

# **Rashpal Malhotra vs Mrs. Satya Rajput And Another on 11 September, 1987**

**Equivalent citations: 1987 AIR 2235, 1988 SCR (1) 110, AIR 1987 SUPREME COURT 2235, 1987 (4) SCC 391, (1987) 3 JT 546 (SC), 4 JT 546, 4 SCC 391, (1987) SCJ 195**

**Author: Sabyasachi Mukharji**

**Bench: Sabyasachi Mukharji, G.L. Oza**

PETITIONER:

RASHPAL MALHOTRA

Vs.

RESPONDENT:

MRS. SATYA RAJPUT AND ANOTHER

DATE OF JUDGMENT 11/09/1987

BENCH:

MUKHARJI, SABYASACHI (J)

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MUKHARJI, SABYASACHI (J)

OZA, G.L. (J)

CITATION:

1987 AIR 2235                      1988 SCR (1) 110

1987 SCC (4) 391                JT 1987 (3) 546

1987 SCALE (2) 516

ACT:

Constitution of India, Article 136: Court acts not only as 'Court of law' but also as 'Court of equity'.

East Punjab Urban Rent Restriction Act, 1949: ss. 2(i) & 13-C Eviction-`Tenant' an entity not a juristic person- Eviction Suit-Whether maintainable.

HELD:

The landlady, respondent No. 1, leased out the premises in question in Chandigarh to respondent No. 2, for residence of its General Manager, the appellant. The lease deed was signed on behalf of the lessee 'for Haryana Milk Food Corporation' by R.P. Malhotra, the appellant. When the landlady came to know in the end of 1974 that the appellant had left the services of the respondent No. 2, she stopped

accepting rent from him. She filed an application under s. 13 of the East Punjab Urban Rent Restriction Act, 1949 for eviction against him and respondent No. 2 in November 1977 on the grounds: (a) non-payment of rent from January 1, 1975 onwards, (b) the subletting of entire premises by respondent No. 2 to the appellant, and (c) bona fide personal requirement. That application was contested by the appellant and respondent No. 2 who filed written statement contending that respondent No. 2 was just a trade name and not a legal entity, nor it was a partnership firm for, the owner of the said concern was Kailash Chemical and Textile Mills Ltd., that there could not have been any lease with such a non-legal entity, and that a suit against such a body was not maintainable.

Both the trial court and the appellant court ordered ejectment of the appellant and respondent No. 2 holding that respondent No. 2 was the tenant under respondent No. 1, that the appellant had taken the premises on behalf of respondent No. 2, that they were in arrears of rent, and that the premises were bona fide required by respondent No. 1.

The High Court dismissed the appellant's revision petition.

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Dismissing the appeal by special leave,

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HELD:1. It is apparent from the facts that the tenancy agreement was not with the appellant, and the lease was signed by him on behalf of the other entity though not strictly legal but it was entered into by a legal entity, namely, the Kailash Chemical and Textile Mills Ltd. The parties knew that the appellant was not a tenant. The parties were aware that the company was the real owner of respondent No. 2. The company had accepted that position. Neither respondent No. 2 nor its owner company was, therefore, prejudiced by holding that the lessee was not the appellant and they have not been prejudiced by not being made formal parties. The order of eviction, therefore, does not call for any interference. [116B-C]

Modi Vanaspati Manufacturing Company and Anr. v. Katihar Jute Mills (Pvt.) Ltd., A.I.R. 1969 Calcutta 496 at page 511; Rajendra Prasad oil Mills, Kanpur and Anr. v. Smt. Chunni Devi and Ors., A.I.R. 1969 Allahabad page 1; M/s. M.K.M. Moosa Bhai Amin, Kota v. Rajasthan Textile Mills, Bhawanimandi A.I.R. 1974 Rajasthan 194 and Educational Supplies Depot, Trivandrum v. Vithoba High School and others, 1970 Kerala Law Journal reports 43. referred to.

2. The Supreme Court is more than a court of appeal. It exercises power under Article 136 only when there is supreme need. Therefore, even if legal flaws might be electronically detected, the Court cannot interfere save manifest injustice or substantial question of public importance. [116F]

In the instant case, it has been held by the High Court and the courts below that no deposit had been made in

accordance with law. Merely because in the form of the lease the owner was not mentioned and as such was not made a party to the suit and the lease was purported to be entered into with an entity which was not a juristic person and a suit was filed against such non-juristic person, this Court should not interfere with the conclusions arrived at by the appellate authority and the High Court. [116G-H; 117A]

Heavy Engineering Corporation Ltd. Ranchi v. K. Singh and Company, Ranchi, A.L.R. 1977 Supreme Court 2031 and Baigana and others v. Deputy Collector of Consolidation and Ors., [1978] 3 S.C.R. 509, referred to.

