

(1989) 01 P&H CK 0022

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 340 of 1986

Krishna Wanti and others

APPELLANT

Vs

Todar Mal and others

RESPONDENT

Date of Decision: Jan. 24, 1989

Citation: (1990) 1 RCR(Rent) 377

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

Bench: Single Bench

Advocate: D.R. Mahajan and Mr. Viney Mahajan, for the Appellant; R.L. Sarin and Shri A.S. Grewal, for the Respondent

Final Decision: Dismissed

Judgement

J.V. Gupta, J.

This is tenant's petition against whom eviction order has been passed by both the courts below.

2. Todar Mal, land lord-Respondent, sought the ejectment of his tenants-Petitioners from the demised premises, i. e rented land, contending that the same had been rented out to M/s. Nathu Ram Ram Chand, Batala, for a monthly rent of Rs 75/- with effect from April 1, 1949, for a period of 15 years, vide rent deed dated March 26, 1949. One Sh. Channan Dass was a partner of M/s. Nathu Ram Ram Chand. He died, and Respondents No. 2 to 10 being his heirs and legal representatives were impleaded as Respondents. The ejectment was sought inter alia on the ground that the tenants had ceased to occupy the demised premises for a continuous period of more than four months without any reasonable cause ; that the landlord bonafide required the premises for his own use and occupation. The stand taken by the tenants was that earlier a similar ejectment application was filed by the landlord on the same ground which did not find favour with the Rent Controller and an appeal from that order was dismissed by the Appellate Authority on 1st October, 1981 (Copy Ex. R/8). It was also denied that the demised premises was a rented land. It was also denied that the landlord bona fide required the demised premises for his

own use and occupation.

3. The learned Rent Controller found that the tenant had ceased to occupy the premises for a continuous period of four months without any sufficient cause and that the same were bona fide required by the landlord for his own use and occupation. The plea of the tenant that the application was barred u/s 14 of the Act was negated and it was held that the application was certainly not barred u/s 14 of the Act, as the circumstances had changed after the dismissal of the first application. With this finding, the eviction was ordered on 27th August, 1984. In appeal, the learned Appellate Authority affirmed the said findings of the Rent Controller. However, before the Appellate Authority, it was conceded that the ground that since the tenant had ceased to occupy the premises for a continuous period of four months without any sufficient cause was not available in respect of "rented land". However, on the finding that the landlord bona fide required the premises for his own use and occupation, the order of eviction was maintained. As regards the bar u/s 14 of the Act, the learned Appellate Authority found that since in the present application specific plea was taken and evidence had been led, there was no escape from the conclusion that the landlord bona fide required the premises for his own use and occupation.

4. The learned Counsel for the Petitioners contended that Issue No. 5 has been wrongly decided by the authorities below. Since on this very ground an earlier ejectment application was dismissed by the Appellate Authority on 1st October, 1981, whereas the present ejectment application was filed on 24th April, 1982, i. e., after about six months, there being no fresh cause of action, the same was liable to be dismissed. Moreover, argued the learned Counsel, the landlord never disclosed this fact in his ejectment application, and, therefore, was guilty of concealment. In support of this contention he referred to *Karam Chand v. Ram Parkash* 1981 (2) R. C. R. 299.

5. On the other hand, learned Counsel for the Respondents-landlord submitted that though the tenant ceased to occupy for a continuous period of four months without any sufficient cause cannot be a ground for ejectment with respect to the rented land but that shows that the tenant was no more in occupation of the demised premises, and, therefore, there was no equity in his favour, and as such, to allow him to remain in occupation was unnecessary. According to the learned Counsel, on the appreciation of entire evidence it has been concurrently found by both the authorities below that the landlord bona fide required the premises for his own use and occupation, and this being a finding of fact, cannot be interfered with in revisional jurisdiction. In support of this contention he referred to [Rajbir Kaur and Another Vs. S. Chokesiri and Co.,](#) .

6. After hearing the learned Counsel for the parties and going through the relevant record I do not find any merit in this petition, in the judgment relied upon by the learned Counsel for the Petitioners, it was held that the second application for

ejectment was not maintainable unless there was fresh cause of action. In the present case, on the appreciation of entire evidence it has been found as a fact that after the dismissal of the previous ejectment application there was a fresh cause of action to the landlord for seeking the ejectment of the tenant from the rented land. This being a finding of fact can not be interfered with in revisional jurisdiction.

7. Consequently, the petition fails and is dismissed with costs. However, the tenant is allowed three months' time to vacate the premises provided all the arrears of rent, if any, are deposited with the Rent Controller within a month, with a further undertaking in writing that after the expiry of the said period, vacant possession shall be handed over, and subject to the further condition that the rent for the said period of three months shall be paid in advance by the 10th of each month.