
Sudesh Kumari Vs Manager, Bank of Baroda and Others

Civil Revision No. 3005 of 1994

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 30, 1995

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 " Section 13(2)

Citation: (1995) 110 PLR 551 : (1995) 2 RCR(Rent) 277

Hon'ble Judges: G.S. Singhvi, J

Bench: Single Bench

Advocate: M.L. Sarin and Rahul Rathore, for the Appellant;

Final Decision: Dismissed

Judgement

G.S. Singhvi, J.

Having remained unsuccessful in persuading the Rent Controller, Amritsar, and the Learned Appellate Authority

(Additional District Judge), Amritsar to pass an order/decreed of eviction of the respondents from the tenanted premises on the ground of subletting,

the petitioners have filed this revision petition with the prayer that the order dated 14.5.1984 passed by the Rent Controller as well as the judgment

dated 4.4.1994 of the Appellate Authority, be set aside and the respondents be evicted from the premises in question.

2. Smt. Sudesh Kumari (since deceased), Smt. Kamla Khanna and Smt. Sarda Khanna, jointly filed an application u/s 13 of the East Punjab Rent

Restriction Act, 1949 (for short "the Act") for eviction of Manager, Bank of Baroda, Town Hall, Amritsar, on the ground of subletting.

Subsequently, respondents No. 2 and 3 were impleaded as respondents. The petitioners alleged that the premises i.e. No. 2761/1-24 situated at

Mahan Singh Gate, Amritsar, were let out to respondent No. 1 in February, 1971 on a monthly rent of Rs. 300/-. The tenancy was oral and it was

agreed by the respondents that it would not sublet or transfer the premises to any other parties or person without consent and permission of the

petitioners but Respondent No.1 had defaulted and had inducted third person in the premises. Respondent No. 1. did not file the written statement.

However, respondents No. 2 and 3 contested the petitioner by alleging that the premises in dispute were let out to them on a monthly rent of Rs.

250/- which was subsequently enhanced to Rs. 275/- and finally to Rs. 300/- per month. These respondents denied the allegations contained in the

petition that the premises were let out to the Bank and that the Bank was making the payment of rent. They pleaded that the rent was being

credited to the account of the petitioners after debiting the same from the accounts of respondents Nos. 2 and 3 as per their instructions. They

asserted that respondent No.1 never transferred lessee rights to any body because it had nothing to do with the disputed property except that some

goods which were pledged and hypothecated to the respondent-Bank were stored in the godown.

3. On the basis of the pleadings of the parties, four issues were framed by the Rent Controller which are reproduced below:-

1. Whether there exists relationship of landlord and tenant between the applicant and respt. No. 1? PPA.

2. If issue No. 1 is proved in affirmative, whether respondent No. 1 has sublet the property ?

3. Whether the application is liable to be stayed u/s 10/151 of C.P.C. in view of preliminary objection No. 1 ? OPR.

4. Relief:

The parties led their respective evidence. Thereafter the Rent Controller passed the order dated 14.5.1984 holding that respondents Nos. 2 and 3

were tenants of the petitioners and that the petitioners had failed to make out a case of subletting by respondent No. 1 in favour of respondents

Nos. 2 and 3. Against the order of the Rent Controller, the petitioners filed an appeal and that has been dismissed by the Appellate Authority vide

its judgment dated 4.4.1994.

The only argument advanced by Mr. M.L. Sarin, Senior Advocate appearing for the petitioners, is that the Courts below have not correctly

appreciated the evidence produced before them and they have failed to apply the principles of law in a correct perspective. Mr. Sarin argued that

once the landlords had proved the existence of the goods of the bank and key of godown was with the bank, subletting should have been

presumed and burden was on the respondents to prove that they had not sublet the tenanted premises without the consent of the landlords.

5. A careful reading of the orders passed by the Rent Controller, Amritsar and the Appellate Authority, Amritsar, show the neither of the

contentions of Mr. Sarin merits acceptance. The entire case set up by the petitioners before the Rent Controller was that the godown was leased

out to the Bank of Baroda and the Bank had sublet the same to respondents No. 2 and 3. The Rent Controller declined to believe the case set up

by the petitioners that they had let out the premises to the bank in the year 1971. It also took note of the fact that there was no document for

leasing out the premises to the bank and that the witness, who had appeared on behalf of the petitioners, was an officer of the Bank closely related

to the petitioners. The Rent Controller held that the rent was, in fact, paid out of the accounts of respondents Nos. 2 and 3. On the basis of

analysis of the evidence made to it, the Rent Controller held that the relationship of landlord and tenant did not exist between the petitioners and

respondent No. 1. Rather respondents No. 2 and 3 were the tenants. On that basis, the Rent Controller dismissed the application. The Appellate

Authority reappreciated the evidence and agreed with the findings recorded by the Rent Controller that there was no relationship of landlord and

tenant between the petitioners and the Bank and, in fact, the premises were let out to respondents Nos. 2 and 3.

