

(2010) 08 P&H CK 0119

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 3373 of 2010 (O and M)

Shrijogesh Kumar Sethi

APPELLANT

Vs

Punjab Financial Corporation and Another

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
State Financial Corporations Act, 1951 — Section 29

Citation : (2011) 2 CivCC 259 : (2011) 161 PLR 594

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Judgement

Vinod K. Sharma, J.—This revision petition is directed against the orders dated 15.2.2007 and 4.1.2010, passed by the learned Courts below, vide which application moved by the Petitioner under Order 39 Rules 1 & 2 of the Code of Civil Procedure, restraining the Defendant/Respondents from interfering in the tenanted premises except with due process of law stands dismissed.

2. The case set up by the Plaintiff/Petitioner was, that the Petitioner was inducted as a tenant by one Sharad Kapoor and his wife Rohini Kapoor. The rent deeds in favour of the Petitioner were executed on 22.6.1998 and 31.7.1998. The copies of the rent deeds were placed on record by the Plaintiff/Petitioner. The Petitioner also proved the electric meter stands installed in his name. Petitioner also placed on record the receipts showing regular payment of electricity bills. The Petitioner also placed on record the judgment and decree passed in his favour, in a suit for injunction filed against Sharad Kapoor directing him not to interfere in possession of the Petitioner. The tenancy of the Petitioner over the premises in dispute stood proved in the said case.

3. The suit was contested by the Respondent/Corporation by denying the tenancy of the Plaintiff/Petitioner. The stand of the Respondent/Corporation was, that the Plaintiff/Petitioner was not tenant over the premises in dispute, therefore, was not entitled to seek injunction against the Corporation.

4. The learned trial Court dismissed the application filed by the Petitioner by holding, that the Petitioner has failed to prove prima facie case, nor balance of convenience was in favour of the Petitioner, nor he was likely to suffer irreparable loss and injury, if the injunction was not granted to him.

5. The reason for recording the finding by the learned Trial Court was, that this Court in the case of Krishan Singh Rana Vs. Haryana State Industrial Development Corporation Ltd., held, that no injunction could be granted against the Corporation in taking over the mortgaged premises u/s 29 of the State Financial Corporations Act.

6. The Petitioner challenged the order in appeal. The learned appellate Court Krishan Singh Rana v. Haryana State Industrial Development Corporation Ltd. (supra) and dismissed the appeal.

7. The learned Counsel for the Petitioner contends, that the judgment relied upon by the Defendant/Respondent/Corporation stands over ruled by the Hon"ble Supreme Court, in the case of Krishan Singh Rana v. Haryana State Industrial Development (2001)127 PLR 149 wherein the Hon"ble Supreme Court has been pleased to lay down as under:

4. In the present case question is, Respondent while proceeding u/s 29 could it dispossess a tenant. The field of Section 29 is between Corporation and the owner. Respondent-Corporation can do all what is permissible to it u/s 29 as against owner, but as against tenant or person claiming such right could only be evicted in accordance with law by the owner now or owner who may subsequently come in. But u/s 29 Respondent cannot evict the Appellant.

5. The submission for the Respondent that the pendency of this suit is coming in its way to sell this property is misconceived. We do not find anything either in law or fact, which has been pointed out by the Respondent which restricts its right u/s 29 of sell the property. We do not find any merit in this submission.

8. The finding of the learned Courts below being perverse, having been based on overruled judgment can not be sustained.

9. The leaned counsel for the Respondents, however, contended that Annexure P-8, attached with the revision petition would show, that the Respondent has taken over the property. Annexure P-8 reads as under:

As your goodself is aware, we are tenant in the premises of M/s Golden Organics Pvt. Ltd. Taken over by your office and our goods worth Rs. 6-7 lacs are lying in the said premises, which have not been released so far. Know my all goods, like wooden products, like wooden moulding is damage all of my goods in M/s Golden Organics (P) Ltd, Village Bhanni Gillan, Majitha Road, ASR premises. Know please refund my payment appx. Rs. 6-7 lacs which my all goods are damage in your premises. If you are not released by payment, I will initiate legal proceedings claiming of damages.

10. The stand taken by the Respondent Corporation that Petitioner is not tenant in the disputed premises, can not be sustained, as the judgment between the owner and the Petitioner proves prima facie case, that Petitioner is tenant in the premises in dispute. In view of the Hon''ble Supreme Court in the case of Krishan Singh Rana v. Haryana State Industrial Development (supra) the Corporation Respondent can not evict the Petitioner, except with due process of law.

11. For the reasons stated, this revision is allowed, the impugned orders are set aside, and the application moved by the Petitioner under Order 39 Rules 1 & 2 of the CPC stands allowed.

12. However, it is made clear, that nothing stated herein above would be taken to be an expression of opinion on the merits of the case, as it will be open to the Corporation to prove, that tenancy in favour of the Petitioner was not genuine, which could entitle him to decree for injunction, as for the purpose of deciding application under Order 39 Rules 1 & 2 of the CPC the Court is to decide on the basis of document attached by the parties, and is required to see prima facie case only.

13. It is made clear, that the Petitioner shall be entitled to retain possession of the tenanted premises till further orders, to be passed in the suit by the Civil Court in this regard. During the pendency of the suit, the Respondents are directed not to block the ingress and egress of the premises under the tenancy of the Petitioner.

14. The Respondents shall be free to deal with the property which is not under the tenancy of the Petitioner, in any way it likes, in accordance with law.