
(2010) 08 P&H CK 0411

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Sanjiv Goel and
Another

APPELLANT

Vs

Rajinder Kumar and
Others

RESPONDENT

Date of Decision: Aug. 2, 2010

Acts Referred:

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

Citation: (2010) 08 P&H CK 0411

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mahesh Grover, J.

This revision petition has been directed against judgments dated 13.10.2004 and 8.3.2007 passed respectively by the Rent Controller, Patiala and the Appellate Authority, Patiala.

2. Respondent No. 1-Rajinder Kumar filed an application u/s 13 of the East Punjab Rent Restriction Act, 1948 (for short, "the Act") against respondent No. 2-Balak Ram and Kulwant Raifather of the present petitioners & proforma respondent Nos. 4 to 6 and husband of proforma respondent No. 3 for their ejectment from the demised premises, which are a shop marked with letters ABCD and a room shown with letters CDEF in the site plan attached therewith, on the ground of non-payment of rent and sub-letting. It was pleaded that the tenancy was created in favour of respondent No. 2 vide rent note, Exhibit A1, but subsequently the demised premises came to be occupied by deceased-Kulwant Rai without the permission of the landlord. The rent was also not paid since March, 1989. The monthly rate of rent was stated to be Rs. 335/-.

3. The application was resisted by Balak Ram as well as Kulwant Rai. It was pleaded that the tenancy was created in the name of Balak Ram, who was Karta of the family and that the joint business was being carried on in the demised premises by three brothers, namely, Balak Ram, Kulwant Rai and Hari Ram under the name and style of M/S Balak Ram Hari Ram, Karyana Dealers. It was further pleaded that in fact, three shops marked as ABCD, CDEF and GHIJ as shown in the site plan attached with the written statement of Balak Ram were taken on monthly rent of Rs. 285/- which was being regularly paid. The allegation of sub-letting was denied. Kulwant Rai, in his written statement, also averred that the partnership was dissolved vide dated dated 31.3.1988 by virtue of which Balak Ram and Hari Ram withdrew from the business being carried out in the demised premises, but he was allowed to continue as such under the name and style of M/S Balak Ram Hari Ram.

4. On the pleadings of the parties as many as seven issues were framed and after examining the evidence led by them, the Rent Controller concluded that the tender of rent made by the tenant was short and invalid, that Balak Ram had sublet the demised premises to Kulwant Rai and that they were liable to be evicted. The application of the landlord was, accordingly, accepted.

5. Feeling aggrieved, two separate appeals were filed - one by Balak Ram and the second by the legal representatives of Kulwant Rai. The Appellate Authority did not find any merit in them and dismissed the same which has led to the filing of the instant petition by two of the legal representatives of Kulwant Rai.

6. Learned Counsel for the petitioners has contended that even if the tender of rent was found short, an opportunity ought to have been granted to the tenant to make up the deficiency in the same in view of the observations of the Supreme Court in [Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others](#), . He further contended that Balak Ram, the original tenant, was acting as Karta on behalf of the entire family which was joint in business and this fact was admitted by the landlord who appeared as AW5 and one of the witnesses produced by him, i.e., AW2-Kulshashi Parkash. He, thus, submitted that there was no occasion for the authorities below to have concluded against the tenant. It was contended that in the year 1988, Balak Ram chose to set up another business and the partnership firm in which Balak Ram, Kulwant Rai - father of the petitioners and Hari Ram were partners, was dissolved and on the strength of this, Kulwant Rai came to occupy the demised premises. It was then submitted that the factum of sub-letting, even if accepted, was known to the landlord for the last many years and this conduct of his amounted to waiver of his right to get the demised premises vacated. In support of his contention, he placed reliance on a judgment of this Court in *Subhash Chander v. Surinder Singh* 1994 (3) P.L.R. 351 (P & H).

7. As against this, learned Counsel for respondent No. 1 contended that rent note, Exhibit A1, does not depict that the tenancy was created in the name of family which was joint in business, but it indicated that the tenancy was only in the name of Balak Ram. He further

contended that the plea of partnership firm having been dissolved in the year 1988 or created prior thereto, has also not been established by way of evidence as the deeds in that respect have only been marked and not proved in accordance with law. It was submitted that merely because the landlord chose to file eviction application belatedly, it would not mean that he had waived off his right to seek eviction of the tenant on the ground of sub-letting. In support of this submission, he relied upon a judgment of the Supreme Court in P. John Chandy and Co. (P) Ltd. v. John P. Thomas 2002 (1) R.C.R. (Rent) 569 (S.C.) and two judgments of this Court in Rajbir Kaur v. Joginder Associates Architect 1999 (1) R.C.R. (Rent) 229 (P & H) and Ram Kishan v. Moti Ram and Anr. 2006 (1) R.C.R. (Rent) 395 (P & H).

