

(1993) 10 P&H CK 0033

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 5008 of 1991

Charanji Lal

APPELLANT

Vs

Dalip Singh

RESPONDENT

Date of Decision: Oct. 7, 1993

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13(3), 15(5)

Citation: (1994) 106 PLR 299 : (1994) 1 RCR(Rent) 490 : (1994) 1 RCR(Rent) 289

Hon'ble Judges: H.S. Bedi, J

Bench: Single Bench

Advocate: R.K. Aggarwal, for the Appellant; Amarjeet Markan, for the Respondent

Final Decision: Dismissed

Judgement

H.S. Bedi, J.

This is a tenant's petition against the order dated 28th October, 1991, passed by the Appellate Authority, Patiala, whereby the ejectment of the petitioner has been ordered on the ground that the premises in dispute were required by the landlord for the residence of his married son.

2. The facts of the case, relevant to its disposal, are as under:-

The petitioner was inducted as a tenant on the ground-floor of a residential house situated in Nabha at a monthly rent of Rs. 170/-. The respondent sought the ejectment of the petitioner, inter alia, on the ground that the residential house was needed for the separate residence of his married son, Baljit Singh. The Rent Controller dismissed the ejectment application holding that the bona fide necessity of the married son was not proved. The judgment was reversed in appeal and on a re-consideration of the evidence, the Appellate Authority came to the conclusion that as Baljit Singh, the son of the landlord was employed in a factory at Nabha and was required to come to duty from his present place of residence in the house of his father in village Kalha Maira, not only was it inconvenient to do so but the

accommodation in possession of the father was insufficient for meeting the needs of his extended family. The Appellate Authority was largely influenced by the unrebutted evidence of Shri S.K. Sial, a Manager in the HMM Ltd., Nabha, factory, which was recorded as additional evidence on application moved under Order 41 Rule 27 C.P.C., who stated that Baljit Singh was a confirmed employee of the factory and that he had been employed on a regular basis on 28th June, 1990 and confirmed on his appointment on 1st October, 1990, but prior thereto had been working on temporary basis with breaks. The Appellate Authority also formed the opinion that in view of the disturbed conditions in the State, it was required that Baljit Singh have his own residence close to his place of work. Aggrieved by the order aforesaid, the tenant has come up in this revision petition.

3. Mr. R.K. Aggarwal, learned counsel for the petitioner has raised two basic points; firstly, that the benefit of Section 13(3)(a)(iv) of the East Punjab Urban Rent Restriction Act, 1949, (hereinafter to be referred as the Act), could not be given to a landlord who sought eviction of a tenant on the ground of the requirement of his married son, if such married son had vacated any residential building without sufficient cause in an urban area after the commencement of the Act, and; secondly, that if any case, there was no conclusive evidence to show that on the 1st March, 1989, i.e. when the present ejectment application was filed, Balbir Singh aforesaid, was, in fact, employed in the factory in question.

4. Mr. Amarjit Markan learned counsel for the respondent has, however, urged that there was no evidence in support of the first argument of Mr. Aggarwal. He was stated that in the cross-examination of the landlord-respondent, he had admittedly stated that Baljit Singh, his son had earlier vacated the premises which was now sought to be recovered but this by itself was not enough as it has further to be proved that Baljit Singh was married at that time and in the absence of such evidence, the eviction on the ground of personal necessity of the son could be ordered, In this connection, reliance has been placed on *Ram Chand v. Miss Santosh Bhasin (1987)98 P.L.R. 592.*

5. I have heard the learned counsel for the parties on the question posed and find that the argument of the petitioner's counsel lacks substance. A bare reading of Section 13(3)(a)(iv) of the Act indicates that four conditions have to be satisfied before a building can be ordered to be vacated and these are:-

- (i) that the building must be a residential one;
- (ii) that the same is required for the residence of a married son;
- (iii) that such son is not occupying in the urban area concerned any other building from which eviction is sought; and,
- (iv) that such son had not vacated such a building without sufficient cause.

6. It will be seen that the section aforesaid refers to the son, meaning thereby a son who is married. It is, therefore, clear that if the petitioner was entitled to succeed and to deny ejectment to the respondent what was to be shown was that on the date when Baljit Singh vacated the accommodation on the earlier occasion, he was, in fact, married. There is absolutely no evidence to this effect.

7. Mr. Aggarwal's assertion that it was for the landlord to prove his case beyond doubt and no onus was cast on the petitioner to prove his case, is again without merit. In the ejectment application, the respondent-landlord had specifically mentioned that the building in question was required for his married son and though in his statement, he merely made a denial that the building had been vacated earlier by Baljit Singh. A bald statement elicited in the cross-examination to the effect that Baljit Singh had vacated the building about 5-6 years earlier to the filing of the present petition, would not, therefore, help the case of the petitioner as further question as to whether Baljit Singh vacated the building after his marriage was not asked. The present case is, therefore, not covered by the judgment quoted by the learned counsel for the petitioner in Ram Chander's case (supra).

8. Mr. Aggarwal has also argued on facts that a case for ejectment is not made out. He has urged that there was no evidence to show that on the date of the filing of the ejectment application i.e. on 1st March, 1989, Baljit Singh was in the service of the factory in Nabha. In this connection, the evidence of Shri S.K. Sial, AW1 and the admission of the petitioner himself in his statement recorded in the Appellate Court on 27th August, 1991, in which he admitted that Baljit Singh was in the service of the factory and that he had joined service sometimes before he had filed the petition, the petition here being a suit, filed by the petitioner on 2.1.1989 seeking relief of permanent injunction for restraining the landlord from interfering with the possession of the tenant. It is, therefore, apparent that as per admission of the petitioner, Baljit Singh was in the service of the factory on 25th January, 1989, whereas the present ejectment application was filed subsequently. It is, therefore, clear from the evidence adduced by the parties that the requirement of the landlord is genuine. Furthermore, on the revisional side, I would be reluctant to interfere with the findings retarded by the Court's below unless the same are perverse or so unwarranted that interference must be made.

9. For the reasons recorded above, there is no merit in the petition and the same is dismissed. However, the petitioner is granted two months time to vacate the premises provided that he files an undertaking to do so and also deposits the arrears of rent, if any, along with advance rent for the period of two months before the Rent Controller within a period of one month from today. No costs.