

(1984) 2 RCR(Rent) 532

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1698 of 1983 and Civil Misc No. 2937/CII of 1983

Smt. Rajinder Kaur
Soni

APPELLANT

Vs

Shri Pushpinder Kumar
Gupta

RESPONDENT

Date of Decision: Sept. 28, 1984

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13(3)(a)(i)(c)

Citation: (1984) 2 RCR(Rent) 532

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

Bench: Single Bench

Advocate: R.S. Mittal, Mrs. Abha Rathor and Mr. N.K. Khosla, for the Appellant; D.V. Sehgal and Mr. D.S. Bali, for the Respondent

Final Decision: Allowed

Judgement

J.V. Gupta, J.

This is landlady's revision petition whose ejectment application was allowed by the Rent Controller, but dismissed in appeal.

2. The demised premises are a residential building, i. e., house No. 1076, Sector 27-B, Chandigarh. They Were rented out to the tenant vide rent note dated February 27, 1974, for a period of six month on a monthly rent of Rs 500/-. The ejectment of the tenant was sought on the ground that the landlady bona file required the same for her own use and occupation, as she was not residing in her own right but on sufferance, in house No 1040, Sector 27-B, Chandigarh, because the said house belonged and was owned by her brother Gurdev, Singh Bhalla (who died during the pendency of the appeal). According to her, her brother Gurdev Singh Bhalla had been pressing her for some time and wanted her to vaeate the said house. The family of the landlady consisted, besides herself, of her daughter and her husband who was serving and posted somewhere in the border area

near Tibet. She could not live with her husband there. Under the circumstances, she had to live at Chandigarh to look after her daughter who was an M. A. student. It was further pleaded that she had no other place to live at Chandigarh except the demised premises. It was also averred that she had not vacated any such building without sufficient cause after the commencement of the East Punjab Urban Rent Restriction Act, (hereinafter called the Act), nor was she occupying any other residential building in the urban area concerned. In the written statement, the tenant admitted the factum of the tenancy. According to him, before he occupied the demised premises as a tenant, they were in occupation of another tenant on a monthly rent of Rs. 300/-. " According to him, the landlady got them vacated from him on the pretext that she needed the same for her own use and occupations. It was further pleaded by him that the ejectment application had been made by her with the motive of enhancing the rent for which she had been pressing him on a number of occasions. In the replication filed on behalf of the landlady, the allegations made in the written statement were contraverted and those made in the ejectment application were reiterated. Thus, the only controversy between the parties was whether the landlady required the building, in question, for her own bona fide requirement or not. The learned Rent Controller came to the conclusion that the requirement of the landlady to occupy the premises, in question, was most bona fide since, then, she was putting up in the house owned by her brother, with his permission. As a result, the eviction application was allowed and the ejectment order was passed against the tenant. In appeal, the Appellate Authority reversed the said finding of the Rent Controller and, consequently dismissed the ejectment application. Dissatisfied with the same, the landlady has filed this revision petition in this Court.

3. The Learned Counsel for the Petitioner contended that the Rent Controller after appreciation of the entire evidence rightly came to the conclusion that the requirement of the landlady was bona fide as she was not occupying any other house in the urban area concerned in her own right, but the said finding has been reversed arbitrarily and on surmises and conjectures by the Appellate Authority. According to the Learned Counsel the finding arrived at by it is wrong, illegal and therefore vitiated. The Learned Counsel also argued that in February, 1982, the father-in-law of the landlady died and, therefore, now, her mother-in-law also wanted to live with her at Chandigarh. Apart from that, it was also averred in the additional affidavit, filed in this Court, dated July 4, 1983, on behalf of the landlady that the Respondent tenant had recently constructed his own house at plot No. 604, Sector 16, Panchkula, on a one kanal plot and therefore, the accommodation for the requirement of the Respondent was sufficient in the said house. Reply to the above said affidavit was filed on behalf of the tenant-Respondent by way of an affidavit dated March 15, 1984, wherein it was inter alia stated that if the father-in-law of the landlady had died in February, 1982, then this fact could be brought on the record when the proceedings were pending in the Court of the Rent Controller because the Rent Controller has passed the eviction order on May 31, 1982. According to the tenant, this ground was not now available to the landlady by way of a subsequent event. As regards the construction of the house in Panchkula as averred in her affidavit by the landlady, it was

