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(2002) 11 P&H CK 0051

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 838 of 1984

Suresh Kumar — APPELLANT

Vs

Hira Nand and Another — RESPONDENT

Date of Decision: Nov. 18, 2002

Acts Referred:

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13(2)

Citation: (2003) 133 PLR 503 : (2003) 1 RCR(Rent) 254

Hon'ble Judges: Amar Dutt, J

Bench: Single Bench

Advocate: S.C. Kapoor and M.S. Naryal, for the Appellant;

Final Decision: Allowed

Judgement

Amar Dutt, J.
This revision petition has been filed by the landlord, to challenge the judgment dated 5.1.1984 passed by the Appellate Authority, Rohtak, by which the ejectment order passed in his favour by the Rent Controller, Rohtak on 18.5.1983 was set aside.

2. The respondent, Hira Nand, is stated to have taken the premises in dispute on rent, which was previously owned by Chitranjan Dass. The petitioner had purchased the same through sale deed dated 30th of August 1977. The rate of rent was Rs. 20/- per month and accordingly to the landlord, the tenant was in arrears of rent from 30th of August, 1977. The shop was also stated to he in a dilapidated condition and unfit and unsafe for human habitation. The petitioner indicated his intention to demolish the shop and reconstruct the same. Me also indicated that he requires the same for his own personal use. The ground of sub-letting the shop to Ram Parkash respondent No. 2 was also taken alongwith an alternative plea that in case the sub-lease is not established, the respondents were responsible for having changed the user from framing of photo to binding of electric motors.

3. The application was contested. The rate of rent was admitted but the transfer of the demised premises in the name of Suresh Kumar was denied for want of knowledge. The arrears of rent along with interest and costs assessed by the Rent Controller were tendered and accepted by the landlord. The allegations of the premises being in a dilapidated condition were denied and it was asserted that the landlord"s bonafide personal use was not a ground available as the premises was a shop and, therefore, non-residential. It is maintained that the respondents are father and son, who constitute a joint Hindu Family and are running a joint family business. The shop, according to the respondents, was let out for carrying on the work of photo frames and it was submitted that the business of binding electric motors is being carried out by the respondents for more than 12 years.

4. From the pleadings of the parties, the following issues were framed:-

1. Whether the respondents are liable to be evicted from the premises in dispute on the grounds mentioned in the petition? OPA

2. Relief.

5. The Rent Controller decided issue No. 1 partly in favour of the landlord and partly against him, where after an ejectment order was passed against the respondents. In appeal, there was a reversal of the judgment on the ground that the purpose of the lease was not spelt out in any document and, therefore, the use to which the premises was being put soon after the lease, would be the purpose for which the demised premises was rented out. In these circumstances, the Appellate Authority was of the view that there was no change of user and, therefore,, the order passed by the Rent Controller was reversed.

6. I have heard Mr. S.C. Kapoor, Sr. Advocate appearing on behalf of the petitioner and with his assistance have gone through the record of the case.

7. It has been submitted on behalf of the petitioner that the Appellate Authority while coming to the conclusion that the inference regarding the purpose of the lease can be drawn from the use to which the premises was put, has ignored the admission in the statement of Hira Nand, RW1 to the effect that initially he had been running the business of making photo frames and only at a subsequent point of time it started the business of binding of electric motors. It is by ignoring this evidence that the Appellate Authority has come to a conclusion that the only evidence regarding the use to which the demised premises was put was that of binding of electric motors and, therefore, there was no change of user. Since there is no consent in writing given by the respondents to the same, they are liable to be ejected.

8. I have carefully considered the arguments of the learned counsel for the petitioner and have perused the records.

9. The submissions made by the learned counsel for the petitioner has got to be accepted. It is not disputed before me that in cases where no rent note exists from which purpose of the lease can be inferred, the Courts would discern the purpose of the letting out from the use for which the premises was put at the lime of inception of the lease. In the present case, Hint Nand respondent, appearing as RW1, has stated that in the shop in dispute he was carrying on the business of framing of photos and now his son is carrying on the business of binding of electric motors. In view of this statement, the correctness whereof has not been impeached by the respondents by seeking to bring on record evidence to controvert the same, the only inference which can be drawn is that the purpose of letting out at the time of inception of the tenancy, was to use the shop for making photo frames. Since, there is no dispute that presently the business carried out in the shop was that of repairing motors, the same, according to Jagdish Lal Vs. Parma Nand, , would constitute a change of user. This to my mind would entitle the petitioner to the relief sought for by him i.e., eviction of the respondent-tenants from the premises in dispute on the ground of change of use.

10. For the reasons recorded above, the revision is allowed, the order passed by the Appellate Authority is set aside and that of the Rent Controller is restored. The respondents are directed to hand over the possession of the premises in dispute to the petitioner within three months from today.