Dr. Ashok Kumar Thapar Vs Amrit Lal and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 2, 1998

Acts Referred: East Punjab Urban Rent Restriction Act, 1949 â€" Section 13, 13(2), 15(5)

Citation: (1998) 119 PLR 716 : (1998) 2 RCR(Rent) 52

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

Bench: Single Bench

Advocate: Sumeet Mahajan, for the Appellant; M.L. Sarin and Sweena Pannu, for the Respondent

Final Decision: Dismissed

Judgement

V.S. Aggarwal, J.
The petitioner is a medical practitioner. The suit premises are situated opposite the old Dayanand Medical College and

Hospital, Ludhiana. It has been taken on rent by the petitioner from Manohar Wati. Respondent No. 1 to 3 (Amrit Lal and others) are the legal

representatives of Manohar Wati. By virtue of the present revision petition, the petitioner challenges the order of eviction passed by the learned

Rent Controller, Ludhiana, against him dated 3.9.1993 and also that of the learned Appellate Authority, Ludhiana, dated 28.10,1997.

2. In the petition for eviction filed by the landlord a number of grounds had been taken but the sole surviving ground regarding which we are

presently concerned is the non-payment of rent and that the petitioner had sublet the property to Dev Raj, respondent No. 4.

3. In the petition for eviction, the landlord asserted that the petitioner is tenant in the suit property from 1.1.1980 at the rate of Rs. 400/- per

month. The property had been let to the petitioner in November, 1969 at a monthly of Rs. 95/-. Besides electricity charges which the petitioner

had to pay, the rent had been increased from time to time vide different deeds which were executed, namely dated 20.10.1971, 9.9.1974,

1,11.1975 and 1.1.1977. These have been described as licence deeds but there is no controversy raised in this Court and it is an admitted fact

that the petitioner was a tenant herein. It was alleged that the petitioner has failed to pay the arrears of rent from 1.2.1980. Furthermore, plea had

been taken that the petitioner had without the written consent of the landlord sublet a portion of the shop to Dev Raj respondent No. 4.

Respondent No. 4 was stated to be carrying on his business of clinical laboratory under the name and style of M/s. Modern Clinical Laboratory in

a portion of the shop in dispute.

4. Needless, to say that in the written statement filed, petition for eviction had been contested. It was not disputed that the property in dispute had

been let to the petitioner for use of the property as clinical and medical consultant. According to the petitioner, earlier the rent agreed was Rs.

100/- per month. It was increased to Rs. 145/- per month in the year 1971. At that time he was given the back portion on rent. His signatures

were procured by the landlord on documents described as licence deed. It was denied that the rate was increased to Rs. 400/- per month as

alleged. The petitioner had been signing the documents in good faith. As regards the document/lease deed by virtue of which the rent was slated to

be increased to Rs.400/- per month, the plea raised was that the landlord respondent appears to have changed the first page of the

agreement/document. It was denied that the arrears were due as claimed. As per petitioner, the petitioner had sent rent in the month of January,

1980 alongwith a letter and a cheque of Rs. 145/-. The letter was refused. He subsequently sent another letter with the rent and that too was

refused. It was denied that the property had been sub-let to respondent No. 4. Respondent No. 4 was slated to be an employee of the petitioner

performing some clinical tests on the patients of the petitioner.

5. Respondent No. 4 had also filed his separate written statement. He too described that he is an employee of the petitioner. He is just doing the

clinical tests in the part of the shop and helps respondent No. 1 in performing certain clinical tests.

6. Learned Rent Controller, Ludhiana, framed the issues. On perusal of evidence, learned Rent Controller recorded his findings that the rent was

being increased from lime to time and that the agreed rent from the year 1980 was Rs. 400/-per month. The version of the petitioner that the rent,

in fact, was only Rs. 145/- or that the first page of the agreement of the year 1980 (Exhibit A-9) had been changed was repelled. The learned Rent

Controller further held that, in fact, it was established in the facts of the case that the property in question had been sub-let to respondent No. 4.

Accordingly, the order of eviction was passed. Aggrieved, by that, an appeal was filed with the Appellate Authority. The findings of the Rent

Controller had been approved and the appeal was dismissed.