stated that he owned plot No. 604, Sector 16, Panchkula, but no house has been constructed except that preliminary construction has been raised thereon so far. However, the details of the so-called preliminary construction have not been given.

4. The Learned Counsel for the tenant-Respondent submitted that the landlady had failed to plead and prove the ingredients of Section 13(3)(a) (i) (c) of the Act, i.e., she had not vacated such a building without sufficient cause after the commencement of the Act. According to the Learned Counsel, the Act was made applicable to the Union Territory of Chandigarh in November, 1972 whereas the tenant had occupied the premises, in dispute, in the year 1974. Under the circumstances, it will be deemed that the said premises were available to her in the year 1974 for her occupation, but she failed to occupy the same without any sufficient cause which under the law would mean that she had vacated such a building without sufficient cause.

5. After hearing the Learned Counsel for the parties and going through the relevant evidence on the record, I am of the considered opinion that the whole approach of the Appellate Authority is wrong, illegal and misconceived.

6. It is the common case of the parties that the house in which the landlady at present is living belongs to her brother Gurdev Singh Bhalla. It is also admitted that he has died during the pendency of the ejectment proceedings before the Appellate Authority. He was unmarried and has left behind his mother and a brother. It is also not disputed that now after the death of Gurdev Singh Bhalla, the inheritance will go to his mother. Thus, the residence in or the occupation of the said house by the landlady could not be said to be in her own right. It is true that she has been living there since the year 1963, but at the same time, it could not be disputed that she was living there as a licensee and not in her own right. It is also not disputed that the landlady or her husband does not own any other house in the urban area concerned except the building, in dispute. The reason given by the landlady to occupy her own house, i.e., the demised premises, was that her brother Gurdev Singh Bhalla was pressing her to vacate the house where she was residing with him because he wanted to sell the same. Be that as it may, if Gurdev Singh Bhalla did not want her to live in the said home with him for any reason or that she did not want to continue to remain in occupation thereof as a licensee, she was entitled to the order of ejectment against the tenant because she wanted to occupy her own house bonafide when admittedly she did not own any other house in the urban area concerned. The main contention raised on behalf of the tenant is that since in the year 1974, she rented out the demised premises to him when she was in a position to occupy the same herself, in law, it would be presumed that she had vacated the said building without sufficient cause after the commencement of the Act and, therefore, Clause (c) of Section 13(3) (a) (i) of the Act, was not complied with. I do not find any merit in this contention. The tenant was inducted on the demised premises in the year 1974 whereas the present eviction application was filed on August 2, 1979, i.e., after more than five years. If in the year 1974, she rented out the premises, as she did not require the same at that time, it did not mean that she was debarred from claiming the ejectment of the tenant subsequently. Though there is some

