

(2005) 01 P&H CK 0044

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1952 of 1988

Gopal Sexena, Principal and
Others

APPELLANT

Vs

Gurnam Singh and Others

RESPONDENT

Date of Decision: Jan. 6, 2005

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13

Citation: (2005) 140 PLR 780 : (2005) 2 RCR(Rent) 200

Hon'ble Judges: Ashutosh Mohunta, J

Bench: Single Bench

Advocate: G.S. Jaiswal, for the Appellant; Munish Jolly, for the Respondent

Final Decision: Dismissed

Judgement

Ashutosh Mohunta, J.

This petition is directed against the judgment dated 25.7.1988 passed by the Appellate Authority, Patiala, whereby the ejectment of the tenant-petitioners from the demised premises has been ordered on the ground of non payment of the arrears of rent by reversing the judgment dated 24.3.1987 passed by the Rent Controller Rajpura.

2. In brief, the facts of the case are that the landlord-respondents purchased House No. 537, Ward No. 4, Dera Bassi of which the demised premises are a part, from one Smt. Pritam Kaur whose husband Harcharan Singh (R.W.4) had let out the demised premises to the tenant-petitioners. On purchasing the said house, the present landlord-respondents filed a petition for ejectment of the tenants (petitioners herein) on various grounds by filing an application before the Rent Controller, Rajpura, u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short "the Act"). The tenants contested the claim made by the landlords. On the pleadings of the parties, the Rent Controller, Rajpura, framed the following issues:-

1. Whether the premises in dispute were rented out by applicants to the respondents at a monthly rent of Rs. 160/- per month as alleged by the applicants and not Rs. 80/- per month as alleged by the respondent? OPA
2. Whether the tender is invalid? OPA
3. Whether the respondents have ceased to occupy a portion of the first floor of the tenanted premises for the last eight months?
4. Whether respondents 1 and 2 without the consent of the applicants have sublet a portion of the house in dispute situated on the first floor to respondent No. 3 (St Shanti)? OPA
5. Whether the tenanted premises are required by the applicants for their own bona fide use and occupation? OPR
6. Relief.

After hearing the counsel for the parties and on going through the evidence adduced on record, the Rent Controller decided all the issues in favour of the tenants and against the landlords. Consequently, the ejectment application filed by the landlords was dismissed vide judgment dated 24.3.1987 passed by the Rent Controller. The landlords filed appeal to challenge the judgment and decree passed by the Rent Controller. The Appellate Authority vide judgment and decree dated 25.7.1988 decided issue Nos. 3 to 5 in favour of the tenants. However, under issue No. 1 it was held that the rent of the demised premises was Rs. 160/- per month and not Rs. 80/-, as alleged by tenants. Under issue No. 2 it was held that the tender of the arrears of rent made by the tenants was short. Consequently, the ejectment of the tenants was ordered on the ground of non-payment of arrears of rent. It is the judgment and decree passed by the Appellate Authority, which has been challenged by tenants by filing the present revision petition.

2. During the pendency of the revision petition, the landlord-respondents filed C.M. No. 7372-C II of 1999 to place on record the photographs of the house in dispute (Annexures P-1 to P-4) in order to show that the building in dispute has crumbled down and it has been averred therein that the tenants are not handing over the vacant possession thereof to the landlords and are demanding "Pagri" for doing so. Notice of the application was given to the petitioners vide order dated 27.5.1999 and no written statement to challenge the averments made in the application has been filed by the tenants. I allow the C.M. and the photographs (Annexure P-1 to P-4) are taken on record.

3. No one has put in appearance on behalf of the tenant-petitioners. I have heard the learned counsel for the landlord-respondents and gone through the evidence adduced on record.

4. The findings of the Appellate Authority on issue Nos. 1 and 2 (which are reproduced hereunder for ready reference) are under challenge in the present revision petition:-

1. Whether the premises in dispute were rented out by applicants to the respondents at a monthly rent of Rs. 1607/- per month as alleged by the applicants and not Rs. 807/- per month as alleged by the respondent? OPA

2. Whether the tender is invalid? OPA

5. It has come in the statement of Harcharan Singh (RW-4), husband of Smt. Pritam Kaur vendor and who used to let out the building to the tenants and receive rent from them on her behalf, has produced various receipts (Ex. RW-4/1 to RW-4/12) with regard to payment of rent by the tenant-petitioners. The receipts produced by him show that the rate of rent was Rs. 80/- per month. This witness further deposed that the rent of Rs. 80/- per month only for one Chaubara and a verandah on the first floor and the entire ground floor at the time of sale of the property to the respondents herein on December 1, 1983 was lying vacant. Harcharan Singh (RW-4) was the witness of the tenant-petitioners. They have not challenged this part of the statement made by Harcharan Singh (RW-4) and they have also not cross-examined their own witness with regard to his statement that only one Chaubara and one Verandah was in their occupation at the time of sale of the property to the present landlords, i.e., respondents in the present revision petition. It has come in the statement of Gurnam Singh, respondent No. 1 (AW-4) that the lower portion of the house in dispute was rented out to the School (petitioner No. 2), the Principal whereof is Mr. Gopal Saxena (Petitioner No. 1) 10712 days after the purchase of the building in dispute by them. Dharam Pal (AW-2) who is an attesting witness to the sale deed, whose shop is situated at a distance of 200 yards from the demised premises, has stated that after purchase of the building in dispute by the present respondents, one big room, and two small rooms on the ground floor were taken on rent by the present petitioners in addition to the accommodation already under their tenancy. Dharam Pal (AW-2) is an independent witness. Thus, from the statement made by this witness coupled with the statement of Harcharan Singh (RW-4), it stands proved that accommodation of the ground floor was taken on rent by the present petitioners after the purchase of the building by the present respondents. It has also come on the statement of Gurnam Singh respondent-landlord (AW-4) that the ground floor of the building was rented out to the School (Petitioner No. 2) only ten/twelve days prior to the purchase of the building by them. In view of this situation, it is but natural that when the ground floor of the building was rented out to the present petitioners, the rate of rent might have been doubled by landlord-respondents. Thus, it stood established that the rate of rent for the demised premises in occupation of the present petitioners, is Rs. 160/- per month and not Rs. 80/- as alleged by them.

6. The arrears of rent amounting to Rs. 320/- were paid by the present petitioners through a cheque. Though it has been contended by the petitioners that the amount of Rs. 320/- included the arrears of rent for four months i.e. December, 1983 and January to March, 1984, at the rate of Rs. 80/- per month, yet as has been held above, the rate of rent was Rs. 160/- per month. Thus, the tender made by the tenant-petitioners was short and invalid. I uphold the findings of the Appellate Authority in this regard.

7. Consequently, I do not find any merit in the present revision petition. It is, accordingly, dismissed. The interim order of stay dated 23.8.1988 stands vacated. The petitioners are ordered to hand over the vacant possession of the demised premises to respondent-landlords with all arrears of rent at the rate of Rs. 1607- per month, if any, on or before March 31, 2005.