IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.5397 of 1999 (O&M)
Date of decision: 27.02.2009

M/s Bombay Motors ..... Petitioner

Vs.

Smt. Bhagwanti and Ors. .....Respondents

Present: Mr. M.L Sareen, Sr. Advocate
with Ms. Alka Sareen and Ms. Himani Sarin,
for the petitioner.

Mr. O.P. Goyal, Advocate with
Mr. R.K. Gautam, Advocate and
Mr. Varun Sharma, Advocate for
respondent No.1.

Mr. Vivek K. Thakur, Advocate for
Mr. Suraj Parkash, Advocate
and Mr. Satish Kumar, Advocate
for LRs of respondent No.1.

CORAM: HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? **Yes**
2. To be referred to the Reporters or not ? **Yes**
3. Whether the judgment should be reported in the Digest ?**Yes**

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K.KANNAN, J.

1. The landlord's petition for eviction filed under the East Punjab Urban Rent Restriction Act, 1949 on the grounds of non-payment of rent, subletting, change of user and material alteration that allegedly impaired the value and utility of the building was upheld on the first two grounds. In appeal by the tenant, the Appellate Authority found that the ground of material alteration of the construction that impaired the value and utility of the building was the only ground available for the landlord and reversed the finding of the Rent Controller as regards non-payment of rent as well as regards the

change of user, but still dismissed the appeal filed by the tenant on account of abovesaid finding regarding the material alteration. Aggrieved against the order of ejectment, the tenant is the revision petitioner before this Court.

2. While adverting to the ground of material alteration, the Courts below had referred to the averment made in the petition. The tenant was alleged to have “plastered bond in front elevation and also painted faces and uses the same for advertisement purpose and walls constructed in the back courtyard" (sic) and attributed them as constituting the actionable wrong acts. According to the landlord, these material alterations had been effected without the consent in writing of the landlord. This act of the tenant, according to the landlord, resulted in an action for resumption by the Chandigarh Administration and relying on the judgment of Hon'ble Supreme Court that an action that exposed the landlord for imminent action constituted material impairment and afforded the ground to the landlord to obtain eviction.

3. Learned Senior Counsel appearing on behalf of the tenant drew the attention of this Court primarily to the specific grounds mentioned in the petition extracted above and pointed out that as regards the first so-called act of painting the portion of the front elevation, it could not be said to be an act that impaired the value and utility of the building and the so-called act of raising a wall at the courtyard had not been done at all by the tenant. He pointed out that the landlord herself had not been examined and her son who was living away at Delhi had come Chandigarh in the year 1990 to inspect

the building and inspected the building for the first time on his visit. He had admitted to be not aware about the nature of building before his visit and therefore, his evidence that a wall had been constructed at the courtyard by the tenant could not be accepted. A further improvement was made at the time of trial by the son who was examined as PW-5 that Tarpaulin and other plastic sheets had been used for raising a small shed at the courtyard which were objected to by the authorities and resumption was sought on account of such additional construction unauthorizedly made by the tenant.

4. Learned counsel for the tenant pointed out to the denial of the averments regarding the so-called construction at the courtyard and his consistent stand had been that the building from the stage of the inception of the tenancy in the early 1960s continued to remain the same. There had been no independent evidence placed through any one to affirm that the tenant had made any construction that impaired the value and utility of the building.

5. After going through the entire judgment of the Rent Controller and the Appellate Authority, it could be seen that the issue whether the defendant put up any construction at the courtyard at the back does not appear to have been clearly made out. What weighed with the authorities below was the fact that an action for resumption had been taken by the administration on the ground that the acts of the tenant were unauthorized. To this, the answer of the learned Senior Counsel appearing on behalf of the tenant was two-fold; (i) the landlord herself had given a statement before the authorities denying that any construction had been made at the courtyard (ii) no wrongful

act had been done by the tenant to be liable for eviction by the landlord. That apart, the order of resumption itself had been cancelled in the appeal filed by the landlord as well as the appeal filed by the tenant when the Joint Secretary (Finance) exercising the powers of the Chief Administrator, Union Territory, Chandigarh had ruled that so-called violations as enumerated in the resumption order had been actually removed and the order of resumption had been withdrawn.