7. As is apparent from the resume of the facts given above, the first and the foremost question that comes up for consideration is as to whether the

findings of the Rent controller and that of the Appellate Authority can be disturbed in the present revision petition or not? Under Sub-section (5) to

Section 15 of the East Punjab Urban Rent Restriction Act (for short "the Act"), High Court can interfere in the findings of the courts below and

can examine the same vis-a-vis their legality and propriety. Taking advantage of the said fact, on behalf of the respondents, it had been contended

that there are concurrent findings of fact by the learned Rent Controller and the Appellate Authority and, therefore, the same cannot be disturbed in

the present revision petition. The scope of interference by the High Court in the revision petition had been considered by the Supreme Court in the

case of Rajbir Kaur and Another Vs. S. Chokesiri and Co., . The Supreme Court held that the revisional jurisdiction cannot be equated with a full-

fledged appeal. In an appeal, evidence can be reappraised. Ordinarily, in its revisional jurisdiction the High court will not re-appraise the evidence

and dislodge the concurrent findings of fact. In paragraph 16 of the judgment, the Supreme Court held as under :-

The scope of the revisional jurisdiction depends on the language of the statute conferring the revisional jurisdiction. Revisional jurisdiction is only a

part of the appellate jurisdiction and cannot be equated with that of a full-fledged appeal. Though the revisional power-depending upon the

language of the provision-might be wider than revisional power u/s 151 (or 115 ?) of the Code of Civil Procedure, yet a revisional Court is not a

second or first appeal. When the findings of the fact recorded by the Courts below are supportable on the evidence on record the revisional court

must, indeed, be reluctant to embark upon an independent reassessment of the evidence and to supplent a conclusion of its own, so long as the

evidence on record admitted and supported the one reached by the Courts below. With respect to the High Court, we are afraid, the exercise

made by it in its revisional jurisdiction incure the criticism that the concurrent finding of fact of the Courts below could not be dealt and supplanted

by a different finding arrived at on the independent reassessment of evidence as was done in this case. We think in the circumstances, we should

agree with Sri Sanghi that the concurrent finding as to exclusive possession of M/s. Kwality Ice-cream was not amendable to reversal in revision.

Contention (a) and (b) in our opinion arc well taken and would require to be held in appellants'' favour"".

8. The same question had been considered subsequently in the case of Lachhman Dass v. Santokh Singh (1995)111 P.L.R. 276 (S.C.) and in the

case of Dev Kumar (Died) through LRs. Vs. Smt. Swaran Lata and others, . The same view prevailed in the case of Smt. Fatima Bee Vs.

Mahamood Siddiqui and Mohd. Omer Siddiqui, . This was the decision under the Andhra Pradesh Building (Lease, Rent and Eviction Act, 1960).

It had been made clear that unless the findings of the Courts below are not based on evidence or in other words misreading of evidence or the

same are absurd or erroneous, the High Court will restrict itself in interfering in the same. Of course, if the findings are absurd or not based on

evidence, High Court would interfere. As referred to above and re-mentioned at the risk of repetition written statement had been filed after the

document, namely, the alleged lease deed had been produced. In other words, petitioner had seen the said document and thereafter filed his

written statement. He had taken up the plea that his signatures had been taken by practising fraud and that the first page of the document, in any

case, had been changed. The petitioner doctor appeared as AW6. He was cross-examined at length. Thereupon he stated as under:-

Before, filing the written reply I had got filed the original deed from the petitioner for my inspection. In the written reply I did not deny my

signature on some of the deeds Ex. A-5 to Ex.A-9. I had instructed Mr. Ahuja that Ex. A-5 to Ex. A-9 does not bear my signatures and they

should be compared.

In other words, total inconsistent stand had been taken by the petitioner during his cross-examination. He stated that he had instructed his counsel

that the documents Exhibit Annexure P-5 to Annexure P-9 did not bear his signatures. In the present case, the Rent Controller himself had

examined the admitted signatures of the petitioner with the disputed signatures. He had come to the conclusion that it bears the signatures of the

petitioner. When the Rent Controller himself had seen the document, there is no ground to take a different view more so keeping in view the above

said facts. It must, therefore, be held that Exhibits A-5 to A-9, particularly Annexure P9, bears the signatures of the petitioner.

