

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.6594 OF 2019
(@ out of SLP (CIVIL) No(s).28859/2018)

DAYA RANI & ANR. **Petitioner(s)**

VERSUS

SHABBIR AHMED **Respondent(s)**

WITH

CIVIL APPEAL NO.6595 OF 2019
(@ out of SLP (CIVIL) No(s).28858/2018)

JUDGMENT

UDAY U. LALIT J.

1. Leave granted.
2. These appeals arise out of the common judgment and order dated 6.9.2018 passed by the High Court of Punjab and Haryana High at Chandigarh in Criminal Revision No.4781 of 2011 and Criminal Revision No.8734 of 2016.
3. The facts leading to the filing of appeal arising out of Criminal Revision No.4781 of 2011 are:
 - (a) The respondent-Rajesh Kumar took on rent shop on the ground floor of suit premises bearing No.464/2 (old) and 422/8 within the municipal limits of Kaithal, District Kaithal, Haryana (hereinafter referred to as the "Ground Floor Premises") from the appellants at a monthly rent of Rs.1700/- including House Tax.
 - (b) An eviction petition being E.P.No.11/2 of 2008 was preferred by the appellants under Section 13 of the Haryana Urban (Control of Rent & Eviction Act, 1973 ("the Act" for short) seeking eviction of Rajesh Kumar on the ground that the Ground Floor

premises were required for the personal need as specified in para 3(a) of the petition seeking eviction. Said para 3(a) was as under:

"a) That the tenanted premises are required by the petitioners for their own use and occupation. The husband of the petitioner no.1 namely Sat Parkash Goel was previously an employee in the Uttar Haryana Bijli Vitran Nigam, Kaithal and retired on 30.11.1999. The above-said Sat Parkash Goel and the petitioner no.1 are having two sons. Both the sons are settled at Delhi. After retirement the petitioner no.1 along with her husband started residing with her son but now some differences have arisen because of which the petitioner no.1 and her husband are not getting the proper respect and treatment from their son and they are feeling as if they are burden on their children/sons. The petitioner no.1's husband wants to start a Jewellery shop in the tenanted premises and for running the jewellery shop the tenanted premises are required by the petitioner for the necessity of petitioner no.1's husband. The petitioners are not occupying any other building in the main bazaar Kaithal and have not vacated such building without sufficient cause."

(c) A reply was filed by Rajesh Kumar denying the claim made by the appellants. The matter was contested and the evidence was led in the matter.

(d) The Rent Controller by order dated 21.12.2010 decreed the Eviction Petition. The requirement pleaded by the appellants was found to have been established and it was observed:-

"10. From the perusal of the records of the case, it is observed that the relationship between the landlord and tenant is not disputed. It is also not in dispute that he is in occupation of the premises and there has been no previous litigation between the parties. The petitioners are claiming a bona fide requirement as petitioner no.1-Smt. Daya Rani and her husband Shri Sat Parkash Goel want to shift out from their current abode in Delhi. They have contended that they are presently residing with their son Rajiv at Delhi but they do not

get along with him. Therefore in order to live a dignified life, the couple wants to return to Kaithal where Shri Sat Prakash Goel shall run a jewellery shop in the demised premises."

(e) Rajesh Kumar being aggrieved, preferred Rent Appeal No.21 of 2011 before the appellate authority, which by its judgment and order dated 11.6.2011 dismissed said appeal. After considering the evidence on record, the appellate authority observed:

"..The appellant/respondent/tenant cannot compel the respondent/petitioner no.1 and Sat Parkash to stay at Delhi with their son or to carry on business with him at Delhi. It has been held by the Hon'ble Apex Court that landlord is the best judge of his requirements. It is no business of the tenant to dictate his terms to the landlord as to which of the property would be best suited to him. In Raju and Others's case [2009(2) HLR 558 (P&H)] it has been observed that cases of bona fide requirement should be construed in liberal way by the courts....

