

(1980) 04 P&H CK 0007

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No 1680 of 1978

Gurjinder Singh Arora and
another

APPELLANT

Vs

Jagjit Lal alias Jagjit Rai

RESPONDENT

Date of Decision: April 15, 1980

Acts Referred:

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

Citation: (1980) 1 RCR(Rent) 724

Hon'ble Judges: Harbans Lal, J

Bench: Single Bench

Advocate: H.L. Sarin, Sh. R.L. Sarin, Sh. Sarwan Singh and Sh. M.L. Sarin, for the Appellant;
G.R. Mojithia, for the Respondent

Final Decision: Allowed

Judgement

Harbans Lal, J.

Eviction application u/s 13 of the East Punjab Urban Rent(sic) Restriction Act, (hereinafter to be called the Act), by the present Petitioners, has been dismissed by the Appellate Authority, Jullundur, vide order dated July 29, 1978. The present revision petition is directed against the same.

2. In the first instance, the eviction order had been passed by the Rent Controller, which was upheld by the Appellate Authority. Revision against the same was, However, allowed by Narula, C. J., by his order dated January 14, 1977, reported as Jagjit Lal alias Jagjit Rai v. Shri Gurjinder Singh Arora 1972 P.F.A. 474. The case was remanded back after allowing amendment of the eviction petition so as to make specific averments in terms of the requirement of item (b) of Section 13 (8)(sic) (a)(i) of the Act. Under this order, opportunity was also to be given to the tenant for filing the amended petition, and opportunity to prove or rebut the new averment was to be allowed to both the parties. After evidence had been led by both the parties,

order of eviction was passed, which was challenged in appeal. The Appellate Authority allowed the appeal and dismissed the eviction petition. It is this order which has been challenged in the present revision petition.

3. The eviction petition had been filed by the present two Petitioners out of whom Petitioner No. 1. is the son and Petitioner No. 2 is his father. In the revision petition before the High Court which was decided by Narula, C.J, it had been urged on behalf of the tenant that the eviction petition be dismissed on the ground that the relationship between the two Petitioners had not been disclosed in the eviction petition and it was not clear if the eviction petition had been filed by the landlord. The learned Chief Justice, after perusing the material on the record came to the following conclusion:

Whosoever may be the owner of the premises, no doubt at all is left from the reading of the pleading of the parties that the landlord of the Petitioner is Respondent No. 1 (now Petitioner No. 1(sic)) The reason why the father of the landlord, that is, Respondent No. 2 had also to be impleaded as a party to the case by the Respondents is clearly set out in paragraph 3 of the petition. The averment in that paragraph is that when a notice of eviction was served by Respondent No. 1 on the tenant, the later stated in reply that the premises, in dispute, were taken by him on rent from respondent No. 2 (now Petitioner No 2) and, therefore, in order to avoid any unnecessary controversy, both the Respondents served a fresh notice or, the Petitioner (now Respondent) and both of them subsequently joined in filing the application for eviction.

4. According to the learned Counsel for the tenant Respondent even if the demised premises were given on lease to the Respondent by Petitioner No. 1, he cannot be considered to be a landlord for the purpose of satisfying the ingredients as contained in Section 13 (3)(a)(3(sic)) (a)(b) and (c) of the Act, and only Petitioner No. 2, being the owner of the premises, has to be considered as landlord. Reliance in this regard has been placed on Shrimati Ram piari v. M/s Delhi Fruit Company 1980 Cur L.J. (Civil) 141. In the said case, one Shrimati Ram Piari filed an ejectment application seeking eviction of the tenant on a number of grounds. The case of the tenant was that the demised premises had been leased out to him by her son Surinder Kumar in the first instance and so he was the landlord and not his mother, Shrimati Ram Piari. According to the findings of the learned Judge, there was no dispute between the said Surinder Kumar and Shrimati Ram Piari, rather the ownership of the latter had been admitted by Surinder Kumar and that he had rented the premises on her behalf. In these circumstances. It was held that Shrimati Ram Piari was the owner and as such the landlord for the purposes of the Act. It was also held as under:

In a given case if there is dispute between the person who inducted the tenant and the person who claims himself to be the owner of the property, the Rent Controller may not decide this dispute under the Act and may refer the parties to the Civil Court, but in a case where there is no dispute between the person who inducted the

tenant originally and the real owner of the property, rather it is admitted by the person that he has rented out the premises on behalf of the owner and has been realising the rent on his behalf, then under these circumstances, it cannot be held that the owner is not the landlord of the property for the purposes of the Act .

Basing his entire case on the above conclusion, the case of the learned)

5. According to the deposition of Petitioner No 1, the demised premises belong to his father Petitioner No. 2, but the same had been given to him and it was he who had rented it out to the tenant-Respondent. In Shrimati Ram Piari's case (supra) Surinder Kumar, who had leased out the premises to the tenant had deposed that he had rented out the same as an agent of the owner, his mother. who had filed the eviction petition. In the present case, however, the demised premises were leased out by Petitioner No 1 not as an agent of Petitioner No. 2. but in his own right and no case is made out from any evidence that he acted as an agent of Petitioner No. 2 while leasing out the premises, in dispute . It was also the case of the tenant that the rent was also, being paid to him. Nor is there any dispute between the Petitioner I No. 1 and Petitioner No 2 regarding the ownership of the demised premises. Besides, in this very case Narula C J. held that Petitioner No. 1 was the landlord of the property in dispute and he was allowed to make requisite averments in the amended eviction petition. This finding with regard to the status of the Petitioners became final and cannot be reviewed at this stage. In these circumstances, the mere fact that the Petitioner No. 2 did not appear as a witness, nor was any evidence brought on the record to show that he required the premises for his personal occupation or that he had not vacated any other premises without sufficient cause, does not weaken the case of the landlord on this account.

6. This case can also be viewed from another angle. It has been specifically pleaded in paragraph 2 (2) of the eviction petition, that Petitioner No. 1, was a practising lawyer at Amritsar and has also to set up an independent residence and office in the demised premises. Even if Petitioner No. 2 were to be treated as a landlord for the purpose of the present eviction petition, he is entitled to get the premises, in dispute, vacated to enable his son, Petitioner No 1, to start practice as a lawyer u/s 13 (3) (a) (iv) and in this regard, under Sub-clauses (a) and (b) of Clause (iv) of Section 13 (3) (a), it was Petitioner No. 1, who was required to prove that he was not occupying any other building for use as his office, consulting room or residence, as the case may be, and has not vacated such a building without sufficient cause. In order to prove the ingredients of this provision, the statement of Petitioner No. 1 was sufficient and the failure on the part of Petitioner No. 2 to appear as a witness or to produce evidence regarding his own requirement does not make any difference.

7. Thus it is held that Petitioner No. 1 is entitled to be considered as a landlord for the purpose of eviction proceedings under the Act, and the Appellate Authority was in error in deciding the case as if he was himself not the landlord and had leased out the premises as an agent of Petitioner No. 2. From the statement of Petitioner No. 1

it has been satisfactorily proved that he does not own or possess any residential property in Amritsar and never vacated any residential accommodation in Amritsar

8. In view of the above, the revision petition is allowed, the order of the Appellate Authority is set aside and the order of ent(sic) Controller, Amritsar, dated May 3, 1977, regarding eviction is upheld. The tenant-Respondent may vacate the premises within three months. There will, however, be no order as to costs.

H L. S. (Revision petition allowed)