

(2007) 01 P&H CK 0149

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 5521 of 2001

Mohinder Singh

APPELLANT

Vs

Surinder Kaur and Others

RESPONDENT

Date of Decision: Jan. 24, 2007

Acts Referred:

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

Citation: (2007) 2 CivCC 89 : (2007) 2 CivCC 89 : (2007) 1 RCR(Rent) 211

Hon'ble Judges: Vinod K.Sharma, J

Bench: Single Bench

Advocate: Priya Gupta, for the Appellant; Sandeep Bansal, for the Respondent

Final Decision: Allowed

Judgement

Vinod K. Sharma, J.

The present revision petition has been filed against the order dated 05.10.2000 passed by the Appellate Authority, Hoshiarpur vide which the order of ejectment passed by the learned Rent Controller, Hoshiarpur, was set aside and the petition filed by the landlord-petitioner was dismissed.

The petitioner-landlord filed a petition u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the "Act") for eviction of the tenant on the plea that Didar Singh son of Mohinder Singh had taken the shop in question on rent in pursuance of the rent-deed dated 20.11.1995 at a monthly of Rs. 150/-. It was averred that Didar Singh died on 07.03.1995 and thereafter the respondents i.e. widow and sons of late Didar Singh came in possession of the demised shop being his legal representatives. It was further averred in the rent petition that Didar Singh had been running the business of spare parts in the shop in dispute upto December, 1994. After his death none of the respondents ever opened the shop for running any business and it remained closed since 1994. It was further claimed that the rent for the month of December, 1994 was not paid by late Shri Didar Singh and after his

death none of the respondents ever made the payment of rent in spite of demand. It was also claimed that the petitioner was an old man and only bread winner in the family and he is not doing anything at present due to skin allergy. The eviction of the respondents was sought on the following grounds :-

(i) Respondents are in arrears of the rent of the disputed shop along with interest at the rate of Rs. 150/- per month w.e.f. 01.12.1994 up to the date of filing of the present application along with interest thereover.

(ii) The respondents have ceased to occupy the disputed shop without any reasonable cause and the shop is closed since December, 1994.

(iii) Requirement of the applicant of the disputed shop for his personal necessity as he is to run hardware business in the same in order to earn his livelihood.

2. The petitioner also pleaded that he has not vacated any such premises within the urban area of Hoshiarpur after the commencement of the Act nor he is in possession of any such premises within the local limits of Municipal area of Hoshiarpur.

3. The petition was contested by the respondents by filing reply in which the rate of rent was admitted. However, the rent-deed dated 20.11.1995 was denied. The main plea taken by the respondents was that earlier Didar Singh was running business of spare parts in the demised premises till he suffered brain haemorrhage and paralytic attack and after his death his legal heirs were running the same business during the ailment of Didar Singh. It was further claimed that the respondents offered the payment of rent to the petitioner, but he refused to accept the same. However, on the first date of hearing, the rent from December, 1994 was tendered. It was also claimed that the rent was even sent through money order which was refused by the petitioner. The ailment of the petitioner was also disputed and it was denied that he was only the bread winner in the family. It was also claimed that the petitioner owns a shop in front of the Tehsil Complex and is in possession of the same. It was further submitted that petitioner has a house on the back side of the said shop and therefore, it was claimed that the eviction petition be dismissed.

In the replication, it was claimed that the tender was short and invalid and the factum of shop in front of Tehsil Complex was denied by claiming it to be a store.

4. On the pleadings of the parties, following issues were framed:-

1. Whether the respondents are liable to be evicted from the disputed shop on following grounds

1(a) Respondents being in arrears of rent ? OPA

1(b) Respondents having ceased to occupy the shop without any reasonable cause ? OPA

1(c) Requirement of the applicants of the disputed shop for personal bona fide necessity ? OPA

2. Whether no cause of action has accrued to the applicants to file the present application ? OPA

3. Relief.

5. The learned Rent Controller held that the tender was short and, therefore, respondents were liable to be evicted on account of non-payment of rent and thus issue No.1(a) was decided in favour of the landlord-petitioner. Issue No.1 (b) was also decided in favour of the petitioner and it was held that the respondents were liable to be evicted on the ground that they have ceased to occupy the demised shop for a continuous period of more than four months without any reasonable cause. However, the ground of personal necessity was decided against the petitioner-landlord. Thus issue No.1 (c) was also decided against him. Issue No.2 was decided in favour of the petitioner holding that he had a cause of action to file the present petition. As a result of the above findings, the eviction of the respondents herein was ordered.

