtor was legally required to vacate the demised premises and hand over its vacant possession to the decree holder.

8. Mr. Chetan Mittal, learned senior counsel appearing for the petitioner tenant argues that when the suit was instituted the East Punjab Urban Rent Restriction Act, 1949 did not apply to the building in which the petitioner was a tenant on the ground floor and therefore was without statutory protection of rent laws. However, the statutory protections of the Act came into operation during the pendency of the suit and when it was decreed in January 1999. Those

protections would come in aid of the petitioner by treating him as tenant holding over and open to ejectment only on the grounds mentioned in Section 13 of the Act. But when Mr. Mittal make this statement he appears to loose sight of the fact that the parties compromised the matter on January 23, 1999 and the deed of compromise became part of the decree when rent law protections were available. The petitioner did not invoke protection of the Act on January 23, 1999 and would therefore be taken to have waived such rights. The decree was passed in terms of the compromise on the statement of the petitioner that, and to emphasis; "I would remain in possession of the ground floor of H. No. 168, Sec. 34-C Chd. for a period of 10 yrs w.e.f. 1.12.98 to 30.11.2008."

9. It is not possible to agree with Mr. Mittal that the Court should relieve the petitioner from the burdens of the decree in execution proceedings after the decree has attained finality. The petitioner did not appeal against the decree seeking to undo his statement before the Court by reason of abundant caution or that it was made under duress and lack of informed reason, bad legal advice etc. when the petitioner made the statement before the Court that he would remain in possession on the ground floor for a period of ten years. I take it that being a prudent businessman he said what he meant and meant what he said. A semantic dissection of the words spoken and reduced in writing cannot be done to enable him to wriggle out of his statement made before the court when he compromised the matter. The words have to be given their ordinary and plain meaning and it is not the case urged that the statement is recorded in language not known to the maker. What he really said was that he would leave the premises and the statement has to be read with the recital in the proposed lease deed/rent note where he agreed its 11th recital that after the expiry of tenancy the tenant would walk out of the premises by handing over the physical and vacant possession to the landlord only. It is the intention of the tenant which is germane to the interpretation of the words. The intention was that he wished not to have the protection of the Act which was amply available to him. If he was between Scylla and Charybdis it was his personal choice which no one forced on him. He gambled for good measure and to his advantage gaining the security of a long period of tenancy ahead of him for which the landlord gave up much.

10. Mr. Mittal then argues that the rent agreement cannot be looked into since it is for a period of 10 years and stamp duty has not been paid. Therefore, it cannot be treated as evidence. This may be true but he fails to see that the burden was upon the petitioner to bear the expenses of registration charges etc. and it is not the case set up that the landlord refused to sign up a lease agreement. It may not be strictly evidence for lack of payment of registration charges denied to the State exchequer but the tenant cannot disown the recitals one of which is 11th recital the letter and spirit of which found its way into the statement of the tenant recorded before the Court at the time of compromise. When the two are connected there is no doubt left that the tenant has no case to hold over as a tenant of the landlord. To be fair to the learned Senior counsel who has placed before me six judgments of this Court, the Bombay High Court

and the Supreme Court in his support with respect to consent decrees and rights of statutory tenants I would fail in my duty if they are not considered. The judgments selected by Mr. Mittal are in the serial order as contained in the compendium of cases handed over at the conclusion of the arguments after having referred to them in his support. They are:

- (1) Kalyandas Manilal Shah Vs. S.M. Kankaria and Another, ;
- (2) Bibekananda Bhowal (dead) by L.Rs. Vs. Satindra Mohan Deb (dead) by L.Rs., ;
- (3) Kailash Chand adopted son of Amrit Lal v. Hariraj Sarup and others, 1980 (1) RCR (Rent) 516;
- (4) Shri K.K. Jain v. Shr J.C. Kapoor, 1985 (2) R.C.R. (Rent) 491;
- (5) Bhuneshwar Prasad and Another Vs. United Commercial Bank and Others, ;
- (6) Gian Devi Anand Vs. Jeevan Kumar and Others, .

Case No. 1 is distinguishable. The compromise entitled the plaintiff to recover possession after the expiry of seven years from the date of compromise. If plaintiff did not surrender his rights to end the tenancy on expiry of seven years then it was found that the decree did not snap the relationship of landlord and tenant between the parties. Therefore, the compromise decree was not executable. The case is, therefore, of no help to the petitioner.

