

Before Rakesh Kumar Jain, J.

SEWASINGH,—Petitioner

versus

MOHINDER SINGH,—Respondent

C. R. No. 682 of 2011

9th February, 2011

Code of Civil Procedure, 1908—Ss. 47 & 151—East Punjab Urban Rent Restriction Act, 1949—S. 13—Ejectment of tenant on ground of personal necessity—Appellate Authority dismissing appeal of tenant—Tenant not contesting revision petition before High Court and only requesting for grant of time to vacate premises—Landlord seeking execution of order of ejectment—Tenant filing objections w/s 47 of CPC—No objections with regard to jurisdictional error of Court below filed before High Court—Cannot be re-agitated in execution application—Petition dismissed.

Held, that there is no undertaking given by the petitioner for vacating the demised premises and has not taken up the matter to the higher Court but the circumstances are not less than the facts of the case of **R. N. Gosain versus Yashpal Dhir**, AIR 1993 Supreme Court 352, because in the present case, after having failed before the Rent Controller and Appellate Authority where the tenant had raised all sorts of objections with regard to the jurisdiction of the learned Rent Controller in passing the eviction order, objections were filed under Section 47 of CPC again challenging its jurisdiction and when the revision was filed before this Court, no argument on merit was raised even with regard to the jurisdiction to decide about the third room which was allegedly illegally occupied by the tenant and the Rent Controller had passed order of eviction in respect of that as well. Thus, the tenant had chosen not to contest the revision petition on merits and allowed the orders of the Rent Controller and Appellate Authority to become final and had only made a request that he may be allowed six months' time to vacate the demised premises on the basis of which law was set into motion and notice was given to the landlord. Ultimately, the revision petition was dismissed only on the ground that from the date of

issuance of notice till the date of passing of the order of dismissal, six months' time already expired, therefore, by virtue of the order of the High Court, the landlord enjoyed his stay over the demised premises. In these circumstances, he cannot be allowed to approbate and reprobate. Thus, I hold that all objections with regard to the jurisdictional error of the Court below which could have been raised before the High Court by the tenant are deemed to have been waived off and cannot be reagitated in the execution application just in order to stop it.

(Para 7)

Further held. that Civil Judges are exercising the powers of the Rent Controllers in both the States, therefore, it is only a matter of nomenclature that when rent petition is filed it is to be addressed to the Rent Controller and when execution is filed it is to be addressed to the Civil Court who is none-else than the Rent Controller.

(Para 13)

J. S. Dhaliwal, Advocate, *for the petitioner.*

RAKESH KUMAR JAIN J.

(1) This revision petition is directed against order dated 23rd September, 2010 passed by learned Rent Controller, Ludhiana by which objection filed by the petitioner under Section 47 read with Section 151 of the Code of Civil Procedure, 1908 [for short "CPC"], has been dismissed.

(2) In brief, the landlord filed the eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 [for short "the Act"] seeking eviction of the petitioner/tenant from the demised premises *inter alia*, on the grounds of arrears of rent, personal necessity and the building having become unfit and unsafe for human habitation. However, the learned Rent Controller ordered ejection of the petitioner/tenant on 24th January, 2005 on the ground of personal necessity which was challenged by the petitioner/tenant before the Appellate Authority by way of appeal which was dismissed on 15th December, 2008. When the landlord sought execution of order of ejection, the petitioner/tenant filed objection under Section 47 read with Section 151 of CPC, *inter alia*, on the ground that according to the landlord he had let out two rooms, one kitchen, one

bathroom and latrine and the tenant had encroached upon the third room in respect of which eviction was sought and has been allowed by the Courts below despite the fact that in respect of the said third room, which has been allegedly encroached upon by the petitioner/tenant, there is no relationship of landlord and tenant between the parties and as such, the learned Rent Controller had no jurisdiction to order eviction of the petitioner/tenant. It was alleged that the execution before the learned Rent Controller is not maintainable in terms of Section 17 of the Act because the order of the learned Rent Controller becomes a decree and can be executed by a Civil Court only having jurisdiction in the area. During the pendency of the objections, CR No. 1822 of 2009 filed by the petitioner/tenant against the orders of eviction passed by the Courts below was also decided by this Court on 20th August, 2010, therefore, the tenant filed his additional objections under Section 47 of CPC that the order dated 24th January, 2005 of the learned Rent Controller and order dated 15th December, 2008 of the learned Appellate Authority have merged in the order of the High Court dated 20th August, 2010, but the order of the High Court is a nullity as it does not fulfill the mandatory requirements and is in contravention of section 13 of the Act, therefore, the same cannot be executed.