3. The Supreme Court in exercising its power under Article 136

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acts not only as Court of law but also as a court of equity and must subserve ultimately the cause of justice. In the instant case, there was evidence that there was some bona fide need of the landlady for her family. After a long lapse of time, in the facts and the circumstances of the case, therefore, interference with the findings arrived at by the High Court and the courts below would not be justified. [117A-B]

[The Court directed that in case the landlady lets out the premises within the period of five years the first option should be given to the appellant, that she would not sell the premises within a period of five years and in case she does the first option should be given to the appellant to purchase the property, that the decree for eviction will not be executed upto 31st August, 1988 provided the appellant files an undertaking in the usual form.] [117C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 188 of 1981.

From the Judgment and order dated 5.12.1980 of the Punjab and Haryana High Court in Civil Revision Petition No. 136 of 1980.

R.K. Garg for the Appellant.

Rajinder Sachhar and Mukul Mudgal for the Respondents. The Judgment of the Court was delivered by SBYASACHI MUKHARJI, J. This is an appeal by the appellant claiming to be a tenant of the premises in question. There was an order of eviction under section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called 'the Rent Act'). The respondent-landlady is the owner of House No. 722, Sector IIB, Chandigarh (hereinafter called 'the suit premises'). The suit premises was let out by a lease deed by respondent No. 1 to respondent No. 2 herein, Haryana Milk Food Corporation for the residence of its General Manager at Chandigarh. It is stated in the said lease deed that the lease was for the use of Shri R.P. Malhotra who was at that time the General Manager of Haryana Milk Food Corporation. On behalf of the lessor the landlady, respondent herein has

signed and on behalf of the lessee, it is signed as follows: "for Haryana Milk Food Corporation R.P. Malhotra" who is the appellant herein. The appellant left the services of Haryana Milk Food Corporation in the end of 1974 and thereafter attempted to pay the rent of the suit premises by sending it by a bank- draft with a covering letter on the letter-head of Haryana Milk Food Corporation. It is the case of the landlady, respondent No. 1 that on coming to know of the cessation of the appellant's employment with Haryana Milk Food Corporation the respondent No. 1 stopped accepting rent from the appellant. On 23rd of November, 1977 application for eviction was filed by the respondent No. 1 against the appellant and respondent No. 2 Haryana Milk Food Corporation, inter alia, on the following grounds: (a) non- payment of rent from 1.1.75 onwards; (b) subletting of entire premises by the Haryana Milk Food Corporation to the appellant and (c) bona fide personal requirement.

It is relevant to mention that the rent application was filed by the respondent making Haryana Milk Food Corporation as the first defendant and the appellant as the second defendant under section 13 of the Rent Act. Respondent No. 2 Haryana Milk Food Corporation filed a written statement contending that Haryana Milk Food Corporation was just a trade name and not a legal entity, nor it was a partnership firm and the owner of the said concern was Kailash Chemical and Textile Mills Ltd. The same ground was taken by the appellant in the written statement filed by the appellant. Respondent No. 2 further contended that the appellant had been sending cheques and drafts for the payment of rent to the landlady which she had never accepted as none of the drafts sent by the appellant to the landlady had ever been encashed. Respondent No. 2 further contended that she had never accepted the appellant as the tenant from whom she had never accepted any rent.. The landlady also filed an application for impleading the company as a party but unfortunately for unexplained reason the same was not proceeded with and withdrawn.

The Trial Court raising issues, inter alia, held so far as relevant to the present purpose that Haryana Milk Food Corporation obtained the house for the appellant and the said concern was making payment of rent to respondent No. 1. The appellant and respondent No. 2 were liable to be ejected on the ground of arrears of rent. It was further held that the suit premises was required bona fide by respondent No.

