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(2012) 09 P&H CK 0265

High Court Of Punjab And Haryana At Chandigarh

Case No: CM No"s. 24454-55-CII-2012 and CR No. 3021 of 1995 (O and M)

Ram Rikh Dass Daga	APPELLANT
Vs	
Mahant Taran Parshad Chela Mahant Chander Parshad	RESPONDENT

Date of Decision: Sept. 27, 2012

Citation: (2013) 169 PLR 255 : (2013) 2 RCR(Civil) 197

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Arjun Sharma with Mr. Ashwani Kumar Chopra, for the Appellant; B.R. Mahajan with Ms. Gagandeep Kaur, for the Respondent

Final Decision: Dismissed

Judgement

K. Kannan, J.
CMs are allowed. Legal representatives" impleadment ordered subject to all just exceptions. The petition is filed at the instance of the tenant who has been ordered to be evicted by the concurrent judgments of the Rent Controller and the Appellate Authority. The grounds of eviction by the landlord were non-payment of rent from 01.04.1984 to 31.03.1986 and cessation to occupy the premises for more than a period of 4 months prior to the filing of the petition. The landlord had a case that the tenant ceased to occupy the premises from the year 1982.

2. The tenant contested the claim on both the grounds and deposited also the rent payable during the period when the landlord was making a complaint that the tenant had been in default. Since the tenant had made the payment at the first hearing, the said ground does not survive consideration and the case would require to be examined only on the ground of the tenant"s alleged cessation to occupy the premises.

3. Admittedly, the tenant was having a fan repair shop and the landlord wanted to adduce proof that the shop was not being used by the tenant by attempting to show that the

electricity consumption card revealed that no charges had been paid by the tenant. The electricity card was with reference to door No. 938/11-27. The tenant contended that the electricity card itself did not pertain to the shop and the shop in his occupation was having door No. 932/111-17. The tenant sought to contend further that he had been having his business even from the year 1976 when there was no electricity and he would have the work done at the shop and used the electricity from some other place to test the fans. The issue was, therefore, not whether the electricity card pertained to the premises, for, the tenant was contending a position that his type of activity did not require any consumption of electricity. As laudable as a conduct of tenant would be in these days of power crisis, it cannot still be seen as truthful, for the nature of activity was such as it would be inconceivable that he could have the avocation of fans repair without consumption of electricity.

4. The landlord also sought to discredit the quality of evidence given by the tenant by pointing out that even if there were 3/4 persons who were employed to carry on his business activity, there ought to have been some proof of payment of wages to them through registers and even no documentary proof was produced before the Court. It was also the contention that since the premises were within the boundaries of Municipal Corporation there ought to have been registration of a shop as a profession and the absence of any such subsisting licence also was a proof that there was no activity which was carried on by the tenant. On a cumulative assessment of the evidence brought by both the parties, the Court had come to the concurrent finding that the tenant had ceased to occupy the premises.

5. The learned counsel appearing on behalf of the tenant makes an impressive display of exuberance by stating to me several decisions rendered by this Court to contend that the landlord had not proved the ground of eviction. I would cite them for the fullness of consideration that the case might deserve. In Karam Chand Joshi v. Shri Kartar Singh and Ors. (1977) RCR 327 a learned judge of this Court held that non-consumption of electricity or disconnection of electricity meter did not necessarily lead to the conclusion that the premises remained unoccupied. The Court was considering a case where there was evidence that 2/3 meter readers were changed during that time and the meter reading was not done properly. The Court found the lapse of a meter reader as not leading to a proof that the non-consumption of electricity could not lead to a cessation of the premises. We are herein examining a situation of a tenant contending that he was actually not using electricity but not that meter reader never came to record meter reading. In Sohan Lal and another Vs. Gurbachan Singh the same issue of the non-consumption of electricity as not proving the closure of business was examined. I am not prepared to re-examine what was dealt with at length while dealing with earlier case. Faqir Chand Vs. Faqir Singh and Another, was also a case where a failure to consume electricity would not lead to an inference of non-occupation of building.

6. In Pawn Singh Tailor Master v. Ram Murti (1981) 2 RLR 448 the cessation to occupy the building was examined in the context of landlord"s obligation to specify in the

pleadings the period during which the tenant ceased to occupy such building. Mere vague allegations were found to be inadequate. Where the requirement of the Act is that the tenant should have ceased to occupy the premises for a period of not less than 4 months, the expectation is that the commencement of such inactivity must be evident. If there was even a dispute by a matter of few months, the date when the tenant ceased to occupy the premises would be significant. When we are examining a case of landlord contending that the tenant was not occupying the premises for 4 years, the lack of reference to the actual month when he ceased to occupy the premises would become irrelevant. In M/s. Babu Ram Gopal and others Vs. Mathra Dass, the Supreme Court was examining the non-occupation of premises by the tenant to be required till the date of filing of the petition on such ground. It is nobody''s case that the tenant ceased to occupy originally and came back to possession before the date when the petition was filed. I have already observed that the Courts below have considered the cumulative factors that the tenant had ceased to occupy the premises. Its a meritless civil revision and a vexatious exercise. It deserves to be dismissed and is, accordingly, dismissed.