6. The respondents filed an appeal against the order of eviction passed by the Rent Controller. The learned Appellate Authority-reversed the finding on issue No.1(a) by observing that the application for eviction was filed on 30th April, 1996, whereas the rent was claimed from 01.12.1994. However, the tenant-respondents tendered the rent upto 31.07.1996 along with costs as assessed by the Court. Thus the learned Appellate Authority held that total rent payable comes to Rs.2,250/- against which the respondents had tendered a sum of Rs.3,000/-along with interest and costs as assessed by the Court and, therefore, the tender could not be said to be short or invalid. Accordingly, finding on issue No.1 (a) was reversed. This finding was not challenged by the learned counsel for the petitioner herein. However, no eviction could be sustained on the ground of non-payment of rent unless opportunity was given to the tenant to deposit the rent after provisionally assessing the same and, therefore, the learned trial Court was wrong in coming to the conclusion that it was not for the Court to assess the rent.

7. The learned Appellate Authority also reversed the findings on issue No.1(b) and held that the respondents had not ceased to occupy the building for a period of four months without sufficient cause. The learned Appellate Authority came to the conclusion that the petitioner failed to specify the period during which the tenant-respondents have ceased to occupy the demised shop. In support of its view, the learned Appellate Authority relied upon the judgment of this Court in the case of Puran Singh Tailor Master v. Ram Murti, 1981(2) Rent LR 448. Thus the findings of the learned Appellate Authority cannot be sustained as in para 3, the petitioner had categorically mentioned that the tenant-respondents have ceased to occupy the demised shop since December, 1994. Thus the pleadings of the petitioner could not

be said to be vague. In para 3 of the petition, it was specifically pleaded by the petitioner that the shop was closed since December, 1994 which means that the shop was even closed on the date of filing of the rent petition.

8. The learned Appellate Authority was also wrong in coming to the conclusion that it has not been mentioned that the shop was closed without sufficient cause which was mandatory, rather the pleading, as noticed, in the judgment itself shows that the petitioner had pleaded that the respondents have ceased to occupy the disputed shop without reasonable cause and the shop is closed since 1994. The finding of the learned Rent Controller that non-use of electricity showed that the respondents have ceased to occupy the demised shop was also reversed by relying upon the judgment in the case of Sohan Lal and another v. Gurbachan Singh, 1989(2) RLR 304 in which it has been held that mere non-consumption of electricity was not sufficient to hold that the tenant has ceased to occupy the building. Reliance in this regard was also placed on a judgment in the case of Faqir Chand (deceased) represented by his LRs v. Faqir Singh and another, 1993(1) Shi LJ 880.

9. The learned Appellate Authority further came to the conclusion that copy of sale-tax assessment order, which was passed on 06.02.1988 could not be said to be a forged document. These findings of the learned Appellate Authority cannot also be sustained. Though the assessment order dated 06.02.1998 cannot be said to be a forged document, but at the same time, it can be rejected from consideration being self-serving evidence created subsequent to the filing of the rent petition. The learned Appellate Authority has wrongly given too much importance to these documents to record a finding in favour of the respondents.

10. The learned counsel appearing on behalf of the petitioner has challenged the findings of the learned Appellate Authority on issue No.1(b). He argued that Surinder Kaur, widow of Didar Singh is Headmistress posted at Bassi Gulam Hussain, whereas Arbind, respondent No.2 was an Electronics Engineer, who was working with different persons, while respondent No.3 is a Teacher at Mahilpur, whereas respondent No.4 was undergoing training in Daya Nand Medical College, Ludhiana. Thus, there was hardly any possibility of their running the business in the demised shop.

11. Learned counsel for the petitioner further contended that evidence of AW-2 Prithi Raj clearly revealed that there has been no use of electricity during the period from December 1994 till the date of filing of the petition and, therefore, coupled with the other evidence, it was proved on record that the tenant-respondents had ceased to occupy the shop in dispute for a continuous period of more than four months without sufficient cause.