1. In the premises on 5th of May, 1979 the Trial Court ordered the ejectment of the appellant and respondent No. 2 from the suit premises. The judgment of the Appellate Court was passed on 5th of November, 1979 affirming the findings of the Trial Court holding that the appellant took the premises on behalf of Haryana Milk Food Corporation. It was further held that Haryana Milk Food Corporation was the tenant under respondent No. 1. It was further held that the appellant and respondent No. 2 were held liable to be ejected on account of nonpayment of rent and in view of the aforesaid findings eviction was ordered from the suit premises. There was a further revision to the High court and the High Court dismissed the appellant's revision petition affirming the reasoning of the Courts below.

The main point of challenge in this Court was that Haryana Milk Food Corporation was not a legal entity and a suit against such a body was not maintainable. It was further contended that there could not have been any lease with a non-legal entity. The main ground of attack in this appeal was

that the real tenancy was with the appellant and not respondent No. 1. It may be mentioned that an appeal was filed before the Appellate Authority by Haryana Milk Food Corporation through its General Manager, and Kailash Chemical and Textile Mills Ltd., through its Director. It was contended in the grounds of said appeal, that the relationship of the landlord and tenant between respondent No. 1 and the appellant did not stand proved from the material on record. It was further contended that the note signed by the appellant that the order dated 5th May, 1979 had virtually held Kailash Chemical and Textile Mills Ltd., as liable. It had treated Haryana Milk Food Corporation as synonymous with Kailash Chemical and Textile Mills Ltd., and it was, therefore, aggrieved by the said order. That appeal had been filed by Haryana Milk Food Corporation through its General Manager and Kailash Chemical and Textile Mills Ltd., through its Director. Therefore, Kailash Chemical and Textile Mills Ltd., accepted that this was the company which owned Haryana Milk Food Corporation and it was a legal entity.

In support of this contention that a non-legal entity like the Haryana Milk Food Corporation could not enter into a reference with the landlady, reliance was placed on the statement of Halsbury's Laws of England, Fourth Edition, volume 7 at page 457, paragraphs 765, 766 and 767, where it was stated that as regards litigation by an incorporated company, as a rule the directors were the persons who have the authority to act for the company. Relying on the said statement of law the Calcutta High Court in the case of Modi Vanaspati Manufacturing Company and another v. Katihar lute Mills (Pvt.) Limited, A.I.R. 1969 Calcutta 496 at page 511 in paragraph 42, A.N. Ray, as the learned Chief Justice of India then was, observed that the provisions contained in order 30, Rule 10 of the Code were that any person carrying on business in the name and style other than his own name may be sued in such name or style as if it were a firm name and so far as the nature of the case would permit all rules under order 30 of the Code of Civil Procedure would be applicable. Agreeing with the said observations, the other learned Judge, S.K. Mukherjee, J. at para-

graph 63 referred to the Halsbury's Laws of England, Third Edition, Volume 6 at page 444, where it was said that a company can only sue or be sued in its corporate name. Mr. Garg, learned counsel for the appellant strongly relying on these observations submitted that the suit against Haryana Milk Food Corporation was not maintainable. A contrary view was taken by the Full Bench of the Allahabad High Court in Rajendra Prasad oil Mills, Kanpur and another v. Smt. Chunni Devi and others, A.I.R. 1969 Allahabad page 1, where it was held that a limited company falls within the meaning of the expression 'person' as used in Rule 10, order 30 of the Code of Civil Procedure. This would be so even though the limited company might have been carrying on business in a name or style other than its own without any attempt to conceal its own corporate name and this fact was known to the party suing. There, the Court observed that there could not be any controversy that Rajendra Prasad oil Mills, Kanpur was an undertaking owned by N.K. Industries limited. Satish Chandra J. as the learned Chief Justice then was, observed that in certain circumstances a limited company carrying on business in an assumed name by concealment of its own corporate name is a person within meaning of order 30 Rule 10 of the Code of Civil Procedure. Same is the view of the Rajasthan High Court in the case of M/s. M.K.M. Moosa Bhai Amin, Kota v. Rajasthan Textile Mills, Bhawanimandi, A.I.R. 1974 Rajasthan 194 where it was held that where a limited company carried on a business in an assumed name and a suit came to be filed against the defendant in that name in respect of price due on sale of goods in view of section 3(42) of the General Clauses Act, 1897 the

