Amar Nath Vs Guru Ramdass Textile Mills (Paul Silk Industries) and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 6, 2001

Acts Referred: East Punjab Urban Rent Restriction Act, 1949 â€" Section 13, 13(2), 15

Citation: (2002) 1 CivCC 621 : (2002) 1 RCR(Rent) 595

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: B.S. Bhalla, for the Appellant; Sweena Pannu, for the Respondent

Final Decision: Dismissed

Judgement

R.L. Anand, J.
This is a landlord"s revision and has been directed against the order dated 7.8.1982 passed by the appellate authority,

Amritsar, who affirmed the order dated 25.7.1979 passed by the Rent Controller, Amritsar and dismissed the appeal of the petitioner-landlord.

The Rent Controller had dismissed the petition u/s 13 of the Rent Restriction Act filed by Sh. Amar Nath seeking the eviction of the respondents

on various grounds.

2. The brief facts of the case are that the premises fully described in para No. 1 of the ejectment application were taken on rent by respondent No.

1 M/s Guru Ram Dass Textiles Mills through Sh. Pritpal Singh son of Sh. Ganga Singh on 27.12.1968 at a monthly rent of Rs. 150/- for a fixed

period of 11 months on the terms and conditions incorporated in the rent note dated 27.12.1968. It was pleaded by the landlord that respondent

No. 1 had violated the terms of tenancy by not making regular payments of each month and as such it resulted in the forfeiture of the tenancy and

that it also stood terminated by efflux of time. Though the notice for terminating the tenancy was not necessary but with a view to avoid any

complication a registered notice dated 16.6.76 was served upon respondent No.1. The notice was also affixed on the tenancy unit as well as on

the residential house of the tenant. The landlord sought the ejectment of the respondents No. 1 and 2 on the ground that respondent No. 1 has not

paid the arrears of rent with effect from 1.1.1976 onwards. He had sub-let the premises by parting the possession of a part of the tenancy to

respondent No-2 M/s MM. Weaving Factory through Smt. Amarjit Kaur wife of Kirpal Singh without his written consent. The sub-tenant is in

complete possession of half of the tenancy unit. It has been partitioned into two portions by raising a wall. The third ground for ejectment was that

the tenant has changed the user of the property. The tenancy was created for running a cloth business but its half portion is now being used as

poultry farm business and for storing the poultry feed and other articles connected with the business.

3. The next ground for ejectment was that respondent No.1 had committed such acts with respect to the demised premises that through those acts

the value and utility of the property has been diminished. A partition wall has been raised by the tenant. The floor, walls and doors have been

damaged. The meter connection has been disconnected due to his fault. It was also pleaded by the landlord that respondent had ceased to occupy

the demised premises for a continuous period of two years before filing the ejectment petition without sufficient cause. He had ceased to occupy

the premises since April, 1975.

4. Notice of the ejectment petition was given to the respondents. Respondent No .2 did not contest the rent application and was proceeded ex

parte. Respondent No. 1 contested the ejectment application and he denied the allegations. According to him, the premises were taken on rent for

doing every sort of business and it was not taken for a specific purpose of carrying the cloth business. He is carrying the cloth manufacturing

business and has installed huge machinery in the said premises. The machinery could not be dismantled without the prior permission of the State

Government. It was also pleaded by respondent No. 1 that present application has been filed in collusion with respondent No. 2. He had never

ceased to occupy the premises. He is regularly carrying on his business. During the period of disconnection of electricity, he was running his factory

with the aid of diesel engine. Respondent No. 1 also pleaded that he had business dealing with respondent No. 2 through Amarjit Kaur.

5. The petitioner filed the rejoinder and denied the allegations of respondent No. 1.

6. From the pleadings of the parties, the learned Rent Controller framed the following issues:-

1. Whether the present application is not maintainable in view of the objections taken in para No. 1 of the preliminary objections? OPR

2. Whether the demised premises were taken for the purposes of carrying on cloth business?OPA

3. Whether the respondent has gone into arrears of rent? OPA

4. Whether the respondent has sublet or assigned lessee rights to respondent No. 2 without the written consent of the applicant? OPA

5. Whether the respondent has changed the user of the premises in dispute? OPA

6. Whether the respondent is guilty of such act and conduct whereby he has diminished materially the value and utility of the premises in dispute?

OPA.

