
(2010) 06 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 117 of 2006

Zulfan Ali

APPELLANT

Vs

Smt. Kanta Kumari Gupta and Others

RESPONDENT

Date of Decision : 23-06-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 5, Order 6 Rule 17
Himachal Pradesh Urban Rent Control Act, 1987 — Section 14

Citation : (2010) 06 SHI CK 0011

Hon'ble Judges : Dev Darshan Sud, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dev Darshan Sud, J.—The tenant challenges the order of eviction passed against him by the learned Rent Controller and affirmed by the learned appellate Authority.

2. The Respondent-landlords preferred a petition u/s 14 of the H.P. Urban Rent Control Act, 1987 (hereinafter referred to as the "Act") praying for an order of eviction on the ground that the landlords intend to reconstruct the building after demolishing it. It is not disputed that the Petitioner-Respondent is a tenant. The defence taken was that the landlords were in the habit of harassing the tenants by filing eviction petitions against them etc. and that the Petitioners do not require the premises bonafide for the purposes of reconstruction etc. Three issues were framed by the learned trial Court, namely, (a) whether the Petitioners required the premises for the purpose of re-building, repair etc., (b) whether the Petitioners instituted the petition malafide and (c) the relief.

3. The first two settled issues were taken for decision together. Considering the evidence of AW-2 Nand Kumar Chopra, Draftsman, who had prepared the building plan Ex.PW-3/A, Om Parkash PW-3, who proved the sanctioned plan by the Municipal Committee and Town and Country Planning Department and the copies of Fixed Deposit Receipts Ex.P-1 to Ex.P-22 to establish the sufficiency of

funds with the Petitioner, the learned Rent Controller accepted the plea of the landlord and rejected the arguments advanced on behalf of the Respondent that if the building was to be demolished, the landlords who are residing on the first floor would also have to vacate the premises and it has not been established as to whether they have any alternate residence or not. It was also urged that earlier also 3-4 petitions were filed against the tenants which itself proves that the landlords were habitual litigants.

4. The learned trial Court, considering the evidence of AW-2 Nand Kumar Chopra and the site plan Ex.PW-3/A, sanction granted by the Municipal Committee, Paonta Sahib and the Town and Country Planning Department as also the Fixed Deposit Receipts duly proved on the record by the Petitioner, came to the conclusion that the need of the landlords was bonafide. On the question of alternate residential premises available with the landlords, the Court holds that the mere fact that it had not been proved on record that they have no alternate premises could not by itself constitute a ground for denial of the order of eviction prayed for. The Court also considers the evidence of RW-3 Rohit Kumar who says that in case an earthquake proof building is to be constructed, the entire structure has to be dismantled. The funds in possession of the landlord as evidenced by Ex.P-1 to Ex.P-22 were about Rs. 10,52,683/- and the estimate as approved on the record required only expenditure of Rs. 10,37,536/-. The order of eviction was accordingly passed against the tenant.

5. Appeal preferred before the learned appellate Authority by the tenant was dismissed after detailed consideration of evidence. The learned Court has considered the evidence in detail and holds that the landlord has sufficient funds to construct the building and to put it to profitable use. The judgment has now been assailed by the tenant in this revision.

6. Before adverting to the other submissions made in this petition, the averments made in CMP No. 191 of 2010, an application under Order 6 Rule 17 of the Code of Civil Procedure, which has been filed for permission to amend the reply filed by the Petitioner before the trial Court, submissions have been made regarding including of defences, which the Petitioner should be allowed to take as it would touch the bonafide of the claim of the landlord. This application was filed on 8th March, 2010, for addition of the following:

The claim of the Petitioners is false, baseless and mala fide. The Petitioners want to take the replying Respondent with surprise. The petition as filed lacks true material and better particulars. Those have been withheld in order to take unfair and undue advantage. The Petitioners have not given details of the additional accommodation, which is to be constructed by them. In the petition in para-18(a) (i) it has been submitted that the Petitioner No. 2 intended to carry out addition and alteration in the building and that plan had been got approved. The Respondent has not been supplied the copy of the approved plan nor he has been disclosed the nature and extent of the addition which are sought to be made. The claim of the Petitioners is self contradictory and misreading. On the

one hand it has been claimed that the building in question has out lived its life and at the same time a plea has been raised that the building in question is being situated in earthquake prone area. The Petitioners have not setup nor disclosed as to how the area in question is situated in earthquake prone area therefore, how he can be permitted to and he can raise the construction of guest house at such a place. Under these circumstances, the claim of the Petitioner is malafides and mutually destructive. Moreover, the Petitioners have not been able to point out as to what kind of additional structure has to be constructed and as to how much amount is required to be spent and what will be source of their income. The Petitioners have not supplied the copies of the documents as referred in the eviction petition and thus, unfair and undue advantage is being availed by them over the Respondent.