6. The tenant had filed C.M. No.7458-CII of 2001 bringing to light the subsequent event of the order cancelling resumption. C.M. No.7457-CII of 2001 was filed for permission to receive the document since the order of eviction itself had been confirmed only on the so-called order of resumption as constituting proof of the material impairment. The subsequent event relating to the resumption was definitely relevant and therefore, the petition for reception of the evidence is allowed. On a consideration of the order passed under the powers of the Chief Administrator, it becomes clear that the landlord herself had contended that there were no acts made at the property which deserved an action for resumption. In particular, the landlord had herself stated that at the time of renting out the premises, she had made a partition with corrugated tin shed to divide the back open courtyard for using it as a passage for going to first and second floor independently. This admission, in my view, clearly evidences that the act attributed to the tenant was not true at all. Perhaps, the landlord could have explained by giving evidence to Court that such a statement had been made only to save the property from being resumed but even such an explanation had not been given by the

landlord. Admissions are the strongest piece of evidence for a party to bind his adversary and this statement of the landlord is definitely the most potent defence that the landlord could use. If it is seen that PW-5, the son of the landlord, himself had no knowledge about the condition of the building before 1990, it would be impermissible to rely on any statement by him that the tenant had put up any construction at the back courtyard. As a matter of fact, it was admitted in the cross-examination that he knew about the so-called construction by the tenant only from the statements of his mother. The learned Senior Counsel appearing on behalf of the landlord concedes fairly that it was merely hearsay and such evidence need not be taken.

7. If the act of painting at the bond could not constitute a material alteration and the so-called act of construction at the courtyard could not be attributed to the tenant, the mere action by the authority for resumption itself would not constitute an actionable ground for eviction, particularly if it is seen that the order of resumption itself had been withdrawn. Learned counsel appearing for the landlord referred to the application-C.M. No.16968-CII of 2007 seeking permission of the Court to place on record the subsequent events namely of a notice by the Chandigarh Administration for certain other acts of the tenant that gave rise to a fresh notice threatening resumption and a suit for injunction was filed before the Civil Judge (Jr.. Division), Chandigarh by the landlord against the tenant restraining him from putting up any further construction in any manner. These documents, according to the landlord, have an

important bearing on the conduct of the tenant. I receive the documents as matters relating to the case but still hold that they do not prove that the landlord had committed any particular act rendering him liable for eviction. The ground of eviction sought on material alteration could relate only to such material alteration that was done prior to the filing of the petition. I have already held that the specific instances of alleged material alteration that were made the basis of eviction had not been proved. The subsequent acts complained of, have been refuted in the counter filed by the tenant to the above application and in my view, the documents could not be taken up with definitude as proving the acts attributed to him subsequent to the filing of the petition. It could give an independent cause of action for eviction if the facts alleged are established but the facts in dispute which are challenged by the tenant cannot be taken as proved and made the basis for eviction.

8. By the consideration of all the relevant facts and evidence adduced by both parties, I am of the view that the Rent Controller and the Appellate Authority had committed a serious error in rooting the petition for eviction not so much on the proof of the so-called alterations made by the tenant but by the action of the authorities that resulted in resumption orders. As stated above, if the resumption order itself contained a reference to the landlord's statement that no action had been done either by her or her tenant that could justify an act of resumption and the ultimate order of the Authorities themselves were withdrawal of the resumption, it would be untenable to order eviction on such a ground. The findings of the Rent Controller and

the Appellate Authority that the tenant had committed any act that materially impaired the value and utility of the building are set aside. The intervention becomes necessary, if it is seen that the findings were rendered by the Courts below without consideration of the fact that the landlord herself had not been examined and the person who spoke about such alteration had no personal knowledge of the alterations as having been done by the tenant. The authorities below have considered the evidence, which were irrelevant for proof of the alleged wrongs attributable to a tenant as sufficient when on the other hand, there was absolutely no evidence that the tenant was guilty of any act that could be said to have impaired the value and utility of the building.