In Case No. 2 the Supreme Court had occasion to deal with a situation where the terms of a compromise stipulated that a portion of the area in occupation of the defendant-appellant shall be handed over by defendant to plaintiff-respondent within one month and in the event of noncompliance with this condition defendant will be liable to ejectment "in execution" of the compromise decree; that defendant shall remain in possession of the remaining portion on a monthly rental basis for 10 years; and that in the event of breach of any condition of the compromise, defendant will be liable to ejectment "by appropriate action in a court of law". In these circumstances, the Supreme Court held that ejectment of defendant on expiry of lease period of 10 years must be "by appropriate action in court of law" which means by filing suit or taking other proceedings in court and not by "execution" of the compromise decree. The facts of the case have no semblance to the facts of the present case.

Case No. 3 is significant and requires greater attention to its facts to cull out its ratio since it is of a coordinate bench of this court. The learned Single Judge was dealing with a compromise decree and a petition for ejectment. The tenant was allowed to remain in possession for 10 years by a compromise decree. Rajendra Nath Mittal, J. took the view on a reading of the compromise and of the two portions of the tenancy; one to which the compromise related and the other where parties agreed that tenant would be entitled to put up additional construction in the area under his tenancy subject to the municipal bye-laws but

after the termination of the tenancy, he would not be entitled to claim compensation for those structures. It was further agreed that the landlord had no objection if the whole or part of the property would be rented to a third party for use of a fourth party. The tenant would have the option to buy the property within a period of one year at the price to be settled mutually or through an agreed arbitrator failing which through arbitration. The decree was accordingly passed on the compromise. The Court held that in case no decree or order of ejectment is passed against any person he cannot be ordered to be ejected in execution of that decree or order. The tenant argued that no decree of ejectment has been passed against him. In order to understand the case more fully that text of the order passed in the case of the landlord in Case No. 3 in a Civil Revision bearing No. 591 of 1965 filed by the landlord in the portion X-1 to X-3 under the tenancy of Kailash Chand deserves to be extracted. The operative part of the order passed in the revision reads as follows:-

"In terms of the compromise recorded today as per statements of Mr. S.K. Tuli and Mr. Roop Chand, Advocates, Regular Second Appeal No. 899 of 1965 is partly allowed and Civil Revision No. 591 of 1965 has become infructuous in view of the compromise. The appellants will be entitled to possession of the land in dispute, excepting the portion marked and to be settled in terms of the compromise and denoted on the plan, Exhibit P. 24 "by letters X-1, X-2, X-4, X-3. The respondent will be the tenant of the appellants of the portion X-1, X-2, X-4, X-3 for a period of ten years at a monthly rental of Rs. 15/- with a portion to purchase it in terms of ten years at a monthly rental of Rs. 15/- with a portion to purchase it in terms of the statement. It is further directed that all the terms in the statements recorded today be incorporated in the decree that is to be prepared. The parties will bear their own costs throughout both in the appeal or the revision."

It was thus reasoned that in case an order of ejectment was to be passed at that time with respect to that property, which is now in dispute, specific order of ejectment would have been passed with the proviso that the order would be executed after the expiry of 10 years. On a reading of the previous order, this Court came to the conclusion that the tenor of the order shows that no such order of ejectment with respect to the property in dispute was passed.

In the present case, the petitioner has made a positive statement before the Court that he would remain in possession of the ground floor for a period of ten years. When the statement was made on January 23, 1999 rent laws applied and by agreeing to the 11th recital he would be obliged to hand over the physical and vacant possession of the demised premises to the landlord.

A right created by statute can be waived by a party for whom the Act was intended. Civil rights can be waived but not fundamental rights. This mechanism of waiver of procedural and substantive rights has been succinctly explained by B.P. Jeevan Reddy, J. in *State Bank of Patiala and others Vs. S.K. Sharma*, . Though the decision is rendered in service law but the principles laid down are of universal application in other fields of law as later observed by the Supreme

Court in Rajendra Singh Vs. State of Madhya Pradesh and others, . On this point the Supreme Court decision in Krishan Lal Vs. State of Jammu & Kashmir, can also be read with profit. The rent laws are conceived in the interest of the tenants. It is for tenants to seek its protection. They may surrender their rights under tenancy laws by their act and conduct and when they do no prejudice is caused to them. If there is no waiver of right then the statutory grounds of eviction clamp on to the disadvantage of landlords channelizing their right to evict a tenant through one or more of the grounds permitted by rent laws enforceable through Rent Controllers and not by the process of the civil courts.