9. Great stress was laid on the fact that the first page of Exhibit A-9 had been changed. It was pointed out that the signatures of petitioner appears

on the second page of Exhibit A-9. The agreed rent had been mentioned on the first page as Rs. 400/- which is on a different type and written with

a different ink. It had been noted that there has been difference in the ink but still both the Courts below felt that document Exhibit A-9 was scribed

at the same time. In this connection, certain salient facts ''hat have emerged cannot be ignored. Both the pages of Exhibit A9 had been purchased

from a stamp vendor of the district courts at Ludhiana. The petitioner felt shy of examining the stamp vendor so as to establish that it could not

have been purchased at the same time. Not only that, Exhibit A-5 to A-8 are the other documents (pertaining to the tease deeds that were being

executed from time to time). All the documents are of two pages. The latter page had been signed. One is, therefore, not surprised that herein also

the document was executed in the same fashion. On behalf, of the respondent landlord, it was pointed out that the rent was increased because

back portion of the said shop was allowed to be used. According to the petitioner, this user had been permitted much earlier. When this contention

of the petitioner once again falls flat on the ground because in Exhibit A-5, it was specifically mentioned that the back, portion cannot be used by

the petitioner. These factors support what was being alleged by the respondent-landlord. The plea of the respondent further finds support from the

fact that in the municipal committee assessment register Exhibit AX/1, the rate of rent has been described as Rs. 400/- per month. In other words,

the landlord was ready and have been paying the house tax at that rate. The net result would be that rent must be held as by the Courts below to

be Rs. 400/- per month. On the first date of hearing, said rent had not been tendered. In these circumstances, the order of eviction was rightly

passed.

10. With respect to the second ground of eviction, some of the admitted facts can conveniently be relisted. It is not in controversy that the

petitioner is a doctor by profession. It is also not being disputed that there is a small cabin within the said shop/clinic. According to the respondent-

landlord, the said cabin had been sublet to respondent No. 4 while the petitioner''s case is, as argued in this Court, that respondent No. 4 Dev Raj

is a servant. Certain patients come and their clinical tests are performed. Thus, the property has not been sublet. At the outset, it must be stated

that if Dev Raj, respondent No. 4, is a servant who conducts clinical tests on the patients of the petitioner only at no profit and loss basis, what is

being alleged would be accepted. However, the facts on the record show otherwise.

11. It is well known that the expression sub-let, assign or parted with possession though not specifically defined under the Act have well known

meaning. In the case of sub-letting, the third person should be in occupation for consideration. At time it is said that he should be, a tenant of the

tenant. In the case of assignment, the tenant should have divested himself of whole or part of the property and in case of parting with possession, it

should be parting with legal possession.

12. On behalf of the petitioner, reliance was placed on the report of the Local Commissioner, dated 17.8.1995. The relevant extract of the report

reads as under ;-

In the shop approximately, in the middle, wooden partitioned wall is fixed with door. In the rear portion of the shop Sh. Ashok Kumar Thapar sits

and does the profession of medical practitioner. He has placed a examination table towards the eastern side. In the east south corner there is a

door which is bolted from outside and a wooden almirah has been placed. The door is not opening in the southern wall, there is almirah and there

is a glass rolling shutter door has been fixed. An ECG machine is also lying by the side of the examination table near the wooden portioned wall in

the rear portion.

In the front portion towards the Eastern side a wooden cabin has been made and the same has been fixed with the main opening and the middle

partitioned wall.

In this cabin clinical lusts were being conducted by Shri Dev Raj under the name and style of Modern Clinical Laboratory. There has been fixed

wooden door from with iron jali over it and a wooden door with iron jali covering the front opening of the shop.

13. A rough site plan has also been placed on the file. In the wooden cabin which has been occupied by Dev Raj respondent No. 4, on one side, it

has been mentioned as open. On these facts, it was urged vehemently by the learned counsel for the petitioner that the wooden cabin does not

have any specific door and, therefore, it cannot be taken that respondent No. 4 was in exclusive possession therein. As would be noticed herein

that a door was there when the local Commissioner had visited and taken the photographs. Furtheremore, the report of the Local Commissioner

Sh. Darshan Singh, Advocate, indicates that Dev Raj, respondent No. 4 was running the business under the name and style of Modern Clinical

Laboratory. Certain photographs relating to the property in dispute had been placed on record. Exhibit AX/1 indicates that on top is the Board of

the petitioner but on the upper portion of the shutter the name of Modern Clinical Laboratory has been mentioned. Exhibit AX/4 is the other

photograph which further reveals that the cabin has a separate door and further there is a board of the Modern Clinical Laboratory with Dev Raj

as proprietor. These facts clearly establish that Dev Raj was running his own business in the suit properly.