dispute as to whether the words, "such a building", in Clause (c) of Section 13(3) (a) (i) of the Act means the building, in dispute, or some other building, but without going into that controversy, from the facts and circumstances of this case, it is amply proved that the demised premises were not occupied by the landlady in the year 1974 for sufficient cause and, therefore, Clause (c) of Section 13() (a) (i) does not stand in her way. The approach of the Appellate Authority in this behalf, as observed earlier, is wholly misconceived. The previous two tenants who had occupied the premises in question, vacated the same themselves. If after their vacation, it was again rented out subsequently on a higher rent by the landlady, it did not mean that she had got the same vacated for the purposes of enhancing the rent thereof. The matter might have been different if the ejectment was sought of those previous tenants through Court, but if they themselves vacated the same, and the same were rented out subsequently by the landlady on a higher rent, it did not mean that her intention was to enhance the rent thereof. According to the Appellate Authority since she has stated in her statement that the present market rent of the house, in dispute, was about Rs. 1,500/-, it was clear that she only wanted to enhance the rent and that her requirement of the demised premises was not bona fide. This approach of the Appellate Authority, as observed earlier, is wholly wrong, illegal and misconceived. It could not be disputed that the rents of the buildings go on increasing and if it is stated by a landlord or a landlady that the present market rent of a building was about so and so, then, it did not mean that he or she will again rent out the same after getting vacated from the then tenant. In the present case, the requirement of the landlady is most bona fide when it is the common case of the parties that she does not own any other residential building in the urban area concerned, and was not in occupation of any other building in her own right. Simply because she has been living earlier for a long time in the house owned by her brother who has died during the pendency of the appeal, it did not debar her from claiming the ejectment of the tenant from the house, in dispute. All the ingredients of Section 13(3) (a) (i) of the Act are fully proved in this case and once the said ingredients are proved, then, it could not be successfully argued that the requirement of the landlady was not bona fide and that it was her mere wish to occupy the premises, in dispute. Similar situation came up for consideration before me in *Rajesh Kumar v. Kulwant Rai* 1982 (1) Rent L. R. 256, wherein it was held that where the landlord was residing with his brother at his mercy and he had no other property in the urban area concerned, his need to occupy his own house which was rented out earlier was bona fide. Similar view was taken in *Sadhu Ram v. Shakuntla Devi* (1979) 81 P. L. R. 52, wherein it was held that if a person is sharing an accommodation(sic) with a relation, he or she cannot be left at the mercy of that relation for all times to come. If such a person owns a house at a different place and puts forth a claim that he or she is going to occupy the same, such a plea in the absence of any evidence to the contrary, should not be lightly ignored. If the landlord in such a situation puts forth such a plea solely with the intention of getting that house vacated and does not occupy the same, the tenant has ample remedies for reoccupying such a house in accordance with the provisions of the Act.

7. According to the Appellate Authority, the very basis of the application of the landlady was that she wanted to shift from the house of her brother Gurdev Singh Bhalla who had been pressing her hard for quite some time to vacate the house. Since he had already died, the very foundation of the claim of the landlady for seeking the tenant's eviction had ceased to exist. According to the Appellate Authority, though the house now will vest in the mother of Gurdev Singh Bhalla, yet ordinarily, one would expect the mother to prefer her daughter (the landlady) to live with her because both will have the assistance of each other in a situation like this. These observations are based on surmises and conjectures. Whether the mother will prefer to live with her daughter or will take to live with her son at Delhi, is for her to decide and not for the authorities under the Act. Once it is found that the landlady does not occupy any other house in the urban area concerned in her own right, she is entitled to seek the ejectment of her tenant as her need of the demised premises under the circumstances will be most bona fide. The only circumstance brought on the record on behalf of the tenant that she wanted to enhance the rent because the market rent at present of the house, in dispute, was Rs. 1,500/-, as admitted by the landlady, has no relevance. Simply because the present market rent thereof is Rs. 1,500/-, it did not mean that the landlady wanted to enhance the rent thereof. At least on that ground, it could not be held that the requirement of the landlady was not bona fide. Thus, keeping in view the facts and circumstances of the case, the finding of the Appellate Authority being illegal & improper is vitiated and that of the Rent Controller is held to be correct.

8. In this view of the matter, this revision petition succeeds and is allowed with costs. The impugned order of the Appellate Authority is set aside and that of the Rent Controller, directing the ejectment of the tenant is restored. However, the tenant is allowed three months' time to vacate the premises; provided all the arrears of rent, if any, and the advance rent for three months are deposited with the Rent Controller within one month and the tenant also gives an undertaking, in writing, before him that he will vacate the premises and hand over the possession thereof to the landlady after the expiry of the above-said period of three months.