

(1986) 05 P&H CK 0008

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3209 of 1985

Santosh Kumari

APPELLANT

Vs

M/s Ravi Raj and Sons

RESPONDENT

Date of Decision: May 23, 1986

Citation: (1986) 2 RCR(Rent) 320

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: D. Khanna, for the Appellant; S.K. Pipat, for the Respondent

Final Decision: Dismissed

Judgement

J.V. Gupta, J.

This is landlady's petition whose ejectment application has been dismissed by both the authorities below.

2. The Petitioner, Smt. Santosh Kumari, rented out a room in a residential building bearing No. NB-257, Mohalla Lakshmipura, Jalandhar, to Messrs. Ravi Raj & Sons on a monthly rent of Rs 400/- on 4th May, 1981. The ejectment application was filed on 12th November, 1982, inter alia, on the ground that she bona fide required the premises for her own use and occupation as well as for her family. It was also stated that the premises were rented out because the Petitioner was in dire need of money to meet the needs of the family; that she did not own any other building in the urban area concerned nor her family owned any such building; that her children were grown-up and she was in possession of only one small room over the premises in dispute which, is hardly enough to meet her requirements; that she has got one son and three daughters who are school-going; that prior to the leasing out of the premises she was living there but later she got loan from the tenant and constructed a chobara thereon and started living there. According to the Petitioner further, the premises in dispute was a part of the residential building, and, therefore, she was entitled to evict the tenant on the ground of bona fide personal necessity. The petition was resisted, inter alia, on the ground that the premises

consisting of one room was rented out for business purposes, and, moreover, the same was situated in a bazar where the upper portion was used by the occupants for their residence whereas the ground floor was being used for business purposes; that the petition had been filed with an ulterior motive to increase the rent from Rs 400/- to Rs 600/-. According to the tenant, the premises did not fall within the definition of "residential building", and, therefore, could not be got vacated on the ground of personal requirement,

3. The main controversy between the parties before the Rent Controller was as to whether the demised premises were residential or not. The learned Rent Controller found that the premises in dispute was not residential, particularly when it had been let out to the tenant for business purposes. It was also found that the Petitioner did not require the premises bona fide for her personal use. In view of these findings, the ejectment application was dismissed. In appeal, the learned Appellate Authority affirmed the said findings of the Rent Controller, and, thus, maintained the order dismissing the ejectment application. Aggrieved with the same, the landlady has filed this revision petition.

4. Efforts were made in this Court for compromise between the parties but unfortunately the learned Counsel for the Petitioner stated at the Bar that his client was not prepared for a compromise.

5. Learned Counsel for the Petitioner contended that the premises in dispute consisted of one room only and though it was rented out for business purposes but prior to that the landlady herself was living therein. As she was in need of money, she rented out the said room to the tenant and constructed a chobara thereon after raising loan from the tenant, and started living therein. Now the said accommodation is insufficient for the landlady, and hence the present application for ejectment. Thus, argued the learned Counsel, in these circumstances, it could not be held that the premises in dispute which forms part of the residential building ceased to be residential as such. On the other hand, learned Counsel for the tenant submitted that the premises is situate in a bazar on both sides of which there are shops, and in that locality the ground floor is being used by the occupants for business whereas the upper story is being used for residence. Thus, contended the learned Counsel, the premises in dispute which were rented out for business purposes could not be termed to be residential building according to the Act

6. After hearing the learned Counsel for the parties, I do not find any illegality or impropriety with the concurrent findings of the two authorities below. It is not disputed that the room in dispute was rented out for business purposes. It is also clear from the evidence on record that on both sides of the premises in dispute, there are shops and the same are situate in a street known as bazar. The mere fact that in the municipal record, the premises in dispute is noted as H. No. 257 is of no consequence, and it does not make the building a residential one. There is evidence on record to prove that this is not the solitary shop in the street; there are many

other shops in the street which is known as bazar. It is under these circumstances that it has to be found as to whether the premises in dispute is a non-residential building or not. According to the definition of non-residential building, it is one which is let out solely for the purpose of business/trade. Admittedly the room in dispute was let out for business purpose. Thus, the only question that remains to be decided is whether it forms part of residential building. It is not disputed that when this room had been let out, there was no other accommodation therein. Later on, a chobara was constructed there the landlady is residing at present. The mere fact that in the upper storey, i.e. the chobara, is residence, the landlady, does not make the whole building a residential one as to claim the ejectment of the tenant on the ground that she bona fide required the same for her own use and occupation. In this view of the matter, the petition fails and is dismissed with no order as to costs.