

provisions of the law.

16. Accordingly, the present writ petition is allowed and the orders Annexures P-4 and P-6 and the notice Annexure P-7 are quashed. There shall be no order as to costs.

Petition allowed.

PUNJAB AND HARYANA HIGH COURT

Before Mr. Justice Hemant Gupta

Civil Revision No. 3445 of 1985

Decided on 12.05.2004

Jagdish Singh, Proprietor, Jagdish Diesel
Service

Petitioner

Versus

Mohan Lal

Respondent

For the Petitioner: Mr. S.C. Pathela, Advocate.

For the Respondent: Mr. Ashwani Chopra, Sr. Advocate with
Mr. Pankaj Gupta, Advocate.

A. East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 2 (c), 13 – Landlord – Owner – Power of Attorney – Attorney of the Landlord let-out the demised premises on rent without disclosing his status – Held, power of attorney is a registered document, registration of document is a notice to all – Tenant cannot deny his relationship with landlord as tenant – Landlord is competent to file ejectment petition against the tenant.

Still further the Power of Attorney in favour of Sham Lal is a registered power of attorney. Registration of a document is a notice to all. Therefore, it is not open to the petitioner to deny that he was not aware of Sham Lal being attorney of Mohan Lal. Still further, it may be noticed that the ownership of Mohan Lal in respect of premises is not disputed. Mohan Lal is competent to seek ejectment under Section 2(b) of the Act, as the landlord includes owner or such other person who is entitled to receive rent.

(Para 7)

B. East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13(2)(i) – Arrears of Rent – Tender of – Denial of relation ship of landlord and tenant – Effect of – Another opportunity to tender arrears of rent can be given only in the eventuality of bona fide dispute regarding rate of rent or period – Where the tenant has denied the relationship of landlord and tenant between the parties, the benefit of providing opportunity to the tenant to tender the tenant is not available.

Learned counsel for the petitioner then referred to a judgment of the Hon'ble Supreme Court in Rakesh Wadhawan Vs. Jagdamba Industrial Corporation (2002) 5 SCC 440 and Vinod Kumar Vs. Prem Lata 2003 (2) R.L.R. 449 to contend that the petitioner is entitled to an another opportunity to tender arrears of rent so found due by the learned Appellate Authority.

Learned counsel for the respondent on the other hand has relied upon a judgment of this court in *Hukma Devi Vs. Bhagwan Dass* 2003(1) R.L.R. 528 wherein it has been held that the ratio of said judgment is applicable only in the eventuality of bona fide dispute regarding either rate of rent or the period but where the tenant has denied the relationship of landlord and tenant between the parties, the benefit of providing another opportunity to the tenant to tender the rent is not available.

(Para 9, 10)

Cases referred:

1. Rakesh Wadhawan Vs. Jagdamba Industrial Corporation, (2002) 5 SCC 440.
2. Vinod Kumar Vs. Prem Lata, 2003 (2) R.L.R. 449.
3. Hukma Devi Vs. Bhagwan Dass, 2003(1) R.L.R. 528.

JUDGMENT

Hemant Gupta, J. – The tenant is in revision petition aggrieved against the order passed by the Appellate Authority under the East Punjab Urban Rent Restriction Act, 1949 passing an order of ejectment on account of non-payment of arrears of rent after holding that there is relationship of landlord and tenant between the parties.

2. Respondent Mohan Lal sought ejectment of the present petitioner on account of non-payment of rent from 1.1.1977 to 30.9.1982 at the rate of Rs.300/- per month in addition to the house-tax. On the first date of hearing respondent-tenant tendered rent at the rate of Rs.200/- per month w.e.f. 1.6.1982 to 31.10.1992. However, in written statement, the petitioner denied the relationship of landlord and tenant alleging therein that the premises in question were let out not by Mohan Lal but by his brother Sham Lal. The rate of rent was disputed and it was alleged that in fact, it was Rs.200/- per month.

3. In support of their respective claim, both the parties produced number of witnesses. However, the learned Rent Controller dismissed the ejectment petition holding that the premises in dispute were let out by Sham Lal and therefore, there is no relationship of landlord and tenant between the parties. However, learned Rent Controller held that the premises in dispute were let out to the petitioner herein at the rate of Rs.220/- per month but the tenant is not in arrears of rent and thus dismissed the ejectment petition. In appeal, the Appellate Authority reversed the finding on issue No.1 regarding the relationship of landlord and tenant between the parties and held that Sham Lal has let out the premises in dispute as an attorney of the respondent Mohan Lal and that there exist relationship of landlord and tenant between the parties. Maintaining the finding regarding the rate of rent of Rs.220/- per month the learned Appellate Court found that the petitioner has not paid or tendered arrears of rent since 1.7.1977 and passed an order of ejectment on account of non-payment of arrears of rent. Aggrieved against such finding, the petitioner has challenged the order in the present revision petition.

4. Learned counsel for the petitioner has vehemently argued that the landlord has not disclosed either in the ejectment petition or even in the replication that the premises in dispute were let out by Sham Lal on his behalf.

