

Dr. Dewan Chand and others Vs Mohinder Singh Arora

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 10, 1980

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

Citation: (1980) 2 RCR(Rent) 724

Hon'ble Judges: Surinder Singh, J

Bench: Single Bench

Advocate: H.L. Sarin, for Mr. R.L. Sarin and Mr. M.L. Sarin, for the Appellant; D.V. Sehgal, for the Respondent

Final Decision: Allowed

Judgement

Surinder Singh, J.

The Petitioner-landlord Dr. Dewan Chand (since deceased) filed an application u/s 13 of the East Punjab Urban Rent

Restriction Act, 1949, against Mohinder Singh Arora, Respondent-tenant on the grounds, firstly that the tenant had ceased to occupy the demised

shop for a period of more than four months and secondly he had materially impaled the value and utility of the premises. The Rent Controller, after

considering the evidence produced by the parties ordered the eviction of the Respondent, hut on the appeal filed by the tenant, the Appellate

Authority reversed, the decision of the Rent Controller and dismissed the ejectment application. The present Revision petition has, thus, been filed

by the landlord to impugn the order of the Appellate Authority.

2. Mr. H.L. Sarin, learned Counsel for the Petitioner has rightly contended that the Appellate Authority had committed a material irregularity in

completely ignoring some important circumstances which had been taken into account by the Rent Controller for coming to the conclusion that the

tenant was liable to be evicted. Counsel has also argued that the Appellate Authority has gone to the extent of ignoring a vital admission made by

the tenant on the point of the shop having remained closed for more than four months.

3. After hearing the learned Counsel, I find that his contention must prevail. It may be mentioned at this stage that the learned Counsel for the

Petitioner has not addressed any argument on the question of material impairment of the building and has virtually given up that ground. However,

on the question of non-occupation of the shop for more than four months, he has referred to the evidence available on the record. In the first place,

he has invited the attention of this Court to document AW 3/1, which is a certified copy of the statement, of electric charges for the shop in dispute

and for this purpose, it is pointed out that for long periods running into several months, the shop was shown to be locked as the words used in the

document as ""P.L.", meaning thereby Premises Locked. This is indeed a circumstance which goes a long way to support the allegation of the

landlord regarding the non-occupation of the shop. It is also submitted that by means of a regular application the tenant was called upon to

produce a large number of documents concerning his business of running the shop from which it could be gauged as to whether any business had

been carried out in the shop or not. However, the tenant refused to produce any of these documents. The Rent Controller, therefore, rightly drew

an adverse presumption against the tenant in not producing vital documents in his possession. The Appellate Authority, however, ignored this

aspect of the case. During the course of his cross-examination, the tenant admitted explicitly that the shop in question had regained closed from

April, 1968 to March, 1969, i.e. for a period of about thirteen months. The tenant could not get out of this admission, but the learned Appellate

Authority seems to have found a way out for him, by merely observing that this admission made by the tenant, is either based on some error or

misconception or there was some mistake in recording of what the Appellant (tenant) had really deposed before the Controller"". This, to say the

least, is not taking a judicious view of the matter. A vital admission made by a party cannot be ruled out on such grounds as done by the Appellate

Authority. After a careful consideration of the matter, I find that the Appellate Authority was not justified in upsetting the well-considered decision

of the Rent Controller.

4. The Revision Petition is consequently accepted and the order of the Appellate Authority is set aside and that of the Rent Controller is restored-

As the demised premises is commercial in nature, the tenant is allowed three months further time from today to vacate the shop and put the

landlord in possession.

5. There will be no order as to costs.