

Basakhi Ram Halwai (Died) Vs Gobind Kumar Chopra

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 15, 1995

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

Citation: (1996) 113 PLR 492 : (1996) 1 RCR(Rent) 614

Hon'ble Judges: S.C. Malte, J

Bench: Single Bench

Advocate: M.L. Sarin and Vikas Suri, for the Appellant; Nemo, for the Respondent

Final Decision: Allowed

Judgement

S.C. Malte, J.

This revision is u/s 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (for short "the Act"). The revision has been

filed by the tenant. The respondent-landlord had filed an application u/s 13 of the Act for a decree for eviction of the present petitioner/tenant on

the ground of rent default. Briefly stated the contention by the landlord was that the tenant failed to pay the rent @ Rs. 200/- p.m. since

1.7.1976. He further contended that the tenant has raised the temporary construction without his consent. The landlord also made a reference to

the rent note on 19.5.76, and contended that the tenant failed to execute the fresh rent-note after the expiry of the tenancy period as per the terms

and conditions of the said rent-note. The tenant by his written statement contended that since 13 or 14 years (prior to 1978) he was tenant @ Rs.

35/- per month. He further claimed that under a misrepresentation about two years back, the landlord got executed one rent-note under which he

agreed that the present shop in occupation of the tenant shall be demolished and in its place a new shop shall be re-constructed and given in

possession of the tenant @ Rs. 200/- per month as the rent. The tenant contended that the landlord demolished the shop, but did not re-construct

it as though it was agreed upon under the said agreement. Under these circumstances, the tenant was constrained to raise the shed over the site of

the shop at his own cost and he thus occupied the said temporary structure.

2. By way of replication or rejoinder, the landlord denied the contention that he misrepresented the tenant that he would reconstruct new shop in

place of old shop. Briefly stated, he denied the allegations made by the tenant.

3. The Rent Controller held that the agreement dated 19.5.1976, indicated that the tenant would pay Rs. 200/- per month after getting the newly

constructed shop in place of the old one. He further observed that though the new shop was not constructed in place of the old one the tenant was

liable to continue to pay rent @ Rs. 35/- per month. On facts, he, however, held that the landlord had got demolished the old shop in pursuance of

the said agreement. Thus, on finding that the tenant was still liable to pay Rs. 35/- per month and has committed default by not paying the said rent,

he passed the order of eviction against the tenant. Against that order appeal was taken before the Appellate Authority under the Act. The

Appellate Authority was also of the view that though the landlord had demolished the old shop, in pursuance of the rent-note Exhibited on

5.9.1976, he did not reconstruct the new shop. All the same, since the tenant did not rescind the said agreement and continued to occupy the shop

in question he was liable to pay the rent @ Rs. 35/- per month as was agreed upon in the past before the demolition of the shop. On that reasoning

he confirmed the eviction order passed by the lower Court.

4. The counsel for the tenant-petitioner submitted before me that the proved position in this case was that the original old shop had been

demolished under the pretext that new shop shall be constructed in its place and tenant would be inducted in the new shop. It was contended that

the tenant would be liable to pay Rs. 200/- per month only if the new shop had been occupied by him. Since new shop had not been constructed

the tenant was constrained to carry on his business by raising a temporary shed on the suit site at his cost. Under these circumstances, the tenant

was not at all liable to pay the rent and no question of rent default would arise. It was, therefore, submitted that the tenant was not liable to be

evicted. My attention was also invited to certain rulings, to which I will make reference in the course of this judgment.

5. On facts, I find that the petitioner-tenant was inducted in the shop @ Rs. 35/- per month. The factual position further shows that by an

agreement dated 19.5.1976, it was agreed that the landlord shall construct a new shop by demolishing the old one and the new shop shall be let

out to the petitioner-tenant @ Rs. 200/- per month. The factual position further shows that the landlord had demolished the old shop, but did not

raise new shop in its place. In this respect, the position now is quite finally decided as per the decision given in Suit No. 229 (dated 15.6.78). In

that suit the landlord had sought mandatory injunction against the present tenant for issuance of direction to the tenant to remove, the construction

of the tin-shed raised by him on the original site of the shop. While deciding that suit issue No. 3 was framed to the effect as to whether the plaintiff

had demolished the demised shop under the pretext of reconstruction. The finding on that issue was that he has done so. In other words, factually it

is now settled position that the old shop has been demolished under the pretext of re-construction and he did not raise the new shop though he had

so agreed upon as per the agreement dated 19.5.1976. It also clearly appear that the tenant had to raise a temporary structure on his cost on the

same site and carry on business. The short question would be as to whether the tenant would be still liable to pay the rent at the old rate at which

he had occupied the original shop.