There is no averment in the ejectment petition regarding letting out of the premises by Sham Lal. In the replication, in spite of specific averment in the written statement that the premises were let out by Sham Lal, the landlord has denied the factum of letting out of the premises by Sham Lal. It is further contended that it is the Sham Lal who has signed sale deed, raised construction of the shop and let out the premises in dispute to the petitioner. The petitioner never disclosed that Sham Lal is not the owner/landlord and therefore, there is no relationship of landlord and tenant between Mohan Lal and the present petitioner. It is further contended that the landlord has claimed monthly rent at Rs.300/- per month, whereas the finding of both the courts below is that the monthly rent was Rs.220/-. Since the landlord has not been believed on the question of rate of rent, he should not be believed in respect of relationship of landlord and tenant between the parties.

5. After hearing the learned counsel for the parties, and going through the records of the case, I do not find that the order passed by the Appellate Authority suffers from any material illegality or irregularity warranting interference in exercise of revisional jurisdiction under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act).

6. The landlord has pleaded that the premises were let out by him. Whether through his attorney was not disclosed. Such fact has been explained by the landlord in evidence. It is proved on record that the premises were purchased in the year 1970. A registered power of attorney was executed by Mohan Lal in favour of his brother Sham Lal on 9.6.1976. Sham Lal, brother of Mohan Lal has accepted the sale deed on behalf of his brother. Sham Lal raised construction of the shop on behalf of his brother who was member of Armed Forces of the country. Sham Lal has appeared as AW 7. In cross-examination, the witness has deposed that he gave receipt to the respondent (present petitioner) of payment of rent with house-tax. He has further stated that the receipts are not on any printed form nor these are duplicate. He has not kept any entry regarding the receipt of rent in his account books. There is no suggestion on behalf of the petitioner that such statement of Sham Lal is not correct. Since Sham Lal was an attorney of the landlord, the petitioner has been inducted as tenant by Sham Lal as attorney of Mohan Lal. Best evidence of receipts has not been produced by the petitioner, as Sham Lal has deposed that such receipts were handed over to the petitioner.

7. Still further the Power of Attorney in favour of Sham Lal is a registered power of attorney. Registration of a document is a notice to all. Therefore, it is not open to the petitioner to deny that he was not aware of Sham Lal being attorney of Mohan Lal. Still further, it may be noticed that the ownership of Mohan Lal in respect of premises is not disputed. Mohan Lal is competent to seek ejectment under section 2(b) of the Act, as the landlord includes owner or such other person who is entitled to receive rent.

8. Learned Appellate Authority has discussed the entire evidence in returning finding of fact which is based upon appreciation of evidence that there existed relationship of landlord and tenant between the parties. Consequently, I do not find any reason to take a different view than the one taken by the appellate authority.

9. Learned counsel for the petitioner then referred to a judgment of the

Hon'ble Supreme Court in **Rakesh Wadhawan Vs. Jagdamba Industrial Corporation, (2002) 5 SCC 440** and **Vinod Kumar Vs. Prem Lata, 2003 (2) R.L.R. 449** to contend that the petitioner is entitled to an another opportunity to tender arrears of rent so found due by the learned Appellate Authority.

10. Learned counsel for the respondent on the other hand has relied upon a judgment of this court in **Hukma Devi Vs. Bhagwan Dass, 2003(1) R.L.R. 528**, wherein it has been held that the ratio of said judgment is applicable only in the eventuality of bona fide dispute regarding either rate of rent or the period but where the tenant has denied the relationship of landlord and tenant between the parties, the benefit of providing another opportunity to the tenant to tender the rent is not available.

11. Admittedly, the petitioner has denied the relationship of landlord and tenant. In view of the judgment of this court in **Hukma Devi (supra)**, the petitioner not entitled to an opportunity to tender arrears of rent in such an eventuality. Keeping in view the said judgment, I do not find any merit in the present revision, which is dismissed.

Petition dismissed.

PUNJAB AND HARYANA HIGH COURT

Before Mr. Justice H.S.Bedi

Civil Revision No. 140 of 1986

Decided on 19.11.2003

Gian Chand and others

Petitioners

Versus

Pyare Lal and others

Respondents

For the Petitioners: Mr. Arun Jain, Advocate.

For the Respondents: Mr. J.R. Mittal, Senior Advocate with Mr. Kashmir Singh, Advocate.

East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13(2)(ii)(b), 13(2)(v) -- Change of user – Ceased to occupy -- In earlier proceedings for ejectment on the ground of ceased to occupy, the findings comes that premises in question was being used as a shop – Ground that demised premises had for last eighteen months, prior to the filing of the second application, were being used as a godown, which amounted to a change of user – is merely an attempt to create a new ground and nothing less – Eviction petition dismissed.

In the light of the positive finding in the earlier proceedings that the shop was not being opened throughout the day, but had been used for Kabari business which required the owner to go outside the shop to collect kabari articles, would indicate that premises in question was being used as a shop. In paragraph 15 of the order of the Appellate Authority in the present set of proceedings, it has been observed as under:

“It is proved by evidence that no business is being conducted in the shop in dispute and it is the case of the appellants-tenants themselves that they have kept therein some articles like iron scraps and old rafters