9. Learned Senior Counsel appearing for the landlord contended that the subletting itself had not been denied by the tenant but it was contended by the tenant that sub-tenancy had been created even prior to the extension of the ground for eviction by means of an enactment for Chandigarh Administration. The specific averment in the petition regarding sub-tenancy is contained in paragraph 4 (ii) that the first respondent had "without the consent and permission of the petitioner has sublet the part of the premises to M/s Verma Auto Engineers, to M/s Kamal Motors, to M/s Diamond Motors and to M/s Delhi Motors, by making partitions in the shop in question." At the time of arguments, the learned Senior Counsel conceded that he was confining his arguments only with reference to so-called sub-tenancy in favour of M/s Verma Auto Engineers and not with reference to the others. In the written statement filed by the tenant, it was specifically

contended that there was no form of sub-tenancy in favour of M/s Diamond Motors or Delhi Motors, who were respondents No.3 and 4 nor in favour of Kamal Motors and that further there was no person by the name of Respondent No.2 (M/s Verma Shockers Works). The tenant had specifically admitted in paragraph 4 (ii) that a small portion of the Shop No.8, Sector 22-C, Chandigarh was sublet to M/s Verma & Company in the year 1965-66 (i.e. before the commencement of the Act) and therefore, the same did not amount to subletting to afford a ground to the petitioner to seek eviction. The learned Senior Counsel for the landlord pointed out that the statement had been filed only by respondent No.1, 3 and 4 and respondent No.2 named in the petition namely M/s Verma Shockers Works had not filed written statement at all.

10. As regards subletting, two factors were required to be considered in the light of what was contended by the learned Senior Counsel appearing for the landlord: (i) the absence of written statement by the second respondent namely M/s Verma Shockers Works; (ii) effect of sub-tenancy before the extension of the subletting as a ground for eviction to Chandigarh City. At the trial, an attempt had been made by the tenant to show that there was no tenant by the name of M/s Verma Shockers Works. He had produced the income tax assessments and challans in the name of Verma and Company which were exhibited as PW3/C. PW8/F was notice issued by the Estate Officer, U.T. Administration and his own evidence that no party by the name of M/s Verma Shockers Works existed at the property. Having regard to the specific contention raised by the tenant

that his own sub-tenant was only Verma and Company but there was also evidence that the person in possession of one of the portions was only Verma and Company. It has to be held that non-filing of the written statement by the second respondent, who had been described as M/s Verma Shockers Works has no relevance. The only consideration has to be whether in the light of admission of sub-tenancy, the tenant can still resist an action for eviction. It is the definite case of the tenant that the sub-tenancy had been created in the year 1965-66 i.e before the commencement of the Act for the city of Chandigarh. Learned Senior Counsel appearing for the landlord would state that his definite case was that the tenancy had commenced subsequent to the Act, six or seven years prior to the filing of the petition. If the tenant was to contend that his act was prior to the provisions of the Act, according to him, the onus of proof was on the tenant to establish that his sub-tenancy had been created prior to the coming into force of the extension of the provisions for Chandigarh city. According to him, there was a discrepancy about the commencement of the sub-tenancy. The tenant had pleaded the sub-tenancy to have commenced during 1965-66, but he gave evidence that it either of the year 1964 or 1967. The prevaricating stand of the tenant, according to him, showed that he had not established the sub-tenancy to have commenced prior to the extension of the provisions to Chandigarh Administration. This contention, in my view, is only liable to be rejected since the definite contention is that the sub-tenancy had commenced prior to the commencement of the Act and it was irrelevant whether the sub-tenancy was of the year 1964, 1965,

1966 or even 1967. The extension of the Act of the Chandigarh Administration itself was made on 04.11.1972 by East Punjab Urban Rent Restriction Extension to Chandigarh Act, 1974. A Division Bench of this Court in ***Surjit Singh Vs. Rattan Lal Aggarwal and others AIR 1980 (P&H) 319*** had held that a tenant who had validly sublet the building in Chandigarh before the commencement of the Rent Act could not be evicted on the ground of subletting. The Hon'ble Supreme Court had also categorically laid down in decision of ***Tirath Ram Gupta Vs. Gurubachan Singh and another (1987) 1 SCC 712*** that a sub lease effected prior to the commencement of the Rent Control Act in the area made the Act itself inapplicable. I reject the contention of learned Senior Counsel appearing for the landlord that since the particular year of sub-tenancy was not clearly established, the tenant must be presumed to have made the sub-tenancy subsequent to the commencement of the Act. The evidence was clear at least to the fact that the sub-tenancy had been made long before the commencement of the Act and hence, he was not liable for eviction. I affirm the finding of the Courts below that the tenant was not liable to be ejected under so-called ground of subletting.

11. Under the circumstances, the order passed by the Courts below are set aside and the civil revision filed by the tenant is allowed. However, there shall be no orders as to costs.

(K. KANNAN)
JUDGE

February 27, 2009
Pankaj*