6. Perusal of the impugned orders bring out the following striking features of the case:-

(i) the petition was filed by the petitioners against Manager, Bank of Baroda, with a plea that there exists relationship of landlord and tenant

between the petitioners and the Bank:

(ii) respondents Nos. 2 and 3 were not impleaded as parties to the eviction petition. They were added as respondents by an order dated

16.3.1981 of the Rent Controller after a stiff contest by the petitioners;

(iii) AW-1 Madan Mohan Sehgal, an Officer of the Bank, who appeared as a witness on behalf of the petitioners is closely related to the

petitioners;

(iv) Shri V.K. Malhotra and Shri B.R. Shah, two officers of the bank, who appeared as witnesses on behalf of respondents No. 2 and 3 have

clearly stated that transactions done on behalf of the bank are always in writing and any building can be taken on rent with the consent of the

respondent-bank and that the disputed premises were never taken by the bank from the petitioners. Shri B.R. Shah stated that he was posted as

Branch Manager at Town Hall Branch and there was no oral agreement between the bank and the petitioners for taking the premises on rent. He

specifically denied the suggestions that the bank took the godown on rent and possession thereof was delivered to the bank.

(v) Respondents No. 2 & 3 had a Cash Credit Limit with the bank and the amount was deposited in the account of the petitioners by debiting the

same from the accounts of respondents Nos. 2 and 3.

(vi) Originally the petitioners did not raise a plea of tenancy between them on the one hand and respondents Nos. 2 & 3 on the other hand. They

did not plead that the premises were sublet by the respondents Nos. 2 & 3 to respondent No. 1. Only at the appellate stage the petitioners

amended their petition and raised the plea of subletting of the premises by respondents Nos. 2 and 3 in favour of respondent No.1.

7. Both, the Rent Controller and the Appellate Authority, have rightly taken into account these points while recording a conclusion that the

petitioners have failed to establish their case of leasing out the disputed premises in favour of the bank and subletting by the bank.

8. Similarly the findings recorded by the Appellate Authority on the additional issue do not suffer from any error. In para 12 of its judgment, the

Appellate Authority has taken note of the shift in the stand of the petitioners, namely, that the property was leased out to respondents Nos. 2 and 3

and they had sublet the premises to respondent No. 1. The Appellate Authority took notice of the law laid down by the Supreme Court in Dipak

Banerjee Vs. Lilabati Chakraborty, and after analysing the evidence on the issue of subletting, held as under :-

So from the law laid down by the Apex Court, the tenant must have the elusive right or possession or interest in the premises or part of the

premises in question. Secondly, the right must be in lieu of the payment of some compensation or rent, but these two ingredients must exist. If one

of the ingredients is missing, then sub-tenancy cannot be proved. The respondents Nos. 2 and 3 have admitted that they are direct tenants under

the appellants. The rate of rent has also not been disputed. The respondent No. 1 is a Nationalised Bank. Mr. B.R. Shah CRW-1 was the

Manager of the bank. He has specifically denied of taking the premises in dispute on rent from the appellants or from the respondents No. 2 and 3.

The case put forth by respondent Nos. 2 and 3 is that they had availed cash credit limit from respondent No. 1 and they have

pledged/hypothecated the goods with respondent No.1 which account has also been cleared and respondent Nos. 2 and 3 are in actual control and

possession of the godown in question. There are number of documents on the record which proved the contention of respondent nos. 2 and 3 that

they had remained in possession of the property and they had not parted with the possession at any stage. The respondent no. 1 had issued notices

Ex.R3 and R.4 to the respondent nos. 2 and 3 in which it was mentioned that the godown situated at Mahan Singh Road, Amritsar has been

occupied by respondent nos. 2 and 3 and the appellants were disputing the tenancy right of respondent nos. 2 and 3 and the bank respondent nos.

1 requested them to produce the documents relating to their possession. The respondent nos. 2 and 3 gave replies to the bank vide Ex.R12 and

Ex.R13 in which it was mentioned that rent is debited from the account of respondent nos. 2 and 3 through the bank. The bank again issued other

notices to the respondent nos. 2 and 3 vide Ex.R5 and Ex. R6 in which it has been mentioned that there is a controversy of the respondent with

their landlords over the tenancy right and they have filed a suit in the competent Court for ejectment. These notices are dt. 21.11.19. The bank

called upon respondent no. 2 and 3 to arrange the shifting of the stock in any other secured premises godown within two days. These notices are

the clinture in this case. If the respondent no. 1 would have been sub-tenant of respondent Nos. 2 and 3, then the respondent no. 1 would not have

asked the respondent nos. 2 and 3 shift the stock of their godown, to any other secured premises. If they fail then the bank will not be liable for

any loss or damage caused to the goods or stock lying in the said premises. The respondent nos. 2 and 3 filed replies to these notices vide Ex.R14,

in which it was pleaded that the landlord of the godown was pressurising the respondent nos. 2 and 3 tenants for further enhancement of the rent

since the tenant did not agree to such illegal and unjust demand. He in collusion and conspiracy with Mr. M.M. Sehgal a staff member/officer of the

said bank is very close relation of landladies or planning to illegally dispossess the tenants. The reply has been given through Shri P.C. Grover,