14. The same conclusion, if to be arrived at on Exhibit PX which is the report given by Modern Clinical Laboratory. It is accompanied by a

receipt. Exhibit AX1 to AX3 are similar reports given on behalf of the Modern Clinical Laboratory, Civil Lines, Ludhiana. They indicate clearly

that Dev Raj has been working in the suit premises in his own right. He has placed his own board and the contention of the petitioner that he was

an employee or that the laboratory is being run on no profit no loss basis has no leg to stand. This is no added reason that Dev Raj described

himself as proprietor of the said concern.

15. Reliance was placed on the fact in the income tax return Dev Raj has been shown as an employee drawing a salary of Rs. 1800/- per year or

Rs. 150/- per month. In this regard, reliance was also placed on the accounts of the petitioner. But one is constrained to observe that no reliance,

indeed, could be placed on these documents. The accounts of the petitioner saw the light of the day after nine years of litigation. Income lax return

had also been filed after the visit of the Local Commissioner or in other words when the petitioner had come to know about the eviction petition. If

Dev Raj was an employee then the returns of earlier period could well have been shown. To crown it all is the important fact that even a common

man would not believe that Dev Raj would work at Rs. 150/- per month in a clinical laboratory of the petitioner despite being a technical hand.

This seems to have been made up an after thought. There is no escape thus but to approve the finding and to hold that Dev Raj was not an

employee of the petitioner and that he was working independently in the suit property.

16. Once a third person is in occupation and the possession is not explained, inference of sub-letting would be legal. It is well known that landlord

is a stranger to any agreement between the tenant and the third person. Once the said agreement is not forthcoming or what is stated is not correct,

inference, of sub-letting was rightly drawn.

17. On behalf of the petitioner, reliance was being placed on the decision of the Supreme Court in the case of Gopal Saran Vs. Satyanarayana, . In

the cited case, the landlord had let the shop to the tenant. The tenant was carrying on the business of opticals. The tenant had asserted that he was

running the business of advertisement by way of display of various advertisement boards in the City and for that he took Rs. 1500/- for three

years. The question was as to whether the tenant had sub-let or parted with the possession of the property. The Supreme Court has held that

having regard to the quality, nature and degree of occupation, it cannot be said that it was sub-letting or parting with the possession.

18. Reliance was further being placed on the decision of the Supreme court in the case of M/s. Delhi Stationers and Printers Vs. Rajendra Kumar,

. Herein, it was held that mere user of the tenant''s kitchen and latrine by the co-tenant while residing in the portion let out to him by the landlord

would not imply that tenant had sub-let, assigned or parted with the property. It is obvious that the cited decisions were confined to their peculiar

facts. It was on the facts of those cases that the Supreme Court held that there was no sub-letting, assignment or parting with possession. They will

not come to the rescue of the petitioner.

19. On the contrary, reference with advantage can well be made to the decision of the Supreme Court in the Case of Rajbir Kaur and Another Vs.

S. Chokesiri and Co., . In the cited case, a shop had been let to M/s. S. Chokesiri and Co. in Sector 17, Chandigarh. It was found that a tailor

and Ice Cream Parlour have been allowed to be run. The defence offered was that the tailor attends to the customers needs and ice-cream is

served to the customers. Both the contentions were rejected by the Supreme Court and it was held as under :-

.....If exclusive possession is established, and the version of the respondent as to the particulars and the incidents of the transaction is found

unacceptable in the particular facts and circumstances of the case, it may not be impermissible for the Court to draw an inference that the

transaction was entered into with monetary consideration in mind. It is open to the respondent to rebut this. Such transactions of sub-letting in the

guise of licences are in their very nature, clandestine arrangements between the tenant and the sub-tenant and there cannot be direct evidence got.

20. The position herein as noticed above is identical. The defence of the petitioner trying to explain the position of the tenant had been found to be

not correct. It had been found that respondent No. 4 is not an employee but is working in the property in his own right as proprietor of M/s.

Modern Clinical Laboratory. He has his own independent cabin from where he is giving report to the patients. The returns of income tax so

furnished by the petitioner were pertaining to the period during the pendency for eviction. Thus, the findings of the learned Rent Controller and that

of the Appellate Authority described to be meritorious are thus absurd. There is no scope for interference.

21. For these reasons, the revision petition being without merit is thus dismissed. Keeping in view the fact that the respondent is doing practice in

the said property for the last many years, he is granted six months to vacate the property dispute.