7. CMP No. 192 of 2010 was also filed on the same date by the Petitioner herein under Order 14 Rule 5 praying that all the material issues arising out of the defence as set up by the Petitioner-applicant had not been framed. Adverting to the application under Order 6 Rule 17, learned Counsel appearing for the Petitioner urges that the law is now well settled that the delay itself is no bar for moving an application for amendment even at the revisional stage, the factual situation is not to be judged while the application is being decided but to be established by leading evidence and amendment(s) necessary which go to the root of the case to determine the actual controversy between the parties ought to be allowed. He relies upon the judgments of Supreme Court in Sumesh Singh Vs. Phoolan Devi and Others, , State of A.P. and Others Vs. Pioneer Builders, A.P., and Andhra Bank Vs. ABN Amro Bank N.V. and Others, . This is the settled law on which amendment can be allowed. However, the very purpose of filing the application in this case is to prolong litigation. The applications lack bonafides. The Respondent now seeks the retrial of the entire case after exhausting full opportunity to contest the claim of the Petitioner-Respondent-landlord before Rent Controller and thereafter the appellate Authority. Even if delay is condoned, I find that the application is nothing but an abuse of the process of law. From the pleadings of the parties, I find that all possible pleas had been taken by the tenant to disentitle the Petitioner from claiming a decree for eviction have been urged and pleaded before the learned trial Court. What I find is that the tenant seeks to agitate or re- agitate the same point over and over again.

8. Learned Counsel appearing for the Petitioner urges that unless the quantum of expenditure to be incurred is not established on the record, both in pleadings and evidence no decree for eviction can be granted. I find from the evidence of the Courts below that both the Courts below have correctly assessed the evidence and held that the Respondent is possessed of sufficient funds for the construction of the building.

9. The law is well settled that a landlord can obtain order of eviction wherein he requires the building for reconstruction where he can be put it to a better/more profitable use. See: Madhva Nand and Another Vs. Nand Lal and Another,

10. Looking to the application, tenant pleads that the applicant although having contested the claim, but could not set up various grounds and defence which are required to be set up for proper adjudication of the case. The pleadings, evidence and vigor with which the claim of the Respondent has been opposed before the trial Court, do not disclose any inadvertence on the part of the Petitioner. Rather every ground possible, which would disentitle the Respondent from claiming an order of eviction, was pleaded before the learned trial Court. The application is nothing but an abuse of process of law which is accordingly rejected.

11. CMP No. 191 of 2010.

This application is also nothing but under its guise the Petitioner seeks retrial. This application is again vague and does not disclose any bonafides on the part of the Petitioner. Rather, all out attempt has been made to thwart the course of justice in order to prolong the litigation. Moreover, there is no explanation as to why such issues, if any, were either not urged before the learned trial Court or before the appellate Authority. The principle of abandonment can be invoked against the Petitioner. This application is dismissed.

12. Adverting to the grounds now urged in the present petition, the learned Senior Counsel appearing for the Petitioner submits that no bonafides have been proved, but all that the landlord expresses is a mere wish. Learned Counsel urges that the evidence has not been properly considered. The intention was of making the building as earthquake proof one, but, no evidence has been produced on the record to establish it.

13. This submission requires to be rejected. In Civil Revision No. 108 of 2006 with respect to portion of the same building, similar pleas were raised by the tenant therein. I have dismissed that revision petition by considering every detail therein. Turning to the present petition, I do not find that the Courts below have committed any error while assessing the evidence and on the question of financial capacity, the fixed deposit receipts Annexures P-1 to P-22, pass book Ex.P-23, have been proved on the record to be the proof being in possession of sufficient funds. The site plan Ex.AW-3/A duly sanctioned by the Municipal Committee and the Town and Country Planning Authorities has been proved on the record of the case. On the question of appreciation of evidence, the learned appellate Authority holds:

26. ...I disagree with the learned Counsel for the Respondent that the Ld. Rent Controller has not appreciated the evidence on record in its true perspective and failed to apply law² correctly to the facts of the case. It has been rightly contended on behalf of the Petitioners that on having properly appreciated the evidence on record and applying the law, the Ld. Rent Controller rightly ordered the eviction of Respondent from the tenanted shop. Consequently, my answer to this point is Yes.

14. Re-appreciating the evidence again, I cannot persuade myself to hold that the bonafide is not established on the record.

15. It is trite to observe that in case of any subsequent events intervening, it would be open to the tenant to urge in execution petition that because of change in circumstances subsequent or events intervening, which impinge upon the bonafides and which have not been adjudicated in this petition, would disentitle the Petitioner for a decree for eviction. See: Lekh Raj v. Muni Lal and Ors. AIR 2001 SC 996 and Harrington House School Vs. S.M. Ispahani and Another, . This revision petition is accordingly dismissed. There shall be no order as to costs.