expression 'person' as used in the Code of Civil Procedure order 30 Rule 10 in the suit filed against the defendant in the name assumed by the limited company was tenable under order 30 Rule 10 of the Code of Civil Procedure. The Kerala High Court, however, in the case of Educational Supplies Depot, Trivandrum v. Vithoba High School and others, [1970] Kerala Law Journal Reports 43 held that a decree could not be passed against a school as it was not a juristic entity much less a person to hold property. It may be mentioned that subsequently the Kailash Chemical and Textile Mills Ltd. has changed its name to the Haryana Milk Food Corporation and they have merged formerly, but that is subsequent to the lease and the institution of the suit. It is manifest from the position that parties knew that Kailash Chemical and Textile Mills Ltd. was the owner of the Haryana Milk Food Corporation. Kailash Chemical and Textile Mills Ltd., accepted that position as it would be apparent from the grounds filed before the Appellate Authority. Mr. Garg, learned counsel for the appellant, however, tried to emphasise that in view of the definition of tenant under section 2(i) of the Rent Act the right of eviction under section 13 in the suit as framed was not maintainable.

It has been held by all the Courts that the parties knew who were the tenants, it is apparent that the appellant was not the tenant. It was held by the Rent Controller that one of the grounds for eviction was bona fide need of the landlord. The Appellate Authority and the High Court did not go into this question. The parties were aware that the Kailash Chemical and Textile Mills Ltd., was the real owner of the Haryana Milk Food Corporation. Neither Haryana Milk Food Corporation nor Kailash Chemical and Textile Mills was prejudiced by holding that the lessee was not the appellant and they have not been pre-judged by not being made formal parties. In the aforesaid view of the matter, we are inclined not to interfere with the order of eviction.

It has to be borne in mind that this is an appeal under Article 136 of the Constitution. This Court in Heavy Engineering Corporation Ltd. Ranchi v. K. Singh and Company, Ranchi, A.I.R. 1977 Supreme Court 2031 expressed the opinion that although the powers of this Court were wide under Article 136 it could not be urged that because leave had been granted the Court must always in every case deal with the merits even though it was satisfied that the ends of justice did not justify its interference in a given case. It is not as if, in an appeal with leave under Article 136, this Court was bound to decide the question if on facts at the later hearing the Court felt that the ends of justice did not make it necessary to decide the point. Similarly in Baigana and others v. Deputy Collector of Consolidation and others, [ 1978] 3 S.C.R. 509 this Court expressed the view that this Court was more than a Court of appeal. It exercises power only when there is supreme need. It is not the fifth court of appeal but the final court of the nation. Therefore, even if legal flaws might be electronically detected, we cannot interfere save manifest injustice or substantial question of public importance. In this case it is apparent from the facts placed before us and the High Court and the courts below that there is a genuine need of the landlady for the premises in question. It has been established clearly that the tenancy agreement was not with the appellant and the lease was signed by the appellant on behalf of other entity though not strictly legal but it was entered by a legal entity, namely Kailash Chemical and Textile Mills Ltd. It has been held that no deposit had been made in accordance with law by three Courts. Merely because in the form of the lease Kailash Chemical and Textile Mills Ltd., was not mentioned and as such was not made a party to the suit and the lease was purported to be entered with an entity which is not a juristic person and a suit was filed against such non- juristic person, this Court should not interfere with the conclusions arrived at by the learned

Appellate Authority and the High Court. It has to be borne in mind that this Court in exercising its power under Article 136 of the Constitution acts not only as a court of law but also as a court of equity and must subserve ultimately the cause of justice. In this case, there is evidence that there is some bona fide need of the landlady for her family. After a long lapse of time, in the facts and the circumstances of this case we decline to interfere with the findings arrived at by the High Court and the Courts below.

We, therefore, dismiss this appeal, but we direct that in case the landlady, respondent No. 1 herein lets out the premises within a period of five years the first option should be given to the appellant. We further direct and record the undertaking of the landlady that she would not sell the premises within a period of five years, and in case she does the first option should be given to the appellant to purchase the property. We further direct that the decree for eviction will not be executed upto 31st of August, 1988 provided the appellant files an undertaking to this Court in the usual form within four weeks from this date. We also direct that the occupation charges or mesne profits from 1st of August, 1987 should be paid to the respondent No. 1 at the rate of Rs.800 per month and the first of such payment should be made on the 30th September, 1987 and each subsequent payment should be made on 15th of each subsequent month. In default of filing the undertaking or not making the payment as hereinbefore indicated the order of eviction will become executable forthwith.

The appeal, therefore, fails and it is dismissed subject to the conditions indicated hereinbefore. In the facts and circumstances of this case, the parties are directed to pay and bear their own costs.

P.S.S.

Appeal dismissed.