

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**C.R. No. 184 of 2011.****Reserved on:24.11.2016.****Decided on: 5th December, 2016.**

Shri Pawan Kumar Sharma

.....**Petitioner/JD.**

Versus

Sarla Sood and others

....**Respondents/DH.**

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting?¹ Yes.

For the Petitioner: Mr. Deepak Bhasin, Advocate.

For Respondents: Mr. B.C. Verma, Advocate.

Sureshwar Thakur, Judge.

The Judgment debtor/petitioner herein, tenant in the demised premises stands aggrieved by the pronouncement made by the learned Executing Court upon his objections constituted therebefore vis-a-vis the execution petition constituted thereat by the Decree holder/landlord, wherewithin the apposite unfoldments qua his resistance to the execution of the decree stood discountenanced by the learned Executing Court.

¹ Whether reporters of the local papers may be allowed to see the judgment?

2. The learned counsel appearing for the judgment debtor/petitioner herein submits qua the impugned pronouncement made by the learned Executing Court upon the apposite objections preferred therebefore by the JD/tenant manifesting therein qua the decree put to execution therebefore not warranting recording of affirmative orders thereon, its standing fully satisfied, standing stained with a vice arising from the factum of its palpably slighting the factum of unfoldments occurring in the relevant record existing therebefore comprised in the testification recorded on 29.10.2004 in Rent Petition No. 10/2 of 2003 by the General Power of Attorney of the landlord wherein he made articulations qua all the outstanding arrears of rent qua the demised premises standing liquidated by the judgment debtor excepting conspicuously the one's pertaining to the period commencing from 1.9.2000 uptill 31.03.2003 whereupon he hence canvassed qua the executable pronouncement recorded in rent petition No. 1-2 of 1996 put to execution before the learned Executing Court embodying therein qua the Judgment debtor, falling into arrears of rent commencing from 1.9.1995 upto the date of payment standing fully satisfied, satisfaction whereof emanating

from the factum of liability of rent fastened upon the tenant in a verdict recorded in Rent Petition No. 1-2 of 1996, standing acquiesced to stand liquidated more so when the aforesaid verdict stood put to execution. However, the learned counsel appearing for the tenant/JD/petitioner herein cannot derive the fullest succour from the aforesaid acquiescence occurring in the testification of the GPA of the decree holder/landlord, given its sineu suffering partial dissipation from an imminent display occurring in the impugned pronouncement hereat wherewithin unravelments are held qua the rendition recorded by the learned Rent Controller in Rent Petition No.1-2/1996 standing assailed before the learned Appellate Authority by the tenant/JD by the latter preferring an appeal therebefore whereat he under an application constituted under Section 5 of the Limitation Act sought extension of time for depositing his statutory liability qua the arrears of rent determined by the learned Rent Controller in a pronouncement made by the latter on 6.11.1999, wherefrom an inference spurs of the JD acquiescing qua his not making the relevant deposit qua his liability towards arrears of rent within the statutorily prescribed period, application whereof suffered the ill fate of its dismissal by

the learned Appellate Authority under the latter's order recorded on 16.12.2000. Of course, the inevitable ensuing sequel therefrom is qua the tenant/JD acquiescing to the factum of his not depositing the relevant computations of arrears of rent made by the learned Rent Controller concerned in Rent Petition No.1-2 of 1996 within the statutorily prescribed period for its deposit therebefore whereupon the apposite decree for his suffering eviction from the demised premises on account of his falling into arrears of rent became executable qua him, whereupon, he stands estopped besides forestalled to derive the fullest strength from any acquiescence made by the GPA of the decree holder/landlords, rather stands entailed with the misfortune of the learned Executing Court ensuring his eviction from the demised premises by ordering for issuance of warrants of possession qua him.

