

Mrs Mohini Suraj Bhan

Vs

Vinod Kumar Mital

Civil Appeal No. 5053 of 1985

(V. D. Tulzapurkar, R. B. Misra JJ)

24.01.1986

JUDGMENT

TULZAPURKAR, J. -

1. The appellant-landlady filed a petition against the respondent-tenant under Section 13(3)(a)(i) of the East Punjab Urban Rent Restriction Act, 1949, Act No. 3 of 1949 (for short the Act) as applicable to the Union Territory of Chandigarh seeking his eviction on the ground that she required for her own occupation the first floor of Hose No. 112, Sector 16-A, Chandigarh which had been let out by her deceased husband to the respondent for residential purposes at a monthly rent of Rs 550 under a rent not dated August 14, 1975. The accommodation consists of two bedrooms, one living room, dining room and a kitchen in addition to dressing, bath and lounge.

2. It appears that the said premises were let out by the appellant's husband to the respondent as he, after retiring as a Vice-Chancellor of the Punjab University in 1974, had shifted to and taken up rented premises in Defence Colony at Delhi when he was appointed the Chairman of the DAV Managing Committee at Delhi. It further appears that the appellant's husband late Shri Suraj Bhan Choudhary suffered in later years from cancer and after protracted illness and treatment at various hospitals in New Delhi and USA ultimately died in Delhi on August 28, 1980. After her husband's death the appellant had no reason to continue her stay at Delhi and she decide to live and spend the evening of her life in her own house, namely, the suit house at Chandigarh where she had spent 15 years of married life prior to their shifting to Delhi. With that object she approached the respondent requesting him to vacate the suit premises and also used good offices of common friends like principal K.S. Arya of DAV College, Chandigarh in that behalf as also wrote two or three letters but when beyond masking promises respondent did not vacate she filed the eviction petition on May 24, 1982 making out a case of bona fide requirement of personal use and occupation. The petition was resisted by the respondent on the ground that it was merely a device to earn enhanced rent after securing vacant possession and there was really no need or bona fide requirement on the part of the appellant as alleged. Both the parties led oral and documentary evidence. Oral evidence on the side of the appellant consisted of three witnesses, namely, the appellant herself, her son Vinod Kumar and K.S. Arya, Principal, DAV College, Chandigarh and documentary evidence mainly consisted of three letters (Exs. P-2, P-3 and P-4) written to the respondent. Respondent examined himself and relied upon one letter (Ex. R-1) that had been addressed to him by the appellant's deceased husband from USA in 1979 when he was suffering from the terminal disease suggesting payment of enhanced rent.

3. On appreciation of the oral, documentary and circumstantial evidence on record the Rent Controller recorded a finding that the first floor premises in question were needed by the appellant-

landlady for her own use and occupation, that her need was genuine and that there was no substance in the respondent's case that the appellant merely wanted to secure enhanced rent after obtaining vacant possession. He, therefore allowed the petition directing eviction of the respondent from the suit premises. In appeal preferred by the respondent the appellate authority took a contrary view on the question of bona fide requirement of the appellant and allowed the appeal. The High Court in revision preferred by the appellant under Section 15(5) of the Act confirmed the view of the appellate authority and dismissed the revision. The landlady has come up in appeal by special leave.

4. Counsel for the appellant raised two or three contentions before us in support of the appeal. In the first place he urged that while exercising its revisional powers under Sections 15(5) of the Act the High Court has unduly restricted its approach to the main issue arising in the case and the evidence thereon, for, under the said provision the High Court was entitled to satisfy itself not merely about the legality of the impugned order of the appellate authority but also its propriety and this has led to miscarriage of justice. Secondly, counsel urged that even on merits the appreciation of evidence done by the High Court is erroneous inasmuch as it has mechanically approved the appreciation and reasoning of the appellate authority which itself was faulty being based on factual errors on vital aspects. Thirdly, counsel contended that the reasons given by the High Court and the appellate authority for negating the appellant's bona fide need or requirement of the suit premises for her own use and occupation do not stand the test of reasonable probability. Counsel, therefore urged that the view of the appellate authority as confirmed by the High Court deserves to be set aside and the Rent Controller's order restored. We find considerable force in these submissions made by counsel for the appellant.

