

(1999) 07 P&H CK 0029

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 216 of 1982

Shri Sardari Lal

APPELLANT

Vs

Shri Hari Kishan and Others

RESPONDENT

Date of Decision: July 13, 1999

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13(2), 15(5)

Citation: (1999) 123 PLR 371 : (1999) 2 RCR(Rent) 515

Hon'ble Judges: V.S. Aggarwal, J

Bench: Single Bench

Advocate: A.C. Jain, for the Appellant; Sanjiv Dhiman, for the Respondent

Final Decision: Dismissed

Judgement

V.S. Aggarwal, J.

The present revision petition has been filed by Sardari Lal and others, hereinafter described as "the petitioners", directed against the judgment of the Appellate Authority, Amritsar, dated 5.9.1981. By virtue for the impugned judgment, learned Appellate Authority had set aside the order of the learned Rent Controller, Amritsar dated 8.9.1979 and instead dismissed the application for eviction.

2. The relevant facts are that the petitioners have filed an eviction petition against the respondents with respect to the property in question. The ground pertaining to non-payment of rent did not survive after the arrears had been paid. The other ground of eviction pressed which require consideration was that, as per petitioners, Hari Kishan was a tenant in the property in dispute. He was alleged to have ceased to occupy the demised premises for a continuous period of four months prior to filing of the ejectment petition and that the respondent-tenant had started working as a washerman in OCM Mills, and had sublet the premises to one Nathu Ram, his brother.

3. The petition for eviction was contested, it was denied that the property had been sublet or that the respondent-tenant had ceased to occupy the suit premises. The respondent-tenant's version was that he is in occupation of the property and his brother Nathu Ram was only assisting him in the business.

4. The learned Rent Controller had framed the issues and recorded evidence. It has been held by the learned Rent Controller that the tenant had ceased to occupy the premises without sufficient cause and had sublet the premises without the written consent of the landlord. An order of eviction was passed.

5. An appeal was filed against the order of eviction. The learned Appellate Authority upset the said finding holding that the respondent-tenant is in occupation of the property and had not joined the service of OCM Mills. It was further held that Nathu Ram is the brother of the respondent-tenant. He is merely helping him in the business and the property cannot be said to have been sublet. With these findings, the petition for eviction was dismissed. Hence, the present revision petition.

6. It is basically a finding of fact as to if a person had ceased to occupy the premises or there is any third person to whom it is alleged that the same had been sublet. When evidence is appreciated and a finding is arrived at based on the evidence, then Sub-section (5) to Section 15 of the East Punjab Urban Rent Restriction Act, 1949 (for short "the Act") puts an embargo to the powers of this Court. Unless the findings are erroneous, this Court will not interfere.

7. With this backdrop, one can conveniently refer to the basic facts. It has been alleged that the property has been sublet by the tenant to his brother Nathu Ram. Subletting itself is an expression not defined in the Act. Normally, it is that a third person becomes a tenant of the tenant. When a third person is in occupation, then the landlord being stranger to any agreement between the tenant and the sub-tenant normally would not be in a position to precisely state the terms of their agreement. Law permits a presumption to be drawn of subletting in such like circumstances unless possession of the third person is explained.

8. In the present case in hand, Nathu Ram is the brother of respondent-tenant. He does not claim any independent right in the property. Though the petitioners claimed that the respondent-tenant had joined the service" of OCM Mills, but the evidence showed to the contrary. The respondent-tenant continues to function in the said property. Once he was functioning from the property and there was no part of the property found to be in legal possession of a third person, the learned Appellate Authority rightly held that there was no subletting of the premises.

9. As regards the ground that the tenant has ceased to occupy the property, the petitioners came to the Court, as mentioned above, asserting that the respondent-tenant had joined the service of OCM Mills. The evidence on the record reveals that, in fact, it was brother of the tenant who was working in the said Mill.

10. The respondent-tenant had been functioning and washing clothes in the premises. The Appellate Authority rightly rejected the contention of the petitioners that merely because no petrol is shown to have been purchased by the respondent-tenant for dry cleaning it is presumed that he is not working in the demised premises. The reasons were obvious. For a small business, it is not necessary to show the receipts that small quantity of petrol had been purchased. It is, in fact, not shown that the respondent-tenant was functioning from any other property. In fact, the petitioners had admitted that the respondent-tenant was doing the work of washerman. Once it is so and it transpires in evidence that the respondent tenant had been doing the business from the suit premises, there is no ground to interfere in the findings of fact.

For these reasons, the revision petition being without merit must fail and is accordingly dismissed.