7. Whether respondent No. 1 has ceased to occupy the tenancy unit for more than two years? OPA

7-A Whether no notice was necessary for terminating the tenancy of the respondent before filing the present application? OPA

7-B If issue No. 1 is not proved whether the applicant served a legal and valid notice upon the respondent before filing the application if not what

is its effect? OPA

8. Relief.

7. The parties were given the chance to lead evidence and on the conclusion of the proceedings, learned Rent Controller vide order dated

25.7.1979 dismissed the ejectment petition.

8. Aggrieved by the order of the learned Rent Controller, the landlord filed the appeal u/s 15 of the Rent Restriction Act before the appellate

authority and for the reasons given in paras No. 9 to 11 of its order the appellate authority dismissed the appeal. Paras No. 9 to 11 of the order of

the appellate authority are reproduced as under:-""9. It is argued by the learned counsel for the appellant that it is admitted case of the respondent

that demised premises were taken on rent only for running cloth business and it is his case that machinery had been installed in the demised

premises which are being used for the manufacturing purposes. It was maintained that in view of the admission of the respondent no other finding

except that demised premises were being used for a purposes other than the one for which it was let out. It was further argued that learned Rent

Controller altogether misled to notice the terms of tenancy orally settled as well as contained in the rent note Ex.A/1 which clearly go to show that

the demised premises were taken only for running cloth business. The arguments are without any force. It is not disputed by the respondent that

demises premises were taken on rent on the terms and conditions contained in rent note dated 27.12.1966 Ex.A./1. On the face of written rent

note the terms of tenancy, if any, alleged to have been orally settled cannot be taken into consideration from the terms contained in rent note it is

clear that demises premises were rented out to the respondent for running business of any kind. There is nothing to show that the premises were

rented out for any specific purpose. The case of the respondent is that he is running the business of cloth manufacturing and is engaged in business

of cloth. The learned counsel for the appellant by arguing stated that cloth business does not include the business of manufacturing cloth, has tried

to show that the respondent has changed the user of the demised premises and that on that score he is liable to ejectment. But the learned counsel

has not been able to show that terms ""business"" does not include manufacturing goods. Therefore, that contention is also not sustainable. The

evidence available on the record is not of such a nature from which even an inference may be drawn that the premises were not rented out for the

business of manufacturing the cloth. There is no rebuttal to the cogent evidence adduced by the respondent that he is carrying on business of cloth

manufacturing which according to the terms of the tenancy contained in the rent note falls within the ambit of any business.

9. The learned counsel led me through the evidence, and argued that it is clearly established that premises were sub let to respondent No. 2 by

respondent No. 1. It was pointed out that it is admitted by the respondent No. 1 that cheques were received from respondent No. 2, but at the

trial respondent No. 1 changed his position by stating that the said cheques related to the business transaction between him and respondent No. 2

but the respondent did not produce his account books in support of the stand taken by him, therefore, adverse reference should have been drawn

by the learned Rent Controller. The main grievance of the learned counsel that the independent and trust-worthy evidence of the landlord was

brushed aside by the learned Rent Controller, without sufficient reasons, is without substance. There is no force in this contention either. It is, no

doubt, well settled that agreement of sub-tenancy between the landlord and sub lessee are not entered into in the presence of landlord and efforts

are generally made by the parties to such agreement to conceal the same from the landlord. Therefore, it is not possible for the landlord to produce

the lease deeds between those parties or to produce any oral evidence to that effect and the landlord seeking ejectment of the respondent on the

ground of sub-letting is required to bring on record such circumstances from which a strong inference may be drawn that premises were sub let by

the tenant. But still the initial onus to prove sub letting, is always on the landlord and in order to succeed he is required to show the exclusive

possession and control of the tenanted premises was transferred to the sub-tenant a careful consideration of the evidence would show that in the

present case, the landlord has not been able to discharge the initial onus. It was stated by Amar Nath appellant while appearing as AW2 that shed

was partitioned and some portion of it was rented out to M/s. M.M. Weaving Factory by the respondent No. 1 that leased portion is half of the

shed and is in possession of M/s. M.M. Weaving Factory which is owned by Amarjit Kaur wife of Kirpal Singh. She has been paying rent to the

respondent through cheques. It is significant to note that it was so stated by him on the information supplied to him by one Manjit Singh and by the

persons of locality. It was admitted by him that the premises was not rented out to M.M, Weaving Factory in his presence according to him Manjit