..
20. In the present case the bona fide requirement of the husband of respondent/petitioner No.1/landlady can not be doubted on the ground that for few years he had gone to his son at Delhi.

21. Learned Rent Controller has rightly decided Issue No.1 in favour of respondent/petitioner and against the appellant/respondent. Hence, the findings of learned Rent Controller on Issue No.1 are hereby reiterated."

(f) Rajesh Kumar carried the matter further by filing C.R.No.4781 of 2011 in the High Court.

4. The facts leading to the filing of the appeal arising from C.R.No.8734 of 2016 are:

a) The first floor of the same premises was let out to the respondent-Shabbir sometime in the year 1987 for residential purposes. While the aforementioned Revision No.4781 of 2011 was

pending in the High Court, the appellants preferred E.P.No.3 of 2013 before the Rent Controller, Kaithal seeking eviction of Shabbir pleading inter alia that the first floor premises were required bona fide for running boutique by the appellant-Daya Rani. The requirement was pleaded as under:-

"The applicant no.1 intends to start a Boutique at the tenanted premises. At present the applicant no.1 is residing at Delhi along with her husband Sh. Sat Parkash Goel and were previously residing at Kaithal. The husband of applicant no.1 was an employee in Uttar Haryana Bijli Vitran Nigam, Kaithal and retired on 30.11.1999. The applicant no. 1 is having two sons and both are settled at Delhi. After the retirement the applicant no.1 along with her husband started residing with their sons at Delhi but due to differences they could not pool on together. The ground floor of the tenanted premises is in occupation of another tenant namely Rajesh Kumar. As the husband of applicant no.1 wanted to run a jewellery shop on the ground floor therefore the applicants filed an ejectment petition against the above said tenant which was allowed by the court of Ms. Retu Y.K. Behl, learned Rent Controller, Kaithal vide her judgment dated 21.12.2010 the appeal filed by the tenant against the above said judgment was also dismissed by the Hon'ble Court of Ms. Sarita Gupta, learned Appellate Authority, Kaithal. However, the revision petition filed by the tenant is pending before the Hon'ble Punjab & Haryana High Court, Chandigarh. In case the tenanted premises are vacated then applicant no.1 shall run the business of boutique in the tenanted premises. In this manner the applicant no.1 will be helping her husband as well as will also be able to keep herself busy. Except the petition referred to above, no other petition for ejectment was filed by the applicants. Neither the applicants own any property in the urban area concerned nor has vacated any such property without sufficient cause after the commencement of 1949 Act."

b) The claim made by the appellants was denied by Shabbir. The evidence was led in the matter and the Rent Controller by order dated 20.2.2015 allowed the petition for ejectment. The matter was

assessed as under:

"No doubt AW-2 Sat Parkash stated in his evidence that they are not going well with their sons and daughter-in-laws since the year 2007 and it is also not disputed that petitioner no.1 and her husband have sold their only residential house in Kaithal in the year 2009 but merely from this fact it cannot be held that bona fide need as alleged by the petitioners is false as usually it is seen that for getting the possession of the tenanted premises takes many year and if petitioner no.1 and her husband have sold their residential house, it cannot be presumed that plea of petitioner no.1 is not bona fide as it is always open to them to purchase another house or take a house on rent after they get the possession of suit premises. Further merely from the fact that son of petitioner no.1 is looking after the bank account, income tax return etc. of her husband also not bone fide as son of petitioner no.1 is Chartered Accountant and merely from the fact that he is looking account etc. of husband of petitioner no.1 it can be presumed that he and his wife is respectful towards petitioner no.1 and her husband."

c) Shabbir being aggrieved, filed Rent Appeal No.82 of 2015 in the Court of District Judge, Kaithal. The Appellate Authority, Kaithal dismissed said appeal on 7.10.2016. The Appellate Authority observed:

