

(2009) 11 P&H CK 0150

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 6285 of 2009 (O and M)

Jaswant Singh and Another

APPELLANT

Vs

Gurbax Singh and Another

RESPONDENT

Date of Decision: Nov. 5, 2009

Acts Referred:

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

Citation: (2010) 1 RCR(Rent) 90

Hon'ble Judges: Surya Kant, J

Bench: Single Bench

Advocate: Anil Chawla, for the Appellant; B.R. Mahajan, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Surya Kant, J.

This revision petition is directed by the tenants against the eviction order dated 10.01.2006 passed by the Rent Controller, Amritsar, which has been further upheld by the Appellate Authority, Amritsar, vide its impugned judgment dated 21.08.2009.

2. The facts may be noticed briefly.

3. The petitioner No.2 is a proprietorship firm whereas petitioner No.1 is its proprietor. Petitioner No.2 through petitioner No.1 was inducted as a tenant in the demised premises comprising a shop situate at Sultanwind Road, Gobind Nagar, Amritsar, by the respondent-landlords vide Rent Note dated 24.07.1990. The said property was purchased by the respondents (husband & wife) vide two different sale deeds dated 28.03.1989.

4. The respondents filed the present eviction petition u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short "the Act"), seeking ejectment of the petitioners from the demised shop, inter-alia, on the grounds that : (i) material

alterations have been made in the demised-shop thereby impairing its value and utility; (ii) the demised premises is required by the first respondent for his personal use and occupation as after retirement from the Punjab State Electricity Board in the year 1996, he wants to start his own business of sale of electric goods about which he possesses sufficient knowledge, and (iii) the demised premises has become unfit and unsafe for human habitation.

5. The petitioners contested the eviction petition and raised a preliminary objection that the respondents have not approached the Court with clean hands; have suppressed the truth and the eviction petition has been filed with an ulterior motive to put pressure on the petitioners to increase the rent. The petitioners further alleged that the respondents have already two shops in their possession and in between these two shops, there is a Deohri which is being used for ingress and outgress to the rear part of the building and thus, there is sufficient accommodation available with the respondents to start the proposed business. The allegations of impairment of value and utility of the demised premises or that the demised premises has become unfit and unsafe for human habitation, were also denied.

6. Both the parties led oral as well as documentary evidence in support of their respective pleas. On consideration thereof, the Rent Controller, Amritsar, answered Issue No.3, namely, whether the demised premises is required by the respondents for their personal use and occupation? in favour of the respondent- landlords, whereas the issue regarding impairment of value and utility of the demised premises was decided in favour of the petitioner-tenants. Based upon the findings against issue No.3, the eviction petition was allowed by the Rent Controller, Amritsar.

7. The petitioners went in appeal which has been turned down by the Appellate Authority, Amritsar, vide the impugned order dated 21.08.2009 after holding that the demised premises is required by respondent No.1 for his own use and occupation, namely, to start the business of sale of electric goods.

8. Aggrieved, the petitioner-tenants have approached this Court. The respondent-landlords are also on Caveat.

9. Counsel for the parties have been heard and some of the exhibited documents/photographs as well as the pleadings referred to by counsel for the parties during the course of hearing have been perused alongwith the impugned orders.

10. The bone of contention between the parties revolves around the plea of bona fide personal necessity for the shop in dispute as pleaded by the respondents. While the case of respondent No 1. is that after his retirement from the Punjab State Electricity Board in May, 1996, he needs the demised premises to start the business of sale of electric goods for which he possesses sufficient knowledge, the petitioners contest the said claim by alleging that the respondents are already in possession of

the sufficient accommodation to start the business, if any.

11. The evidence on record, including the photographs (Ex.AW2/1 to Ex.AW2/5), site plan (Ex.AW3/1), inspection report (Ex.AW3/A), coupled with the oral testimonies of Kirpal Singh AW1, Satpal, Draftsman AW3, Manmohan Singh AW4, Harbans Singh AW5, as well as of the first respondent AW6, clearly reveal that the entire length of the front portion of the building abutting the main road, is 20 ft. out of which the width of the Deohri is 4x7 ft. which is admittedly being used as passage for ingress and outgress to the residential portion constructed on the rear side of the plot. After excluding the area utilized for the aforesaid passage (Deohri), the left out length of the building abutting the main road remains about 15 ft. in which two shops have been constructed, Admittedly, one shop is occupied by the son of the respondent-landlords who was earlier running the "Ruby Medical Store" which has now been converted into "Ruby Juice Bar". The left out second shop is let out to the petitioner-tenants. There is, thus, no third shop as sought to be projected by the petitioners.

12. The petitioners have made strenuous efforts to prove that there were three shops and that one shop was subsequently dismantled and merged into the shop occupied by the son of the respondent-landlords. However, the evidence on record coupled with the total width of the building abutting the main road, falsifies this plea. The Courts below have also concurrently concluded that after excluding the passage (Deohri), only two shops are there out of which one is occupied by the tenants (petitioners) and the other one is in occupation of the son of the respondent-landlords.

13. There is not an iota of evidence led by the petitioner-tenants to suggest that there is any other commercial property owned by the respondents within the urban area of Amritsar or they have vacated or let out any other shop after the retirement of the first respondent from service or even prior thereto.

14. It is also not in dispute that respondent No.1 was in service of the Punjab State Electricity Board and has retired on superannuation. Both the respondents (husband and wife) being the co-owners, have jointly filed the eviction petition with a specific plea that the demised premises is required by respondent No.1 to start the business of sale of electric goods as he has got sufficient knowledge of these electric goods while in service. The bona fide of the personal need pleaded by respondent No.1 is, therefore, unquestionable. In these circumstances, the findings returned by the Courts below against Issue No.3, namely, whether the demised premises is required by the respondents for their personal use and occupation, warrants no interference by this Court in exercise of its revisional jurisdiction, especially when no case of perversity in findings or misreading of evidence on record by the Courts below, is made out.

15. Counsel for the petitioner-tenants vehemently argues that the second respondent has not filed her affidavit nor she entered in the witness box to support the alleged personal necessity of respondent No.1 and that there are no specific pleadings to the effect that the respondents have not got vacated any shop after the commencement of the 1949 Act.

16. Learned counsel also urged that the respondents ought to have specified that the area of the shop occupied by their son is wholly insufficient for the start of the new-business by respondent No.1.

17. In my considered view, all the contentions merit rejection. The eviction petition has been filed by both the respondents jointly being husband and wife. It is their jointly pleaded case that respondent No.1 has retired from service of Punjab State Electricity Board on superannuation and requires the shop to start the business of sale of electric goods. The averments made to this effect in the eviction petition are for and on behalf of both the respondents. The first respondent did enter into the witness box AW6 and deposed in support of his plea. There was no legal necessity for respondent No.2 also to depose and replicate the oral version. Similarly, non-mentioning of insufficiency of the space in the accommodation occupied by the respondents' son, is totally inconsequential and has no bearing on the issue involved. It is the conceded position that the son of the respondents is now running the "Ruby Juice Bar" in the shop occupied by him and the same cannot be obviously used for the sale of electric goods by respondent No.1.

18. For the reasons afore-stated, I not find any merit in this revision! petition. The same is accordingly dismissed.

19. However, taking into consideration the fact that the petitioners are required to make some alternative arrangement to shift their business, it is directed that they may retain the possession of the demised premises till 31.01.2010, on payment of monthly rent by 10th of each calendar month.