5. It cannot be disputed that the powers of the High Court under Section 15(5) of the Act are wide and not confined merely to examining the legality of the appellate authority's order nor are those powers akin to the revisional powers of the High Court under Section 115 of the CPC. Sub-section (5) of Section 15 of the Act insofar as is material states :

The High Court may... on the application of any aggrieved party or on its own motion, call for and examine the records relating to any order...for the purpose of satisfying itself as to the legality or propriety of such order...and may pass such order in relation thereto as it may deem fit.

We find that at two places in its judgment the High Court has categorically observed that it was not open to it to reappraise the evidence unless the finding recorded by the appellate authority suffered from some legal infirmity and further that even if it were to come to a different conclusion - of course properly and reasonably - it would not be open to it to interfere with the finding of fact recorded by the appellate authority on reappraisal of the evidence. It is true as was fairly pointed out by the counsel for the appellant that High Court has even after making these observations itself gone into the evidence and appreciated it in a particular manner but on reading the entire judgment as a whole we feel that the approach to the main issue arising in the case and the evidence led by the parties thereon has been considerably influenced or coloured by the unwarranted inhibition which the High Court put upon the exercise of its revisional powers as aforesaid and therefore, it becomes necessary to consider the other submissions made by counsel for the appellant before us.

6. The broad undisputed facts on the basis of which the Rent Controller accepted the appellant-landlady's case about her bona fide need for the suit premises were these. The premises were let out to the respondent for residential purposes by the deceased husband of the appellant in 1975 after he had retired as a Vice-Chancellor of Punjab University at Chandigarh and had gone to Delhi as the

Chairman of DAV Managing Committee at Delhi where he started residing with the appellant and the other members of the family in rented premises; that the husband of the appellant died of cancer in Delhi on August 28, 1980; that after recovering from the shock of the loss of her husband the appellant decided to shift to Chandigarh for the purpose of living and spending the evening of her life in her own house there where she had spent about 15 years of married life prior to their shifting to Delhi in 1974 and where she links and association with number of social institutions and she could do some useful work; that with that object accompanied by common friends she approached the respondent on several occasions but after making hollow promises to vacate the respondent did not do so and then she filed the petition on May 24, 1982. The Rent Controller did not accept her plea that her two sons who along with their wives are living abroad or her divorced daughter who was studying in USA would join her at Chandigarh but it could not be doubted that her second son Vinod Kumar and his wife and their children would be positively visiting her often and at times staying with her in the suit premises. He laid considerable emphasis on the aspect that after her husband's death she has no business or purpose to remain in Delhi and it is but natural for her to decide to go to Chandigarh and stay in her own house - which admittedly is the only house owned by her in India. Placed in that situation he concluded that it was not a case of mere desire or wish on her part but there was need to go and stay in her own house towards the evening of her life. Moreover according to the appellant her landlord was pressing her to vacate the rented premises in Defence Colony in Delhi. As regards the respondent's suggestion that this was a device to get higher rent the Rent Controller noted that in cross examination the respondent had made clear admission that no demand was ever made by the appellant for such enhanced rent from him nor could he produce any letter from the appellant making any such suggestion for any enhanced rent. The respondent of course, relied upon the letter Ex. R-1 received by him from the deceased husband of the appellant from America in the year 1979 asking for more rent in support of his case but that letter was written by the husband in the peculiar condition of his health during his terminal illness and in any case that letter would not in any manner show that even after the death of her husband the appellant wanted enhanced rent from the respondent. Rent Controller therefore negated that case of the respondent and accepted the appellant's case that her need was bona fide.

7. It may be stated that the appellate authority has noted that the respondent had even at the appeal stage made an offer to pay enhanced rent even to the extent of Rs 1500 per month but that offer was spurned by the appellant and in view of such conduct even the appellate authority was not prepared to give any credence to the respondent's case that the appellant's petition for eviction was motivated to earn higher rent. If that be so the appellate authority should have agreed with the Rent Controller's view on the question of bona fide need of the appellant landlady.