Singh Incharge of the factory had told him that he had taken that premises on rent. It is, therefore, clear that what has been stated by Amar Nath

appellant is no better that hear say as such no reliance can be placed on it. A careful perusal of the evidence of Behari Lal AW4 would show that it

is also not of any help to the appellant. It was admitted by him that this shed was never opened or closed in his presence by Manjit Singh. He has

no dealing with M/s M.M. Weaving Factory. He has further stated that he is ignorant about the ownership of the power looms or as to by whom

those were worked. According to him, shed was neither rented out to this factory in his presence nor any rent was paid in his presence. It am of

the considered view that no reliance can be placed on the evidence of Behari Lal, in the absence of any other evidence of convincing nature. From

the mere fact that a few payments were received from M/s M.M. Weaving Factory through cheques cannot be considered a conclusive proof of

sub letting especially when the case of respondent No. 1 is that he had business dealings with M/s M.M. Weaving factory to which there is no

rebuttal and the cheques also do not indicate that these were issued towards the payment of rent if any. If the appellant-applicant was very much

sure about the sub-letting, he could very well get the account books of M/s. M.M. Weaving Factory produced to show that they had been paying

the rent to respondent No. 1 or any other documentary evidence showing that M/s M.M. Weaving Factory was installed in the premises in dispute

as sub-lessee by respondent No. 1. But the appellant does not appear to have taken step in that direction. In view of the evidence discussed

above, there is no option but to record that the landlord appellant has not been able to discharge the initial onus for proving the sub-tenancy.

10. Placing much reliance on the evidence of Harbans Singh Engineer (AW-3) his report Ex.A.11 and the site plan of the demised premises Ex.A.

12, prepared by him, it was argued by the learned counsel that it is established, that numerous acts of diminishing the value and utility of the

demised premises have been proved on the record but the same was not well appreciated by the learned Rent Controller. He further contended

that the evidence provided by Harbans Singh Engineer is further supported by Bihari Lal AW, who has also stated that a partition wall is

constructed in the shed in dispute. It is pertinent to note that Shri S.C. Vermani Engineer, was also examined as RW5 by respondent No. 1 and he

also proved his report Ex.PW5/A. A careful scanning of the evidence of Harbans Singh and S.C.C. Vermani, both Engineers, and their reports

would show that they have given reports in favour of their respective clients and have come only to depose in their favour. Therefore, their

evidence does carry with it much significance and no reliance can be placed on the same. The witnesses examined by respondent No. 1 have

categorically stated that Harbans Singh Engineer, did not visit the demised premises. Besides the bare statement of Amar Nath (AW-2) appellant

himself stated that respondent has constructed a partition wall in the shed and some portion of it has been let out to M/s M.M. Weaving Factory

by the respondent and in the other portion, the respondent tethered his cattle and has stored poultry feed and he has damaged the walls, floors and

stairs. There is no other evidence to show that the respondent No. 1 is guilty of such an act and conduct whereby he has materially diminished the

value and utility of the premises in dispute. I am of the considered view that in order to arrive at a just conclusion in respect of that aspect of the

case, the nature of the business carried on in the rented premises has also to be kept in view. In view of the fact that respondent No. 1 is engaged

in the business of cloth manufacturing the incidential damage to the property which is expected to because in the natural course has to be ignored.

The appellant has made grievance that when the shed was rented out to the respondent it was provided with two electric connections, one for the

light and the other for ten horse-power motor and now those connections stand disconnected. 1 am of the view that mere disconnection of electric

connections cannot be considered such an act or conduct which may materially diminish the value and utility of the demises premises as the electric

connection can at any time be obtained by moving to the concerned authorities. As the change of source of power cannot be considered as a valid

ground for ejectment of the respondent.

11. It was next argued by the learned counsel for the appellant by making reference to the statement of Amar Nath AW2, Meter Reader Clerk

Gopal Nagar, Amritsar and to the photo stat copy Ex.RWS/A of the reading book regarding the electricity meter that it is clearly established that

the respondent ceased to occupy the premises in dispute. To vigorise his contention, he pointed out that no evidence has been produced by the

respondent to show that any diesel oil for the engine to run his factory and that the respondent failed to produce his account books to show that he

was having any income from the factory. According to the learned counsel the income tax returns were manipulated by the respondent with a view

to avoid his ejectment. I do not find any substance in this contention of the learned counsel. Initial onus to prove that the tenant has ceased to

occupy the demised premises is on the landlord and in order to discharge that onus he has to prove that the tenant is not in possession or control of

the demised premises for a period of not less than four months. But in the instant case there is nothing on the record to show that the machinery

installed in the demised premises was removed by the respondent No. 1 at any point of time and that the premises are lying in abandoned state

without ostensible control over the same. In View of the evidence available on record, it is difficult to conclude that respondent No. 1 ceased to

occupy the tenancy unit for more than 2 years as alleged by the appellant"".