12. Learned counsel for the petitioner also argued that once it was proved that the shop was closed, it was for the tenant-respondents to have proved that the same was closed for sufficient cause. However, in the present case, a wrong plea was

taken that the shop was not closed and thus it has to be presumed that the closure of shop was without any sufficient cause. In support of her contention, learned counsel for the petitioner placed reliance on the judgment of" this Court in the case of Virender Singh v. Mahabir Singh, 2005(2) RCR 534 wherein it has been held as under

10. The initial burden or onus of establishing the ground of ejectment is always upon the landlord by producing cogent material evidence. The landlord has thus to prove by leading positive evidence that the tenant had ceased to occupy the demised premises for a period of at least four months immediately prior to the filing of the ejectment petition. Once it is so established by the landlord, then it is the tenant who is required to prove that he ceased to occupy the demised premises due to some reasonable cause. However, where the tenant denies that he had not ceased to occupy the demised premises for the statutory period as required under the Act, then the question of proving the reasonableness does not arise. The present is the case where the tenant had denied that he had not ceased to occupy the demised premises.

11. In the instant case, the petition for eviction was filed on 19.09.2000 and the shop in question remained closed from November, 1997 to December 2000 and no explanation had been furnished by the tenant for the closure of the shop for such a long period except the tenant pleading that the shop was not closed, which is not believable in the light of overwhelming evidence produced by the landlord. The landlord not only established that the tenant could not have conducted his business of selling cloth from the demised premises in the absence of electricity connection he had produced evidence of postman and transporter who have also supported his case. The tenant on the other hand failed to produce any document in the form of receipts, bills, vouchers etc. concerning his shop in support of his claim that he was doing business from the demised shop during the relevant period.

She further placed reliance on the judgment of this Court in the case of Naval Kishore v. Smt. Padma Sharma, 2003(2) RCR 345 wherein this Court was pleased to hold that when the evidence showed that the premises were lying locked for more than four months and this fact is supported by the fact that there was no consumption, eviction of tenant was justified.

13. On the other hand, Mr.Sandip Bansal, learned counsel for the respondents contended that the respondents by way of evidence have proved on record that tenant never ceased to occupy as the shop was being run in the same name by his son, who was an electronic engineer. Learned counsel for the respondents further submitted that eviction on the basis of meter reading could not be a basis as the very fact that the meter reading was taken would show that the shop was open. Learned counsel for the respondents further argued that in the present case as the petitioner had failed to prove the specific period during which the tenant ceased to occupy the premises in dispute, therefore, the learned Appellate Court was right in

reversing the findings recorded by the learned Rent Controller. He also contended that the petitioner was also supposed to prove that the building remained closed till the date of filing of eviction petition. He placed reliance on the judgments of this Court reported in Puran Singh Tailor Master's case (supra) and a judgment of the Supreme Court in the case of M/s.Babu Ram Gopal and others v. Mathra Dass, 1990 HRR 294. He also submitted that the Appellate Authority was right in placing reliance on the assessment orders and thus the order passed by the learned Appellate Court was just and did not call for interference by this Court.

14. I have considered the arguments addressed by the learned counsel for the parties and find force in the contentions raised by the learned counsel for the petitioner. In the case in hand, the learned Rent Controller was right in coming to the conclusion that the tenant-respondents have ceased to occupy the premises in question for a continuous period of four months. The learned Appellate Authority was wrong in coming to the conclusion that there was no specific pleading regarding the period for which the demised shop remained closed. This finding of the learned Appellate Authority cannot be sustained as it was specifically mentioned in the eviction petition that the tenant-respondents had ceased to occupy the building since December, 1994 meaning thereby that from December 1994 till the date of filing of the rent petition, the shop was closed without any reasonable cause. The evidence led by the petitioner along with the documentary proof of meter reading of electricity showed that the shop in question remained closed for a period of more than four months and the only stand taken was that the respondents continued to do business in the shop in dispute proves that no reasonable cause was shown for its closure. The learned Appellate Authority was wrong in placing reliance on the assessment orders which were obtained subsequently i.e. after filing of the eviction petition. Thus, the same could not be a basis to reverse the findings of the learned Rent Controller.

15. In view of the foregoing discussion, the revision petition is allowed, the impugned order passed by the Appellate Authority is set aside and that of the Rent Controller is restored.