(3) On the other hand, in reply to the objections filed before the learned Rent Controller, it was alleged by the landlord that all the objections, which are now being taken up in execution, were taken and rejected by the Courts below and the petitioner/tenant cannot be allowed to raise all these objections again in execution in the garb of Section 47 of CPC and that the question of relationship of landlord and tenant was not raised before the learned Rent Controller and was rather taken up before the learned Appellate Authority by seeking amendment in the written statement which was dismissed on 8th May, 2008, against which tenant had filed a revision petition which was dismissed on 30th July, 2008 which had become final between the parties, therefore, it cannot be re-agitated. The learned Rent Controller/Executing Court dismissed the objection filed under Section 47 of CPC by observing that objection qua the non-maintainability of execution before the Rent Controller in terms of Section 17 of the Act is not maintainable because the Rent Controller, while executing the order of eviction as a decree, is exercising the powers of Civil Court and all the objections which are now being taken in respect of the jurisdiction of the Rent Controller

to pass the eviction order were even though available before the revisional Court yet the same were not raised, rather the time was sought to vacate the demised premises.

(4) Aggrieved against the impugned order of the learned Rent Controller, the present revision petition has been filed in which the primary contention of the learned counsel for the petitioner is that the Rent Controller has no jurisdiction to execute the order of eviction as the jurisdiction solely vests with the Civil Court having jurisdiction in the area. In this regard, he has drawn the attention of this Court to the provisions of Section 17 of the Act and has submitted that if the language of the provision is unambiguous, the Court is to give plain meaning to the words used by the Legislature.

(5) I have heard learned counsel for the petitioner and have read the available record with his able assistance.

(6) The undisputed facts are that the objections were filed by the tenant under Section 47 of the CPC when orders of the learned Rent Controller and learned Appellate Authority were passed for his eviction. He also filed additional objections when his revision petition was dismissed by the High Court. It would be relevant to refer to the order dated 20th August, 2010 which was passed by this Court in CR No. 1822 of 2009 titled as '**Sewa Singh versus Mohinder Singh**' which reads as under :—

"This revision petition by the tenant is directed against the orders passed by the learned Rent Controller as well as the learned Appellate Authority ordering the eviction of the petitioner from the premises in dispute.

The eviction was sought on the ground of personal necessity.

When this matter came up for hearing on 1st April, 2009, the petition was not contested on merit and only request made was, that the tenant be granted six months time to vacate the premises. It was in view of the request of the petitioner, that this Court issued notice of motion qua the request only.

The order passed by this Court on 1st April, 2009, read as under :—

"The only request made by the learned counsel for the petitioner is for the grant of six months time to the tenant to vacate the plot.

Notice of motion qua that request only 16th April, 2009.

Dasti only."

The regarding of the order would show, that the petitioner did not contest the petition on merit, and had only prayed for six months' time to vacate the plot, which already stands expired, therefore, nothing left here to be directed in this revision by this Court.

Dismissed."

(7) In view of the above order, the question is as to whether the petitioner is trying to hoodwink the Rent Controller by filing frivolous objections and whether he is permitted to approbate and reprobate. In the case of **R. N. Gosain versus Yashpal Dhir (1)** the Supreme Court has held that "*law does not permit a person to both approbate and reprobate. No party can accept and reject the same instrument and that a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn around and say it is void for the purpose of securing some other advantage. Thus, the tenant having given an undertaking in pursuance of the directions given by the High Court and having availed the protection from eviction on the basis of the said undertaking, cannot be permitted to invoke the jurisdiction of this Court under Article 136 of the Constitution of India and assail the said judgment of the High Court*". Although in the present case, there is no undertaking given by the petitioner for vacating the demised premises and has not taken up the matter to the higher Court but the circumstances are not less than the facts of the case of **R. N. Gosain (supra)** because in the present case, after having failed before the Rent Controller and Appellate Authority where the tenant had raised all sorts of objections with regard to the jurisdiction of the learned Rent Controller in passing the eviction order, objections were filed under Section 47 of CPC again challenging its jurisdiction and when the revision was filed before this Court, no argument on merit was raised even with regard to the jurisdiction to decide about the third room which was allegedly occupied by the tenant and the Rent Controller had passed order of eviction in respect of that as well. Thus the tenant had

chosen not to contest the revision petition on merits and allowed the orders of the Rent Controller and Appellate Authority to become final and had only made a request that he may be allowed six months' time to vacate the demised premises on the basis of which law was set into motion and notice was given to the landlord. Ultimately, the revision petition was dismissed only on the ground that from the date of issuance of notice till the date of passing of the order of dismissal, six months' time had already expired, therefore, by virtue of the order of the High Court, the landlord had enjoyed his stay over the demised premises. In these circumstances, to my mind, he cannot be allowed to approbate and reprobate and the judgment of the Supreme Court in the case of **R. N. Gosain (supra)** is squarely applicable. Thus, I hold that all objections with regard to the jurisdictional error of the Court below which could have been raised before the High Court by the tenant are deemed to have been waived off and cannot be re-agitated in the execution application just in order to stop it.