9. Still, not satisfied with the orders of the Courts below the present revision has been filed by the petitioner-landlord.

10. I have heard Shri B.S. Bhalla, learned counsel, appearing on behalf, of the petitioner-landlord and Ms Sweena Pannu, learned counsel

appearing on behalf of the respondent-tenant and with their assistance have gone through the record of this ease.

11. It was submitted on behalf of the petitioner that it is proved on the record that respondent No. 1 had changed the user of the property. The

property was let out for running the cloth business but in violation of the alleged terms of tenancy, the respondent No. 1 had installed machinery in

the demised premises. It has become a manufacturing unit and, therefore, it is a violation of the agreement itself.

12. There is no merit in the contention raised by the learned counsel for the petitioner. The tenancy in this case was written one. Ex.A.1 is the rent

note on the record. Clause 7 of the rent note is very material for my purpose which I have gone through very carefully. The rent note is in Urdu

script and the translation of the Clause 7 runs as follows:-

In the shed, I would be entitled to do the business of any kind"".

13. Thus, it will be wrong to say on the part of the landlord that the purpose of the tenancy was specific for running the cloth business. Rather the

intention of the parties was that the tenant could do any type of business permissible under the law. In these circumstances, there is no difficulty on

my part to repel the first contention of the learned counsel for the petitioner. Also, there is no evidence on the record to show that at the start of the

tenancy, respondent No. 1 was doing the business of selling cloth or that he subsequently changed the user of the property. The word ""business

used in the rent note is of widest import and it will also include all types of manufacturing of the goods.

14. The second contention raised by the learned counsel for the petitioner is that respondent No. 1 had sub-let the premises to respondent No. 2

where respondent No. 2 had installed his own factory. It was also submitted on behalf of the petitioner that respondent No. 2 did not give the

contest to the allegations of the petitioner in the trial Court, therefore, it has to be presumed that respondent No. 2 was a sub-tenant. This argument

cannot be accepted. It is for the landlord to prove the sub-tenancy independently that respondent No. 1 had parted the possession in a legal

manner to respondent No. 2 and that respondent No. 2 is occupying the-premises or part thereof in his own right. The case set up by respondent

No. 1 in the trial Court was that respondent No. 2 is colluding with the petitioner and moreover, he had business dealings with respondent No. 2

but the legal possession always remained with him.

15. It was also argued by the learned counsel for the petitioner that respondent No. 1 has admitted that he received certain cheques from

respondent No. 2. Respondent No. 1 has not produced his account-books in the trial court, therefore, the adverse inference should not be drawn

against the petitioner. The learned counsel for the petitioner has also referred to the statement of AW2 who deposed that in part of the rented

premises, M/s M.M. Weaving factory is doing the business. The submission of the counsel for the petitioner again cannot be accepted; firstly, as

per statement of the petitioner himself the premises were not let out to M/s M.M. Weaving factory, secondly the source of information of the

landlord is one Shri Manjit Singh, the alleged incharge of the factory. Shri Manjit Singh has not appeared in the witnesses-box. Thus, the

information derived by the petitioner is hear-say. Had M.M. Factory was doing the business in part of the premises, it was very easy for the

landlord to prove that respondent No. 2 had a separate electric connection as this type of evidence would be the best evidence. The landlord

could also produce the postman to show that he had been delivering the Dak of M/s M.M. Weaving factory in this very premises.

16. The stand of respondent No. 1 was that respondent No. 2 was his dealer and he had business dealings with him. In these circumstances, if

some payment has been made by M/s M.M. Weaving Factory it does not mean that M.M. Weaving factory is making that payment towards rent.

No neighbour has been examined from which it can be established mat M/s. M.M. Weaving factory has an independent and complete control over

the part of the demised premises. The landlord could also summon the account-books of M/s M.M.Weaving factory to establish the alleged

relationship of sub-tenancy between respondents No. 1 and 2.