"Landlady No.1 was 68 years old when she was examined on 21.8.2014. At present, she would be 70 years of age. She has explained that she is not willing to reside with her sons on account of disputes and wanted to shift with her husband to Kaithal as her husband wanted to start jewellery business on the ground floor and she would run a Boutique at the first floor. Neither the tenant nor the court is in a position to advice the land-lady to continue living with her sons, who would look after her in old age. It is the land-lady alone who knows the situation of her family and the court does not expect her to narrate the painful details of her estrangement with her sons. If land-lady No.1 wants to lead a life of self-respect and dignity, her need cannot be viewed with suspicion. She is the owner

of the premises. She does not wish to lead a life of dependency at the mercy of her sons and daughter-in-laws and the court must honour her desire. In the evening of life, one needs peace more than any other thing and to spend his/her time gainfully. The landlady in cross examination, stated that she had some training in stitching and embroidery and there is nothing to hold that she is not in sound physical and mental health and is incapable of starting business. Even though she is old, she can employ workers to run the business and assist her. There is nothing wrong if she wants to keep herself busy in some vocation and intends to earn money for livelihood. One can start business or some vocation to improve his/her standard of life, generate income and respect both, even in old age. The tenant cannot dictate to land-lady no.1 to adjust with her sons and daughter-in-laws and continue to live with them at Delhi. Nothing damaging has been brought out in the cross-examination of either landlady-Daya Rani or her husband to doubt her pressing and genuine need. It is inconsequential that she has never visited the shop in dispute and is unaware of its area. The landlady is not required to submit a project report in the court of the intended business to convince the court of her need."

(d) Shabbir carried the matter further by filing C.R. No. 8734 of 2016 in the High Court.

5. Both the aforesaid C.R. Nos.4718 of 2011 and 8734 of 2016 were heard together by the High Court. During the pendency of the Civil Revisions, the High Court by its order dated 31.8.2012 in C.R.No.4781/2011 and order dated 23.12.2016 in C.R.No.8734/2016 had directed the respondent-tenants in respect of Ground Floor and First Floor Premises to keep depositing sums of Rs.20,000 and Rs.5,000/-per month respectively towards mesne profits.

We understand that such sums have been deposited upto date by both the respondent-tenants, namely, Rajesh Kumar and Shabbir.

6. By its common judgment and order dated 6.9.2018 the Revision Applications were allowed by the High Court. The judgment and orders passed by the Rent Controller and the Appellate Authority in both the matters were set aside and the Eviction Petitions preferred by the appellants were dismissed. According to the High Court, the appellants had failed to establish their bona fide need in respect of the Ground Floor and the First Floor premises.

7. The judgment of the High Court shows that a question was put to the learned counsel for the appellants whether they desired to shift to Kaithal or not. The fact that the counsel could not answer the question weighed with the High Court which is apparent from the judgment of the High Court. The discussion in that behalf was as under:

“Learned counsel for the respondent-landlord was specifically called upon to explain whether his clients wish to shift to Kaithal or not. He submitted as under:

“In the petition, the landlord has never pleaded that they wish to shift to Kaithal. It is their option whether they wish to run their business while continuing to reside in Delhi or at Kaithal. Residing at a particular place is irrelevant as today the business can be run from any place.”

In the considered opinion of this Court, the answer of learned counsel for the respondent is evasive. It is not in dispute that the landlords have not pleaded that they wish to continue to reside in Delhi but they wish to open their business at Kaithal which is more than 175 kms. away. If the pleadings are carefully read, it is apparent that Daya Rani and her husband Sat Parkash were not getting along well with the family of their sons and therefore, they want to become