3. Even though, this Court has partially blunted the effect of the aforesaid communication occurring in the testification of the GPA of the decree holder qua the tenant/JD not holding any liability qua the landlord vis-a-vis liquidation qua him of rent for the period commencing from 1.9.1995 upto the date of payment, whereupon, this Court concludes qua its entailing the effect of the Executing Court

ordering for issuance of warrants of possession upon the judgment debtor yet before ordering, the learned Executing Court to make the aforesaid pronouncement, this Court is enjoined to also not remain oblivious to the factum of the executable decree standing rendered in the year 1999 by the learned Rent Controller concerned in Rent Petition No. 1-2 of 1996, also this Court stands enjoined to not remain unmindful to the factum of the landlord subsequent to his obtaining a verdict in Rent Petition No. 1-2 of 1996 his also qua the demised premises instituting Rent Petition No.10/2 of 2003 before the learned Rent Controller concerned, during proceedings whereof the GPA of the landlord made a communication displaying his acquiescence qua the tenant liquidating his liability of rent qua the demised premises in sequel to the pronouncement made in Rent Petition No. 1-2 of 1996. Though, the acquiescence of the GPA of the landlord would not erode the play of the dictat of the relevant statutory mandatory provisions enjoining the tenant to within the time prescribed therewithin deposit his apposite judicially determined liability of arrears of rent before the Court concerned, whereas, evidently with the tenant not liquidating his apposite liability within the statutorily ordained period for its liquidation whereupon the

statutory consequence qua the Executing Court ordering for issuance of warrants of possession qua him is an inevitable ensuing sequel therefrom. However, the acquiescence qua the relevant facet made by the GPA of the landlord in rent petition No.10/2 of 2003 which stood instituted subsequent to the pronouncement made in rent petition No.1-2 of 1996 holding bespeakings therein of the tenant making the relevant liquidation holds the sequel of the landlord accepting the attornment of rent to him by the tenant/JD other than the statutory mode for its deposit. The effect of the landlord personally/directly accepting attorning of rent qua the demised premises from the tenant in detraction of the statutory mode does hold the consequence of the landlord waiving his rights to seek eviction of the tenant, right whereof stood bestowed upon him under an executable decree pronounced in Rent Petition No.1-2 of 1996, inference whereof when stands construed in coagulation with the landlord subsequent to the pronouncement recorded by the Rent Controller in Rent Petition No. 1-2 of 1996, his in the year 2003 instituting another petition seeking eviction of the JD from the demised premises, ultimately also when both the factum aforesaid stand construed in entwinement with the apposite

execution petition constituted before the learned Executing Court by the landlord whereupon he sought execution of the executable decree rendered in Rent Petition No.1-2 of 1996 standing constituted therebefore belatedly on 30.08.2010 does foster an inference of with the landlord receiving rent directly from the tenant, he is to stand construed to not only create a fresh tenancy qua the demised premises upon the tenant besides is to stand construed to concomitantly hence, waive his rights to seek eviction of the JD under an executable decree recorded in Rent Petition No.1-2 of 1996. Contrarily, it has to be concluded of the landlord by procrastinating the execution of the executable decree rendered on 6.11.1999 in Rent Petition No. 1-2 of 1996 upto 29.09.2005 whereat a pronouncement in rent petition No. 10/2 of 2003 also occurred his also thereupon renewing the tenancy qua the relevant premises vis-a-vis the JD.

4. The summom bonum of the aforesaid discussion is that all the aforesaid material which existed before the learned Executing Court standing slighted besides their impact standing untenably undermined by him whereupon the ensuing sequel therefrom is of the learned Executing Court while pronouncing its impugned rendition overlooking the relevant and germane evidence besides its not

appreciating its worth. Consequently, the order impugned suffers from a gross absurdity and perversity of misappreciation of material on record. Accordingly, the instant petition is allowed and the order impugned is quashed and set aside. In sequel, the apposite execution petition seeking execution of the verdict pronounced in Rent Petition No.1-2 of 1996 is dismissed, whereas, the objections instituted thereat by the JD/petitioner herein/tenant are allowed. All the pending applications also stand disposed of.

5th December, 2016.
(jai)

(Sureshwar Thakur),
Judge.

High Court