8. One of the main reasons why the appellate authority negated the appellant's bona fide need was that the ground floor of the house in question which had been let to a bank at a monthly rent of Rs 850 fell vacant in 1979 and the same was relet at an increased rent of Rs 1450 per month to Microwave Department of the Central Government by the appellant in September 1980, i.e. admittedly a year and a half prior to the stating of this litigation and this showed that the appellant's need for self-occupation was not bona-fide. The appellate authority clearly went wrong in drawing this inference because on subsequent verification it was found that the reletting of the ground floor was not done in September 1980 much less by the appellant but it had been done on September 22, 1979 by the husband of the appellant when he was alive. When these facts were put on record by seeking necessary amendment to the pleadings the amendment was not objected to by the respondent and was allowed to be made and the respondent accepted the position that reletting of the ground floor was done by the appellant's husband in September 1979. It is thus clear that one of the main reasons on which the appellate authority came to the conclusion that the appellant could

not be said to have proved her bona fide need was based on erroneous assumption of fact and even after the amendment was allowed to be carried out at the revisional stage, the High Court has confirmed the appellate authority's finding which is based on the aforesaid faulty reasoning.

9. We would also like to point out that while appreciating the material on record the High Court also has fallen into couple of errors which would go to vitiate its conclusion. For negating the appellant's bona fide need for the suit premises the High Court observed that there has been unexplained delay of nearly two years on the part appellant to file the eviction petition after the death of her husband on August 28, 1980 and such unexplained delay casts a doubt on the genuineness of need of the appellant but in taking this view the High Court has completely ignored the admitted facts that the appellant had made several efforts to approach the respondent personally for getting vacant possession of the premises and had written the letters EX. P-2 (dated December 12, 1980), Ex. P-3 (dated February 24, 1981) and Ex.-4 (dated April 10, 1981) to the respondent in that behalf. The evidence of the appellant that on some of the occasions when she met the respondent she was accompanied by K.S. Arya, Principal, DAV College, Chandigarh has been even accepted by the appellate authority. The respondent did not deny the visits of the appellant to his house but merely denied that the Principal had accompanied her and as regards letters Exs. P-2, P-3 and P-4 he disowned having received those letters though the postal acknowledgements in respect thereof bore the signature of his mother and the respondent went to the length of feigning ignorance of his mother's signatures. In this situation it is difficult to accept the High Court's reasoning that there has been unexplained delay on the part of the appellant to file the eviction petition.

10. One more aspect may also be mentioned. It was the appellant's case even in her eviction petition that there was pressure on her to vacate the rented premises in Defence Colony at New Delhi from her own landlord and in that behalf she gave oral evidence but later on it appears that the appellant's landlord filed an eviction petition and served summons on the appellant and the appellant made an application before the High Court for permission to lead additional evidence under Order 41, Rule 27, CPC. That application was rejected by the High Court on the ground that the said evidence was irrelevant because no ejection order had been passed and till that was done the evidence would not be relevant. It is difficult to appreciate the ground mentioned by the High Court for rejecting the application for leading additional evidence. May be that ejection order had not been passed but the fact that eviction petition was filed against the appellant and summons in that behalf was served upon the appellant would have at least corroborated her case that there was pressure upon the appellant from her landlord to vacate the rented premises. The probative value of such evidence cannot be doubted.

11. Having regard to the aforesaid discussion we are clearly of the view that neither the appellate authority nor the High Court was justified in coming to the conclusion that the appellant had failed to establish her bona fide requirement or need for the suit premises and their conclusion gets vitiated by the errors indicated above.

12. We, therefore, allow the appeal set aside the judgment of the High Court and the appellate authority and restore the order passed by the Rent Controller but give to the respondent time to vacate till end of April, 1986. In other words the Rent Controller's order will be executable on or after May 1, 1986. The respondent will pay the costs of this appeal to the appellant.

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