financially independent. That is the reason why the husband desires to open a jewellery shop whereas the wife desires to open a boutique at the first floor. When confronted with the sale of the residential house, learned counsel for the respondent-landlord tried to explain that the aforesaid property was sold. However, it will be noticed that there is neither any pleadings nor any evidence to prove that Devender was insisting for the sale of the property or it is because of Devender, the property has been sold. At the cost of repetition, it will be noticed that it is admitted fact that Devender had shifted to Delhi and residential house was in exclusive possession of the Daya Rani and her husband Sat Parkash. It will be noted that Devender is son of second respondent No.2 - Santosh Rani. Once the residential property has been sold during the pendency of the petition, this Court is of the view that the land-ladies have a bona fide requirement of both the premises. Now the only issue to be examined is whether the landlords can claim eviction on the ground that they would like to run their business while residing in Kaithal which is 175 kms. away. First of all, it will be noted that it is not the case pleaded by the landlord-respondents. The landlords do not claim that they are running a big company and they are in a position to open their branches/franchises at different places while testing bona fide of the landlords, the Court has to take a practical view of the matter. The landlady wishes to open a boutique in which she has no prior experience and husband wishes to open a jewellery shop now, although, he retired from service in 1999. The wish to open a jewellery shop has been expressed for the first time in the year 2008 only on account of fact that they are not being treated properly by their son and his family. In the aforesaid view of this Court, the requirement of the landlords in both the cases is not bona fide. Learned Appellate Authority has although held that the tenant cannot compel the respondent-Daya Rani and her husband to stay at Delhi, however, since counsel for the respondent has taken a different stand, therefore, the aforesaid finding of the Appellate Authority is erroneous."

8. We heard Ms. Kaveeta Wadia, learned counsel for the appellants and Mr. Ajay Veer Singh Jain, Adv. learned counsel for the respondents in both the matters.

9. The jurisdiction exercised by the High Court in terms of Section 15(6) of the Act is "for the purpose of satisfying itself as to the legality or propriety of such order or proceedings". Said Section 15(6) is as under:

"Sec.15(6) - The High Court, as revisional authority, may, at any time, on its own motion or on the application of any aggrieved party, made within a period of ninety days, call for and examine the record relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit. In computing the period of ninety days the time taken to obtain a certified copy of the order shall be excluded."

10. The provisions relating to revisional powers of the High Court in other Rent Legislations came up for consideration before the Constitution Bench of this Court in Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh¹. The matter was referred to the larger Bench because of two lines of decisions which were somewhat inconsistent as is apparent from the referral order quoted in para 3 of the decision.

"3. The two-Judge Bench in Hindustan Petroleum Corporation Ltd. case² felt that there was conflict in the two decisions and for its resolution referred the matter to the larger Bench. In the reference order³ (dated 27.8.2009), the two-Judge Bench observed, thus:

"The learned counsel for the appellant has placed reliance on a three-Judge Bench decision of this Court in Rukmini Amma Saradamma vs. Kallyani Sulochana wherein Section 20 of the Kerala Rent

1 (2014) 9 SCC 78

2 (2014) 9 SCC 102

3 Hindustan Petroleum Corpn Ltd. vs. Dilbahar Singh (2014)9 SCC 102

Control Act was in question. It was held in the said decision that though Section 20 of the said Act provided that the Revisional Court can go into the 'propriety' of the order but it does not entitle the Revisional Court to reappraise the evidence. A similar view was taken by a two-Judge Bench of this Court in Ubaiba vs. Damodaran⁴

On the other hand the learned counsel for the respondent has relied upon a decision of this Court in Ram Dass v. Ishwar Chander⁵ which was also a three-Judge Bench decision. It has been held in that case that the expression 'legality and propriety' enables the High Court in revisional jurisdiction to reappraise the evidence while considering the findings of the first appellate court. A similar view was taken by another three-Judge Bench of this Court in Moti Ram vs. Suraj Bhan⁶ .

From the above, it is clear that there are conflicting views of coordinate three-Judge Benches of this Court as to the meaning, ambit and scope of the expression 'legality and propriety' and whether in revisional jurisdiction the High Court can reappraise the evidence. Hence, we are of the view that the matter needs to be considered by a larger Bench since this question arises in a large number of cases as similar provisions conferring power of revision exists in various rent control and other legislations, e.g. Section 397 of the Code of Criminal Procedure. Accordingly, we direct that the papers be placed before the Hon'ble the Chief Justice for constituting a larger Bench.""

