

Dr. Avtar Singh Vs Ascharaj Lal

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 24, 2002

Acts Referred: East Punjab Urban Rent Restriction Act, 1949 " Section 13(3)

Citation: (2002) 3 CivCC 168 : (2002) 2 RCR(Civil) 201 : (2002) 2 RCR(Rent) 201

Hon'ble Judges: V.K. Bali, J

Bench: Single Bench

Advocate: Sweena Pannu, for the Appellant;

Final Decision: Dismissed

Judgement

V.K. Bali, J.

This revision petition has been filed against concurrent findings recorded by the Rent Controller and the Appellate Authority

disentitling the petitioner landlord to eviction from the premises in dispute on the only surviving ground of personal necessity. The cause of

petitioner was also not found favourable as the demised premises were commercial in nature, over which the landlord had no right to seek eviction

on the ground of personal necessity.

2. "Learned counsel for the petitioner vehemently contends that be it a residential premises or commercial one, in view of the authoritative

pronouncement of the Supreme Court in Harbilas Rai Bansal Vs. State of Punjab and another, , a landlord would be able to seek eviction on the

ground of personal necessity. The counsel appear to be correct but to secure eviction, in any case, it has to be proved that petitioner required the

premises bona-fide for his personal requirement. On the pleadings of the parties and arguments advanced by them before the learned Appellate

Authority, it recorded following findings on the aforesaid crucial issue:-

13. Petitioner pleaded that there has been family settlement between him and his brother, in which northern portion of building vide Ex.AW3/A

has fallen to his share and that he and his wife own/possess no other building in Bhatinda. This plea has been admitted by appellants" brother

respondent No.2 in his written statement, but he never appeared to depose in favour of the appellant. There is no writing regarding the alleged

family settlement, but when examined on 5.6.1982 vide Ex.R3 in rent application No.2 of 3.2.1981, Avtar Singh had stated that he does not know

if a writing regarding family settlement was executed or not. If there had been no writing of family settlement, then he was expected to have given a

specific reply in negative when asked if the settlement was witnessed by a written statement. In his statement Ex.R3 Avtar Singh has stated that his

father, his younger brother and members of the family alone were present when the family settlement was effected between him and his brother.

Surjit Singh, PW2 admitted that he is not a family member of Dr. Avtar Singh. If that is so, his presence at the time of the alleged family settlement

stood excluded by reason of statement Ex.R3 of the appellant. Appellant's, father Gurbachan Singh stated that one common jeep fell to the share

of Sher Bahadur respondent No.2 and in lieu of the other half share, Rs.18,000/- were given to Avtar Singh but this fact has categorically been

denied by Avtar Singh, who stated that no jeep was partitioned nor any money in lieu of his share in the jeep was given to him. Family settlement,

in which northern portion of the building Ex.AL3/A is alleged to have fallen to Avtar Singh and southern portion to Sher Bahadur respondent No.2,

had also within its compass joint agricultural land of the two brothers and their father situate at village Daleke in District Faridkot. Gurbachan Singh

and appellant admitted that partition of joint property by family settlement was not got recorded in the revenue record or in the municipal record.

Votes of the petitioner and his brothers are recorded in the same building and their ration cards are still joint. In these circumstances, the theory of

family settlement appears to have been put up simply to create a need for construction of a clinic for the petitioner, otherwise he is practising with

his father and brother in the Medical Hall as shown in southern portion of buildings Ex.AW3/A. During the course of arguments, I put a specific

question to Shri Inderjit Singla, Advocate and he admitted that at present, Avtar Singh is working with his father and brother in the said Medical

Hall. Since the theory of family settlement that he has no other building except the one constituting northern portion of building vide plan

Ex.AW3/A is not true. Gurbachan Singh has admitted that he filed five-six ejectment applications against Ashcharaj Lal on different grounds and all

of them were dismissed. Appellant and his brother filed ejectment application No.37 of 3.4.1975 vide Ex.RS on the ground of impairing value and

utility of the demised shop and that application was dismissed in default on 22.12.1975 vide Ex.R4. Petitioner also moved against the contesting

respondent for his ejectment vide Ex.R2, petition No.2 of 3.2.1981, written on 5.1.1981 and the same was dismissed on 2.11.1982. In petition

Ex.R2 appellant had taken the ground of personal use and occupation to start his office and Clinic and therein, his statement Ex.R3 was recorded

on 5.6.1982 and all these are admitted documents. If a petition moved on ground of personal use and occupation was allowed to be dismissed in

default after the petitioner had led his evidence, then suggestion of contesting respondent that petition Ex.R2 was got dismissed as there was no

merit in it, deserves to be believed. Petitioner's anxiety to gain financial benefit is discernible from the fact that, by compromise, the got half portion

of shop surrendered from the contesting respondent, which he further rented out to Doria Ram for Rs.300/- per month and at the same time,

continued charging full rent of Rs.25/- per month from Ascharaj Lal. Appellant and his father are working together in contiguously situated medical

hall and the petitioner is also working with them and partition among them is not established. Medical Hall where respondent No.2 is stated to be

carrying on his business with his father is 720 square feet vide plan Ex.AW3/A while the area on the - ground floor of northern portion lying vacant

with the applicant is 310 square feet. Limit of desire of the appellant may be any; but I think that 310 square feet of constructed portion in bazar of

Bathinda, furnishes sufficient accommodation for a registered medical practitioner like the appellant and his wife. In all these circumstances, finding

of the learned Rent Controller that Dr. Avtar Singh does not bona fide require the disputed premises for use and occupation, is faultless and is

affirmed.

3. During the course of arguments, it could not be disputed that as per site plan, Ex. AW3/A, SCF No.B-35/5738 at Bathinda is one big building

where the petitioner with the father is already running a medical hall for which precise purpose he sought eviction of the shop measuring 17 x 10

feet as he wanted to start his medical practice there. A perusal of Ex. AW3/A would also show that half portion of the medical hall is 24.3" x 30",

On the other half of the big room, petitioner is residing which happens to be over the shop in dispute. It is interesting to note that the petitioner set

up a family settlement between him and his brother showing as if the disputed portion, i.e., shop measuring 17 x 10 feet had come to his share

whereas the share in medical hall he had wished to be owned by his brother. This family settlement has been found to be fake simply with a view to

create a ground of eviction of the bona-fide personal necessity which, it appears, could be available to the petitioner alone, being a medical

practitioner. Once, the family settlement arrived at between the petitioner and his brother was found to be fake and there is no scope to set aside

the said findings and, in particular, that the same was arrived at simply with a view to create a ground of eviction, this revision has necessarily to be

dismissed. Nothing at all has been shown to this Court that may detract from the findings to the effect aforesaid recorded by the appellate

authority. Otherwise too, this is purely a question of fact which has been decided on the strength of evidence that came to be recorded before the

Rent Controller.

4. Finding no merit in this petition, I dismiss the same, leaving, however, the parties to bear their own costs.