
(2006) 08 P&H CK 0067

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Satya Wati

APPELLANT

Vs

Inderpal

RESPONDENT

Date of Decision: Aug. 3, 2006

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13(2)(ii)

Citation: (2007) 145 PLR 297 : (2006) 4 RCR(Civil) 732 : (2006) 2 RCR(Rent) 465

Hon'ble Judges: Adarsh Kumar Goel, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Adarsh Kumar Goel, J.

This revision petition has been filed by the landlady who is aggrieved by dismissal of eviction petition filed u/s 13(2)(ii) of the East Punjab Urban Rent Restriction Act, 1949 (in short, "the 1949 Act"). The said ground is as unden-

12(2)(ii). That the tenant has after the commencement of this Act without the written consent of the landlord-

(a) xx xx xx

(b) used the building or rented land for a purpose other than that for which it was leased,
or

Case set up in the eviction petition was that the respondent was a tenant in Booth No. 48, Sector 27, Chandigarh, under the petitioner. As per terms of the conveyance deed dated 21.10.1967, the same could be used only for general trade. The tenancy started under lease deed dated 1.8.1973, which carried the following clause:

If any transferee has failed to pay consideration money or any installment thereof on account of sale of any site, or building or both u/s 8 or has committed a breach of any other conditions of such rule the E.O. may issue notice in writing, call upon the transferee to show cause why an order of resumption of the site or building or booth may not be made as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof (which is in no case shall exceed 10% of the total amount of the consideration money, interest and other dues payable in respect of the sale of site or building or booth) should not be made." It was alleged that the tenant in violation of the provisions of the Capital of Punjab (Development and Regulations) Act, 1952 (in short, "the 1952 Act"), started carrying on trade of repair/painting/welding of scooters/motor-cycles etc. as a result of which Estate Officer issued notice dated 15.7.1981 threatening to resume the site and asking the petitioner to appear and show cause why the site be not resumed and amount not exceeding 10% of the total amount of consideration money be not forfeited. The tenant also damaged the structure of the demised premises and materially impaired the value and utility of the demised premises; floors were broken; the walls were blackened with petrol, diesel and mobil oil and the plaster of the walls was removed by inserting nails etc. Damage to electricity fittings were also alleged.

2. The tenant denied having executed lease-deed dated 1.8.1973. He stated that the property was taken for the business of sale of auto spare parts and was being used for the said purpose. Notice under the provisions of the 1952 Act was manipulated and no repairing/painting/welding of scooter/motor-cycles etc. was being done.

Following issues were framed:

1. Whether the respondent has started using the premises for a purpose other than that for which it was let out? OPP

1A. Whether the petition is not maintainable for the preliminary objection taken by the respondent?

2. Whether the respondent has materially impaired the value and utility of the demised premises as alleged? OPP

3. Relief.

3. The Rent Controller dismissed the petition. It was held that the tenant was not proved to have materially impaired the value or utility of the demised premises. Reasons given under Issue No. 2 are that the petitioner did not enter the witness box; her husband appeared as attorney and only gave a self-serving statement; no Engineer or architect was examined to prove any damage.

4. The Rent Controller further held that the petitioner failed to prove that the respondent had started using the demised premises for purposes other than for which it was let out.

Under Issue No. 1, the Rent Controller held that use of the shop for auto spare parts did not amount to change of user; photographs Exhibits RW 5/5 to RW 5/8 showed that space available inside the booth was such that no scooter or motor-cycle could be taken inside the shop and any repair work which was being done in the verandah, which was not a part of the tenanted premises, was not relevant nor there was clear evidence of the work in verandah being attributed to the tenant.

5. The petitioner preferred an appeal before the appellate authority. The appellate authority dismissed the appeal affirming the findings recorded by the Tribunal. The appellate authority noticed the statement of learned Counsel for the landlady in para 6 of the order that finding of the trial Court on Issue No. 2 was not challenged and challenge was only to finding on Issue No. 1.

6. Learned counsel for the petitioner submitted that encroachment of space in front of the shop amounted to impairing of utility within the meaning of Section 13(2)(iii). Reliance is placed on judgment of this Court in Jagminder Dass and Anr. v. Hart Kishan Sushil Kumar 1981(1) R.C.R. 489. He submitted that though the said case was on the ground of impairing of utility and in that case, encroachment had been done in front of the shop but he relied upon the said judgment for adopting the same reasoning in support of the submission that even space in front of the shop was relevant.

7. Learned counsel for the tenant submitted that the said judgment had no relevance to the present case. In the present case, ground of material impairment had been given up before the appellate authority and that the finding recorded by the Rent Controller in para 10 was categorical that the tenant was not using the premises for repair work nor there was clear evidence to show that the repair work, if any, done in the verandah, could be attributed to the tenant. It was submitted that observation in the order of the appellate authority that the tenant misused the verandah or the open space, was without evidence and without dealing with the finding of the Rent Controller.

8. I have considered the rival submissions and perused the record.

9. The petitioner landlady gave up the plea of material impairment and pressed for eviction only on the ground of change of user. Both the authorities below have concurrently held that the petitioner landlady failed to prove that the premises or even area in front thereof was being misused in any manner for any repair work. The said findings is not shown, in any manner, to be perverse. Judgment relied upon by the learned Counsel for the petitioner relates to a case of encroachment, even if it is assumed that the tenanted premises also included are in front thereof, in absence of clear finding of use of the said area by the tenant for any inconsistent purpose, no ground is made out for interference in exercise of revisional jurisdiction.

Accordingly, this petition is dismissed.