6. Section 13 of the Act states that the landlord would be entitled to evict the tenant by applying to the Rent Controller and by obtaining his order

on the ground that the tenant has committed rent default by not paying the rent either as per the agreement, or in the absence of agreement, by the

last day of the month next following the one for which the rent was payable. In this case obviously, the term "rent" refers to the rent that was

payable in respect of the structure or building that was originally let out. Since, the admitted position in this case was that the original structure was

no more in existence, there was no question of payment of rent in respect of any such structure. The proved position in this case is that the

temporary shed now in existence at the suit site was constructed by the tenant at his cost and the old shop is no more in existence. In my view,

therefore, both the lower Authorities proceeded on the misconception that the tenant was still liable to pay the rent at the old rent. Both the lower

Authorities lost sight of the fact that the rent was thus payable for the structure that was let out was now no more in existence. The lower Appellate

Authority relied on the ruling reported in The Chamber of Colours and Chemicals (P) Ltd., Delhi v. Shri Trilok Chand 1973 R.C.R. 758. That was

a case under the Delhi Rent Control Act. In that case, during the pendency of the eviction matter before the Rent Controller, interim rent was fixed

and the tenant was directed to deposit that rent every month. The facts in that case further indicate that during the pendency of that litigation, a part

of the premises had been destructed by fire. Under these circumstances, the tenant failed to deposit the rent. The question then arose whether his

defence should be struck off for non-payment of the rent as per the direction that was issued by the Rent Controller while fixing the interim rent.

His Lordship of the Delhi High Court observed that the tenant had not even applied for variation of the interim rent after the destruction of the

property in question. His Lordship of the Delhi High Court referred to certain observations made by other High Courts with reference to Section

108(e) of the Transfer of Property Act, and observed that if the property had been destroyed, it was left to the option of the tenant to rescind the

lease deed, and in that case he would be absolved from payment of the rent. It was observed by his Lordship that since the tenant continued to

occupy whatever the property was left, he was liable to deposit the rent as was directed by the order fixing the interim rent. The lower Appellate

Authority did not take into consideration the factual aspects that led to these observations in the aforesaid ruling. As such, in fact that ruling is not

applicable to the present case. In the present case the position is totally different, as can be seen from the observations made above.

7. My attention was invited to a case reported in *Hakim Sardar Bahadur v. Tej Parkash Singh* (1962) 64 P.L.R. 538 . In that case, his Lordship

has observed that where the landlord tortuously deprives the tenant of the use of the part of the demised premises, so long as the deprivation

continues, the landlord cannot even claim the rent for the rest of the premises which the tenant still continues to occupy. In this view of the matter, I

feel further fortified by another ruling reported in *Nirmalendu Basu and Others Vs. Sm. Nilima Chatterjee*, . In that case, on evidence it was

proved that the landlord acted fraudulently to keep the tenant out of possession of the portion of the said premises. Their action was found to be

mala fide and tortuous. In view of that factual position, his Lordship held that the tenant was justified to suspend the payment of rent.

8. It would, therefore, appear that the consistent view of majority of High Courts is that if landlord by his fraudulent and tortuous act deprives the

tenant of the use of the leased property, either partially or wholly, the tenant would be justified in suspending the payment of rent, and the landlord

even could not claim the rent in respect of the portion of the property that had remained in the occupation of the tenant. In the present case, the

whole structure was demolished under the Pretext of reconstruction of new building. The tenant was thus deprived of the total utility of the original

shop that was let out to him. The proved position is that tenant at his cost raised his temporary construction, and continued the business. Under all

these circumstances, the tenant-petitioner was justified in suspending the payment of rent. There was no question of payment of rent simply on the

ground that he continued to occupy the shop site. Both the lower authorities, therefore, committed error in passing the eviction order. In view of

the legal position that emerges I find that the order passed by both the lower Authorities deserves to be set aside. The revision is allowed with

costs. The order of eviction of the petitioner-tenant is hereby set aside and the petition filed by the landlord stand dismissed with costs throughout.