In view of the above position, I would like to read the statement of the tenant made before the court as two sides of the same coin. In their plain and unambiguous language, meaning, text and context they deserve to be so read that when the tenant proclaimed to the Court that he would remain in possession for the fixed term agreed upon he meant inversely that he would not remain in possession thereafter. The tenancy would thus come to an end by efflux of time which was agreed upon by the parties with open eyes. In this manner Case No. 3 is distinguishable from the accepted facts of this case as there was no such contrite words used in the statement of the tenant which formed part of the decree.

In Case No. 4 a learned Single Judge of this Court was dealing with a compromise where the tenant had agreed to pay the rent @ Rs. 750/- instead of Rs. 350/- per month which he was already paying to the landlord and upon such enhancement of rent, the landlord agreed not to execute the decree for one year. In the meantime, the Rent Act became applicable and it was held that the decree of the civil court became inexecutable by reason of tenant earning statutory status by operation of law and, therefore, the old tenancy does not stand revived. There are no such express words either in the compromise or in the decree in that case as are found in this case. What is of relevance is the intention of the parties. A compromise is in the nature of a contract between the parties and, therefore, enforceable. After all the compromise in the present case was entered when the tenant had no protection of rent laws. He had no protection against eviction since he was not a statutory tenant. He could have been readily evicted in a suit for possession without aid of rent laws upon a simple notice to quit but enforceable in a court of law. He was in arrears of rent when the parties agreed to settle the matter. He was in default of payment. The landlord gave in and surrendered his rights to mesne profits which were a sacrifice. In settlements there is always an element of give and take which by their very nature garners peace between warring parties. The petitioner won ten years of continued tenancy for him to carry on his business for profit. The landlord lost mesne profits instead though he benefited by the enhancement of rent. In such circumstances, Case No. 4 can also be of no help.

Insofar as Case No. 5 is concerned it is a case of an agreement creating a fresh tenancy after the expiry of the lease within the meaning of Section 116 of

Transfer of Property Act, 1882. The facts were that after the expiry of the lease period of five years, the landlords accepted the tenant's proposal for increase of rate of monthly rent. The tenant deposited rent into the bank account of the landlords from where the landlords regularly withdrew money for their own use without demur. The landlords filed a suit for eviction under the Bihar Rent Act after the expiry of the lease for specific period pleading that rent was being deposited without their consent. The trial Court decreed the suit. The decree was set aside with the High Court. The Supreme Court upheld the decision. The Supreme Court considered the effect of holding over by the lessee and did not believe the landlord's version that he did not consent to accept rent from a tenant whose lease had expired, and therefore, the acceptance would mean that he had assented to the tenant continuing in possession. In these circumstances, acceptance of rent was accepted as admitting tenant and the statutory status. In the present case, learned counsel for the respondents have vehemently urged that the landlord has not accepted a penny from the tenant beyond the expiry of the period of tenancy but has accepted only such money as was in arrears prior to the cut off date and there is no acceptance of future rent which may deprive the landlord of the ground of eviction by regaining possession in terms of the compromise.

The 6th and last case is a matter arising out of the Delhi Rent Control Act, 1958 where a four Judge Bench of the Supreme Court have held that death of a statutory tenant of commercial premises would make the heirs of the decedent statutory tenant capable of inheriting his tenancy and business unless there are contrary provisions in the Act applicable. The heirs are not liable to be evicted as a matter of course. The present is not a case of inherited tenancy and, therefore, reliance on the case law to the facts of the present case is misplaced and would be of no avail to the petitioner.

For the foregoing reasons as are recorded above the order of the Execution Court declining the objections is found not open to correction and is endorsed in its conclusion as no merit is found in this petition and the same is ordered to be dismissed. The decree is eminently executable.