

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3705 OF 2017

(Arising out SLP (C) No. 2037 of 2017)

GURDEV SINGH AND ORS. THROUGH THEIR POWER OF
ATTORNEY HOLDER

Appellant(s)

VERSUS

VINOD KUMAR

Respondent(s)

O R D E R

- 1) Leave granted.
- 2) We have heard the learned counsel appearing for the parties at length.
- 3) The only question which arises for our consideration is whether the High Court was right in dismissing the application of the petitioners seeking to withdraw the petition and to file fresh ejection petitions.
- 4) The facts, in brief, are that the appellants (landlords) filed five eviction petitions against five tenants, one against the respondent herein praying for an order of immediate possession of the property in dispute. The respondent filed written statement to the same.
- 5) The appellants filed another application seeking permission to withdraw their eviction petition and to file fresh petition on the ground of inadvertent technical defects which could not be corrected by way of amendment. The respondent filed reply against the said application objecting to the same.

6) The Rent Controller, after hearing the parties, allowed the application of the appellants permitting them to withdraw the ejectment petition with liberty to file fresh petition. The Rent Controller while allowing the application noted that the confusion in framing of petition arises due to similar petitions filed by the appellants on the same date and further noted that due to similar pleadings, technical defaults arose which is practically not possible to cure by way of amendment.

7) Being aggrieved, the respondent approached the High Court which allowed the civil revision filed by the respondent.

8) The High Court, while allowing the revision of the respondent, observed that on perusal of the application of the landlords that no factual averments were made in support of the fact that there were technical defects in the pleadings. The High Court further opined that the Rent Controller had also not given any consideration to the matter and neither has the effect of the technical defects been pointed out which would make the petition liable to be dismissed.

9) Challenging the order passed by the High Court, the appellants preferred this appeal, by way of special leave.

10) Having given our thoughtful consideration, it appears to us that the appellants before us applied for correcting the petition, after withdrawing the same, and to file fresh petitions. In our opinion, they have such a right under the provisions of Code of Civil Procedure to take such steps and that right cannot be taken away, without being given an opportunity, to apply before the

Court.

11) It appears that in an application which was filed before the Court under Section 115 of the Code of Civil Procedure, the High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears to have acted in exercise of its jurisdiction with material irregularity, then only the High Court should interfere. In our opinion, the Trial Court which has passed the order has not failed to carry on the proceedings in accordance with law and thereby, there is no material irregularity which has been done by granting such leave to the petitioners.

12) In view of this, we find that the reasoning given by the High Court cannot be accepted or held sustainable in the eyes of law and hence the order passed by the High Court is set aside upholding the order passed by the Trial Court.

13) Accordingly, the appeal is allowed.

..... J.
(PINAKI CHANDRA GHOSE)

..... J.
(ROHINTON FALI NARIMAN)

New Delhi;
March 02, 2017.

ITEM NO.9

COURT NO.6

SECTION IVB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 2037/2017

(Arising out of impugned final judgment and order dated 29/01/2016 in CR No. 5207/2014 passed by the High Court Of Punjab & Haryana At Chandigarh)

GURDEV SINGH AND ORS. THRU THEIR POWER OF ATTORNEY
HOLDER

Petitioner(s)

VERSUS

VINOD KUMAR

Respondent(s)

(With interim relief and office report)

Date : 02/03/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s) Mr. M.K. Ghosh, Adv.
Ms. Tina Garg, Adv.
Mr. Rohit Dutta, Adv.
Mr. B. Ramana Murthy, AOR

For Respondent(s) Mr. Pawan Ray, Adv.
Mr. Ritesh Khare, Adv.
Mr. Aditya Sharma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(R. NATARAJAN)
Court Master

(SAROJ KUMARI GAUR)
Court Master

(Signed order is placed on the file)