Advocate to Shri Kewal Khanna through whom the bank served notices Ex.P5 and Ex.P6. He had replied that the demand of his client for

arranging another godown is likewise is a link of the same chain to help the landladies in securing the dis-possession of his client from the godown

in question. Vinod Kumar Malhotra-RW1 deposed in his statement that he has standing instructions vide which 50% of the rent is to be paid from

the account of Darshan Textile which is credited in the joint account of the appellants. Counsel for the appellants contended that there could be no

oral instruction for the debiting of the amount from the account of any depositor or crediting the same in the account of the appellants/applicants.

The Appellate Authority further observed as under :-

From the statement of Amar Nath, attorney of the appellants, it is crystal clear that bank cannot into a transaction without a resolution of the bank

and approved by the higher authorities. No such resolution has been brought on the record to show that bank has taken on lease the demised

premises from respondent Nos. 2 and 3 are the bank has paid any rent to them. Rather from the statement of Amar Nath AW4, it is clear that the

demised premises is in possession of respondent nos. 2 and 3. The respondent has examined Vinod Kumar Malhotra, officer of the bank. He has

deposed that bank has never taken on rent the demised premises nor he paid any rent. He has further deposed that respondent nos. 2 and had a

cash credit limit account with them and they have hypothecated and pledged the goods with them.

9. The above quoted findings of the Appellate Authority are based on an analytical appreciation of evidence produced by both the parties and

there is no error in the conclusion recorded by the Appellate Authority.

10. For proving that respondents Nos. 2 and 3 had parted with possession, the burden lays upon the petitioners and since they have failed to

produce any evidence to show that respondents Nos. 2 and 3 had, at any point of time, given away exclusive possession of the premises to the

bank, there can be no justification in accepting the contention of Mr. Sarin that subletting should have been presumed by the mere fact that the

goods belonging to respondents Nos. 2 and 3 were under the control of the bank. Action of the bank in calling upon respondents No. 2 and 3 to

shift their goods clearly establishes that the exclusive right of possession over the disputed premises was not with the bank. Rather, the disputed

property was under the control of respondents Nos. 2 and 3. In Dipak Banerjee"s case (supra), the Supreme Court laid down the following

principles of law:-

In order to prove tenancy or sub tenancy two ingredients had to be established, firstly the tenant must have exclusive right of possession or interest

in the premises or part of the premises in question and secondly that right must be in lieu of payment of some compensation or rent.

11. In Nihal Chand Rameshwar Dass and Another Vs. Vinod Rastogi and Others, on which reliance has been placed by Mr. Sarin, the Supreme

Court upheld the findings of fact recorded by the First Appellate Authority and the High Court on the question of subletting. The Supreme Court

relied on the observations made in Rajbir Kaur and Another Vs. S. Chokesiri and Co., , held that where exclusive possession is established, the

transaction will be presumed to have been entered for monetary consideration having regard to the ordinary course of human conduct. This

authority has no bearing to the facts of this case because the petitioners have failed to prove exclusive possession of the bank over the disputed

premises. Similarly, judgment of this Court in Karam Chand Chuni Lal Vs. Smt. Pista Devi and Others, does not in any manner help the case of the

petitioners. In that case, the Court held that finding of fact recorded by the Appellate Authority was based on a correct appreciation of evidence

and does not call for interference. A careful reading of this judgment shows that the learned Judge had agreed with the Appellate Authority that the

exclusive possession of the property was with the bank.

12. In the present case the petitioners set up a patently frivolous case of leasing out the premises to the Bank and subletting by the respondent -

Bank to respondents Nos. 2 and 3. The deliberately did not implead the respondent Nos. 2 and 3 as parties to the eviction petition. They even

manipulated evidence of Madan Mohan Sehgal who was their close relative. If the respondents had not been vigilant and not produced two Bank

Officers Shri V.K. Malhotra and Shri B.R. Shah the petitioners may have succeeded in persuading the Rent Controller to pass an order of eviction

the basis of tainted evidence. However, when the petitioners realised that their concocted story of leasing out the premises to the respondent Bank

and subletting by the Bank has fallen flat, they changed the case in reversed gear and raised plea of subletting by the respondent Nos. 2 and 3 to

the respondent-Bank. The Appellate Authority has made a careful evaluation of evidence for recording a finding that possession of the property

continued to be with the respondent Nos. 2 and 3 and that the respondent Bank was not having exclusive possession of the demised premises. In

the back ground of this case the findings of the Appellate Authority can neither be termed as perverse nor can it be described as unjust. In my

considered view contumacious conduct of the petitioners is sufficient to discredit their case.

13. For the reasons mentioned above, the revision petition is held to be without substance and is, therefore, dismissed.