17. The next argument raised by the teamed counsel for the petitioner was that it stands proved from Ex.AW5/A that respondent No. 1 has

ceased to occupy the demised premises. It was also submitted that the case set up by the tenant was that with the disconnection of the electricity

connection he had been running his factory with the help of diesel engine but no voucher regarding the purchase of diesel has been produced by

respondent No. 1 has ceased to occupy the premises. The submission of the learned counsel for the appellant cannot be accepted. In order to

prove ""ceased to occupy"" two factors are necessary to be proved firstly the actual lose of control of the premises and secondly that this lose of

control was with the intention to abandon the tenancy rights from the said premises. Mere closure of a business for some period cannot be termed

with ""ceased to occupy"". Initial onus is upon the landlord that tenant has ceased to occupy the demised premises. In the present case, it has not

been established that tenant had removed the machinery which was installed in the demised premises or that he had started doing business

somewhere else. So long he had the control over the demised premises it will be difficult for me to say that tenant has ceased to occupy the

demised premises.

18. Last submission raised by the learned counsel for the petitioner was that it is also established on the record that the premises have become

unsafe and unfit for human habitation. In support of his contention he has invited my attention to the statement of Shri Harbans Singh who appeared

as AW3 and proved his report Ex.A. 11 and the site plan Ex.A.12. He also referred to the statement of one Shri Behari Lal who deposed that a

partition wall has been constructed in the shed in dispute. Every alteration made by the tenant will not be considered the material alteration. In

order to succeed on this ground it has to be proved on the record by the landlord that the alleged alteration is material vide which the value or

utility of the property has been diminished to a considerable amount. If the alleged construction is a minor one and can be removed by spending

few rupees, that alleged construction will not be considered as material alteration in the value or utility of the property which is the ground of

ejectment in the Rent Restriction Act. As against the statement of Shri Harbans Singh, the respondent has also examined Shri S.C. Vermani

Engineer who proved his report Ex.PW5/A. The reading of this report will controvert the evidence led by the landlord. There is no evidence to

corroborate the alleged construction of the wall. Even if it is assumed for the sake of argument that there was some construction, till it is established

hat the said construction has gone to the extent of violating the very nature of the premises, no case for eviction is made out.

19. We are dealing with a case of revision. When there is a concurrent finding of fact based on the proper appreciation of evidence, the High

Court will not interfere in these findings as held by the Hon''ble Supreme Court in Rajbir Kaur and Another Vs. S. Chokesiri and Co., It was also

held in this very judgment that in order to raise a presumption of sub-tenancy, it is necessary to prove that exclusive possession of the demised

premises or part thereof has been that of the sub-tenant. The ingredient of the sub-tenancy is missing in this case. Again it was observed in 1996(1)

RCR 342. Goyal Parkash v. Som Nath and Ors. by the Hon''ble Supreme Court that concurrent finding of fact given by the Rent Controller and

the appellate authority, should not be disturbed by the High Court and that the High Court is not entitled to re-appraise the entire evidence. In

1998 94 P.L.R. 699 , Om Pal v. Anand Swamp the Hon''ble Supreme Court while dealing with a case of Rent Restriction Act from Punjab has

held in para No.9 of the judgment that the intention of the Legislature was that only those constructions which brought about a substantial change in

the front and structure of the building, that would provide a ground for tenant''s eviction and, therefore, every case should be used to interpret the

word ""materially"" which has been used by the legislature in the Act in section 13.

20. Reliance was also placed on behalf of the respondent on Bhupinder Singh and Another Vs. J.L. Kapoor and Another, a judgment of DB of

this Court in which it was held that the word ""impair material by the value or utility"" of the property has to be considered as having a definite

meaning and connotation as accepted from lime immemorial. The counsel for the respondent has also supplemented her argument by relying upon

Om Prakash Vs. Amar Singh and Others, and submitted that every change in the premises is not to be treated as materially impairment of the value

or utility of the property. Reliance was also placed on Ranbir Bhatia Vs. Kashmiri Lal, and Subhash Chander Vs. Valayati Ram, and it was

submitted from the side of the respondent that it is the duty of the landlord to prove as a fact that alterations made by the tenant had materially

impaired the value or utility of the property by leading cogent evidence. In the present case none of the grounds complained of has been proved by

the landlord. The concurrent finding of fact based on appreciation of evidence cannot be disturbed in the revision. There is no error of jurisdiction.

21. Resultantly, there is no merit in this revision filed by the landlord. The same is hereby dismissed with no order as to costs.