11. While approving the law laid down by a Bench of three Judges in Rukmini Amma Saradamma vs. Kallyani Sulochana & Ors.⁷, the Constitution Bench in para 43 of its judgment observed:-

"43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate

4 (1999) 5 SCC 645

5 (1988) 3 SCC 131

6 AIR 1960 SC 655

7 (1993) 1 SCC 499

court/first appellate authority because on re-appreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that if allowed to stand it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

12. It would, therefore, be relevant to consider the view taken by this Court in Rukmini Amma Saradamma⁷. That matter arose from the exercise of Revisional Power by the High Court under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965, which is in pari materia with Section 15(6) of the Act and empowers the High Court to call for and examine the record relating to any order passed as to the legality or propriety of such order or

proceeding. Para 20 of the decision in *Rukmini Amma Saradamma*⁷ was to the following effect:

"20. We are afraid this approach of the High Court is wrong. Even the wider language of Section 20 of the Act cannot enable the High Court to act as a first or a second court of appeal. Otherwise the distinction between appellate and revisional jurisdiction will get obliterated. Hence, the High Court was not right in re-appreciating the entire evidence both oral or documentary in the light of the Commissioner's report (Ext. C1 and C2 mahazar). In our considered view, the High Court had travelled far beyond the revisional jurisdiction. Even by the presence of the word "propriety" it cannot mean that there could be a re-appreciation of evidence. Of course, the revisional court can come to a different conclusion but not on a re-appreciation of evidence; on the contrary, by confining itself to legality, regularity and propriety of the order impugned before it. Therefore, we are unable to agree with the reasoning of the High Court with reference to the exercise of revisional jurisdiction."

13. In *Ram Dass*⁵ and *Moti Ram*⁶, the scope of revisional power of the High Court under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 was in issue. Said Section 15(5) is in pari materia with Section 15(6) of the Act.

14. The law is thus well settled that while exercising revisional power, the High Court can not reappreciate the evidence on record: both oral or documentary. Further the consideration while exercising revisional jurisdiction is confined to find out whether the findings of fact rendered by the Court or Authority below were according to law and did not suffer from any error of law.

15. The assessment made by the High Court in the present matter is not in conformity with the law laid down by this Court in Hindustan Petroleum Corporation Ltd. Though the judgment of the High Court discloses that the High Court was aware that it was exercising Revisional Powers, the judgment does not spell out or advert to any perversity in the findings rendered either by the Rent Controller or by the Appellate Authority.

16. In the circumstances, in our considered view, the High Court was not justified in exercising revisional power in the present matters. We, therefore, allow these appeals, set aside the judgment and order under appeal and restore the decrees for eviction passed by the Rent Controllers in both the matters namely, in EP No.11/2008 and EP No.3/2013.

17. In both these matters, the respondent-tenants were directed to hand over peaceful possession within the stipulated time which time has already elapsed long back. Considering the facts and circumstances on record, we grant to the respondent-tenants in both the matters, time upto 31.5.2020 to vacate the respective premises subject to filing usual undertakings within three weeks incorporating the following terms:

- (a) The respondent-tenants shall hand-over vacant and peaceful possession of the floors in their occupation on or before 31.5.2020.

- (b) They shall keep paying rent in the sum as specified in the order dated 31.8.2012 by the High Court in CR No.4781 of 2011 and in terms of order dated 23.12.2016 in CR No.8734 of 2016.
- (c) The arrears if any, shall be cleared at the aforesaid rates.
- (d) In case any deposit is lying with the High Court the same shall be made over to the appellants.

The appeals are allowed in aforesaid terms. No costs.

.....J.
(UDAY UMESH LALIT)

.....J.
(VINEET SARAN)

New Delhi
August 22, 2019.