8. I have thoughtfully considered the rival contentions and have gone through the record.

9. Concededly, the rent note, Exhibit A1, does not establish the plea of the petitioners that the family was joint and that the tenancy was created in the name of joint family engaged in a venture which was also joint. There is also no material from where it can be inferred that such a plea stood established and in the absence of any evidence in this regard, the authorities below cannot be faulted with for returning a finding that Balak Ram was the original tenant and there was no commonality of interest between him and father of the petitioners in business or residence. The petitioners have also failed to substantiate their case regarding the partnership having come into existence prior to 1988 or having been dissolved in that year and mere marking of such documents does not dispense with the requirement of proving the same in accordance with law. It is a settled principle of law that the Court is not precluded from looking at such document for proper adjudication of the matter, but if the documents referred to above in the light of the controversy in hand are to be perused, then it is apparent that the petitioners have failed to establish their case. The findings of the authorities below on this count also, therefore, cannot be faulted with.

10. In so far as the plea of the petitioners that the landlord will be deemed to have waived off his right to invoke the provisions of the Act on the ground of sub-letting, is concerned, I am of the opinion that the same is also without any substance. The provisions of the Act clearly lays down that the tenanted premises cannot be parted with by the tenant in favour of any other person except with the express consent of the landlord. Sub-section (2)(ii)(a) of the Act is extracted below for ready reference:

13. Eviction of tenants.--(1) xx xx xx xx

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied-

(i) xx xx xx xx

(ii) that the tenant has after the commencement of this Act without the written consent of the landlord-

(a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or

(b) xx xx xx xx

(iii) xx xx xx xx

(iv) xx xx xx xx

(v) xx xx xx xx

11. In the light of the afore quoted provisions, it is clear that merely because the landlord chooses to have recourse to the process of eviction at a stage which is subsequent to the acquiring of his knowledge of sub-letting would not amount to waiver. Therefore, it has necessarily to be held that the landlord was well within his right to avail of the ground which was available to him to seek the eviction of the tenant. For this view, I am fortified by the law laid down in P. John Chandy and Co. (P) Ltd. v. John P. Thomas (supra); Rajbir Kaur v. Joginder Associates Architect (supra) and Ram Kishan v. Moti Ram and Anr. (supra).

12. On the basis of the above discussion, I am of the opinion that sub-letting is adequately proved and even if the finding of the authorities below on the issue of non-payment or short tender of rent is reversed in light of the law laid down in Rakesh Wadhawan's case (supra) and, therefore, it is not likely to make any difference to the fate of the case and the revision petition deserves to be dismissed.

13. At this stage, learned Counsel for the petitioners submitted that some time may be granted to the petitioners to vacate the demised premises. In the result, the instant revision petition is dismissed being devoid of any merit. However, having regard to the fact that the petitioners are in possession of the demised premises since long and also the fact that they are carrying on their business therein, it would be appropriate to grant some time to vacate the same. Accordingly, the petitioners are allowed six months' time to hand over the physical vacant possession of the demised premises to the landlord subject to their furnishing of an undertaking within three weeks from today before the Rent Controller in the following terms:

1. That they shall hand over physical vacant possession of the demised premises to the landlord on or before 1.2.2011.

2. That they shall pay all arrears of rent up to date to the landlord within two months.

3. That they shall continue to make payment of rent at the agreed rate till the physical vacant possession of the demised premises is handed over to the landlord.
4. That they shall not commit any default in payment of arrears of rent or the monthly rent and that even a single default will disentitle them to the benefit of this order.
5. That if the arrears of rent or the monthly rent is not paid as aforesaid, the landlord shall be entitled to execute the eviction order forthwith.
6. That the physical vacant possession of the demised premises shall be handed over to the landlord in the condition as it is.
7. That if they make an attempt to deviate from the undertaking, the landlord shall be entitled to apprise the Rent Controller, who shall proceed to get the demised premises vacated and to hand over the physical vacant possession thereof to him by granting police assistance.