(8) The second question which has been primarily argued by learned counsel for the petitioner with regard to the jurisdiction of the learned Rent Controller is as to "whether the Rent Controller can execute the order of eviction as a decree which is executable only by a Civil Court in view of Section 17 of the Act". In this regard, Section 17 of the Act requires a reference, which reads as under :

"17. Execution of Orders.— Every order made under Section 10, or Section 13, and every order passed on appeal under Section 15 shall be executed by a civil court having jurisdiction in the area as if it were a decree of that court."

(9) Section 10 of the Act deals with the powers of the Rent Controller not to restrain the amenities enjoyed by the tenant. Section 13 of the Act is in respect of the order of eviction of the tenants to be passed by the Rent Controller and Section 15 is in respect of power of the Appellate Authority. The question is thus whether the execution filed before the Rent Controller is maintainable and the Rent Controller has exercised his power for the purpose of execution of the order as a decree of a Civil Court because the Civil Judges in the State of Punjab are the Rent Controllers in terms of the notification issued by the Government.

The reference in this regard has to be made to Appendix-C attached with the Act as published in the Garg's bare Acts of new Garg Law House, which reads as under :—

“1. Subordinate Judges of First Class appointed Controllers—“In pursuance of the provisions of clause (b) of Section 2 of the Punjab Urban Rent Restriction Act, 1947, the Governor of the Punjab is pleased to appoint all First Class Subordinate Judges in Punjab to perform the functions of Controllers under the said Act, in the Urban areas within the limits of their existing civil jurisdiction.”

(10) Similarly, in terms of Section 15(1)(a) of the Act, Governor of Punjab has appointed all District and Sessions Judges in the Punjab as Appellate Authorities. The said notification reads as under :—

“4. District and Sessions Judges appointed Appellate Authorities.—In exercise of the powers conferred by sub-clause (a) of clause (1) of Section 15 of the Punjab Urban Rent Restriction Act, 1947, the Governor of Punjab is pleased to confer on all District and Sessions Judges in Punjab in respect of the urban areas in their respective existing jurisdiction, the powers of Appellate Authorities for the purpose of the said Act, with regard to orders made by Rent Controllers under Sections 4, 10, 12 and 13 of the said Act.”

(11) By virtue of subsequent notification, similar power is conferred upon all the Additional District Judges in Punjab. It is pertinent to mention here that in the Haryana Urban (Control of Rent & Eviction) Act, 1973 [for short “the Haryana Act”], Section 18 deals with the execution of the orders, which reads as under :—

“Execution of orders.—Every order made under the provisions of this Act shall be executed by a civil court having jurisdiction in the area as if it were a decree or order of that court.

Explanation.—One year's rent of the building or rented land, preceding the date of the order which is sought to be executed, shall be the jurisdictional value for the purposes of determining the forum of appeal.”

(12) In fact, after coming into force of the Haryana Act on 25th April, 1973, in terms of Section 2(b) of the said Act, which confers power to the State Government to appoint a person as Controller, the State Government appointed Sub Divisional Officers (Civil) as Controllers in the State,—*vide* notification dated 7th September, 1973 and the Deputy Commissioners were appointed as Appellate Authorities. Later on, by a notification dated 8th May, 1978, the Sub Divisional Officers (Civil), who were earlier appointed as Rent Controllers, were replaced by the Subordinate Judges and the Deputy Commissioners by the District Judges as Appellate Authorities. The power of Appellate Authority was further conferred upon the Additional District Judges as well.

(13) From the narration of aforesaid provisions of both the Acts of Punjab and Haryana, it is apparent that the Civil Judges are exercising the powers of the Rent Controllers in both the States, therefore, it is only a matter of nomenclature that when the rent petition is filed it is to be addressed to the Rent Controller and when execution is filed it is to be addressed to the Civil Court who is none-else than the Rent Controller. The Division Bench of this Court in the case of **Ram Kishan versus Santra Devi and others**, (2) has also held that the Rent Controller and Appellate Authority under Rent Acts applicable to States of Punjab and Haryana act as Civil Courts in matters like summoning and attendance of witnesses, enquiries and hearing of parties. They are obliged to decide cases in judicial manner and are covered by definition of term 'Court' given in the Indian Evidence Act and as such they are legally competent to take evidence and are governed by the provisions of the Indian Evidence Act.

(14) In view of the aforesaid discussion, I do not find any merit in the present revision petition and as such the same is hereby dismissed, but before parting with this order, I find it appropriate to issue a direction to all the Rent Controllers in the States of Punjab, Haryana and Union Territory Chandigarh to mention in their orders that they are deciding the execution as Rent Controller-cum-Civil Court instead of hearing the objections as Rent Controller so that this kind of frivolous objection may not be raised in future leading to a litigation before this Court.

(15) The Registrar General is directed to circulate copy of this order to all the Rent Controllers in the States of Punjab, Haryana and U.T. Chandigarh through their District Judges after seeking approval of Hon'ble the Chief Justice.

R.N.R.