

Vijay Kumar Vs Lata Sharma and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 26, 2008

Acts Referred: East Punjab Urban Rent Restriction Act, 1949 " Section 13(3)

Citation: (2009) 2 RCR(Rent) 371

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Advocate: Arun Jain with Mr. Amit Jain, for the Appellant;

Final Decision: Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.

The present revision petition has been filed by Vijay Kumar tenant. One Babu Ram Sharma was owner and

landlord of Booth No. 10, Sector 29-D, Chandigarh. According to the landlord, in the eviction petition filed, it was stated that monthly rent was

Rs.400/- in respect of said booth. Babu Ram Sharma died on 04.07.1994 leaving his legal representatives, noticed in the opening sheet of the

order of ejectment passed by learned Rent Controller, Chandigarh. It was pleaded by petitioner No.2 Amir Chand that other co-owners agreed

that they have no objection in case he commence his own business in order to settle his son Sanjeev Kumar in the demised premises.

2. Written statement was filed and it was stated that rent has been determined by various Courts earlier to be Rs.320/- per month. It has been

further stated that Babu Ram was not a landlord and ground of personal necessity is not made out.

3. Replication was filed controverting the averments made in the written statement and that of petition were reiterated.

4. In evidence, Amir Chand himself appeared as PW1, his son Sanjeev Kumar was examined as PW2, Sanjeevan Sharma as PW3 and Vajinder

Sharma as PW4. Thereafter, Amir Chand closed his evidence.

5. Tenant Vijay Kumar examined himself as RW1 and Avtar Singh, Record Keeper as RW2.

6. Before the Courts below a lot of controversy was raised regarding determination of rent. Learned Rent Controller concluded that Rs.320/- per

month was the rent of demised premises.

7. Another controversy raised was that Babu Ram Sharma was not a landlord but one Gurmeet Singh was the landlord being attorney of Babu

Ram Sharma. This part of argument was rejected as in earlier petitions, Babu Ram Sharma had appeared and accepted the rent. Mr.Arun Jain,

Advocate, appearing for the petitioner, has not raised this argument.

8. Learned Rent Controller found that the personal necessity of the tenant is made out and ordered eviction. Learned Appellate Authority also

upheld that the premises are required for the personal use and occupation by the landlord. It took into consideration two facts that landlord is

running a Phari (wayside stall on ground) at Sector 22 Market which is unauthorized along with his son, therefore, premises is required for running

his own business. Mr.Arun Jain, who assailed the concurrent finding of fact recorded by the two Courts below, and has made two submissions

before me. He has referred to Section 13(3) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act") to state

that necessary ingredients are that the landlord must plead that he require the demised premises for his own occupation; he is not occupying any

other residential building in the urban area concerned; he has not vacated such building without sufficient cause after the commencement of the Act.

Therefore, he states that these specific averments were not made in the eviction petition and, therefore, landlord is bound to fail. Mr.Jain has shown

me eviction petition. In para 3(ii) it was stated that landlord Amir Chand intended to settle at Chandigarh along with his son Sanjeev Kumar and to

start his business in demised premises i.e. Booth No. 10, Sector 29D, Chandigarh as they are running their business from their residence where

they are tenant and the other co-owners have no objection if petitioner No.2 Amir Chand commence his own business from the premises which

are on rent with the tenant. In para 4, it was specifically stated that the petitioners have no other shops in their own name at Chandigarh nor they

have vacated such shop without sufficient cause.

9. Perusal of para 3(ii) and 4 make it abundantly clear that in explicit terms, landlord has fulfilled the condition though the specific words as per the

provisions of the Act may not be there. It is the essence of the pleadings which is to be taken into consideration and not the technicalities, which

will oust the landlord.

10. Mr.Amit Jain has raised another argument before me. He has stated that after the death of Babu Ram Sharma, his another son Prem Nath i.e.

petitioner No.4 was occupying booth in Sector 19 and 22, therefore, co-owner being in possession of two booths, personal necessity cannot be

raised by the landlord. Growing families and a number of brothers in their own right require the premises. Merely because another brother, who is

a co-owner, has got the property it cannot be said that Amir Chand has no personal necessity. He has specifically stated that other co-owners

have no objection if he take possession of this premises and start business for settling his son Sanjeev. In view of this, the above argument is also

liable to be rejected.

11. No other argument has been raised as concurrent findings of fact based on appreciation and re-appraisal of the evidence could not be

challenged before the revisional Court as re-appreciation and reappraisal of the evidence is not permitted.

12. Therefore, there is no merit in the present revision petition and the same is dismissed.

13. However, Mr.Amit Jain has vehemently canvassed before me that since the petitioner is shopkeeper, therefore, adequate time be granted to

him to vacate the premises and hand over vacant possession of the premises to the landlord. In case such an undertaking is filed, before the

concerned Rent Controller, petitioner be granted two months" time t o vacate the premises and hand over its vacant possession to the landlord.