

(2001) 09 P&H CK 0134

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3205 of 1982

Apex Co-operative Handloom
Department, Patiala and Another

APPELLANT

Vs

Vinod Parkash Nirula and
Another

RESPONDENT

Date of Decision: Sept. 11, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13, 115
- East Punjab Urban Rent Restriction Act, 1949 - Section 13, 15, 15(5), 9

Citation: (2002) 1 CivCC 237 : (2001) 2 RCR(Rent) 531

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

Bench: Single Bench

Advocate: M.L. Sarin and Savina Pannu, for the Appellant; O.P. Nagpal, for the Respondent

Final Decision: Allowed

Judgement

R.L. Anand, J.

This is a revision of the tenants and has been directed against the order dated 8th September, 1981 passed by the Court of Rent Controller (Spl.) Patiala who dismissed the application of the tenant-petitioners under Order 9 Rule 13 C.P.C.

2. The brief facts of the case are that Sh. Vinod Parkash Narula landlord filed an ejectment application against the petitioners u/s 13 of the East Punjab Urban Restriction Act, 1949, inter alia alleging that the tenants are in possession of the shop in dispute on a monthly rent of Rs. 175A They have neither paid nor tendered arrears of rent w.e.f. 1st December, 1978 to November 1979. The ejectment application was filed on 26th November, 1979. The landlord further pleaded that the tenants have also not paid the house-tax at the rate of Rs. 19.69 paise per month. In these circumstances, the tenants are liable to be ejected from the demised

premises on the ground of non-payment.

3. Notice of the ejectment petition was given to the tenant/petitioners who tendered the arrears of rent alongwith costs and interest and house-tax amounting to Rs. 2310/-. On the first date of hearing of this petition, the tenant did not appear. The learned Rent Controller recorded ex parte decree in favour of the landlord and vide order dated 30.5.1980 passed the ejectment order.

4. The tenants filed an application under Order 9, rule 13 C.P.C. before the Court of Rent Controller and the said application was dismissed on 8.9.1981. Under the ignorance of law the tenants filed appeal before the Appellate Authority Patiala u/s 15 of the said Act, which was dismissed by the appellate authority vide order dated 24.11.1982 holding that the appeal was not legally maintainable. Thereafter realising the mistake on its part the tenants filed the present revision petition and have given challenge to the order of the Rent Controller dismissing its application under Order 9, Rule 13 C.P.C.

5. I have heard Sh. M.L. Sarin, learned Senior Advocate assisted by Ms. Savina Pannu on behalf of the petitioners and Sh. Nagpal on behalf of the respondents and with their assistance, have gone through the record of the case. After going through the record of this case, I am of the opinion that the learned Rent Controller had taken an erroneous view of the matter firstly in deciding the ejectment application against the tenant. Had the learned Rent Controller applied its mind to the finding, there was hardly no ground made out for the ejectment of the tenants. These facts would make it clear that the very ejectment order dated 30th May, 1980 was erroneous and an illegal act on the part of the learned Rent Controller.

6. The case set up by the landlord in the ejectment application which was filed on 26th November, 1979, was that the tenants have neither paid the arrears of rent nor tendered the amount w.e.f. 1st December, 1978 to November 1979. The rental for the months of October and November had not become due on account of the fact that the ejectment application was filed on 26th November, 1979. In this manner, the rental for ten months starting from 1st December, 1978 to 30th September, 1979 had become due to the landlord. Further the case set up by the landlord was that the house-tax at the rate of 19.69 paise per month has not been paid. There is no averment in the ejectment application that the landlord served any notice u/s 9 upon the tenant before claiming enhancement of the house-tax. Be that as it may, even if it is assumed for the sake of arguments that the landlord was entitled to house-tax at the rate of Rs. 19.69 paise, still the tender made by the tenants was sufficient to meet the demand of the landlord. On the date of filing of the ejectment application, only a sum of Rs. 2067 was due to the landlord, including the rent, costs interest and house-tax. The break-up as follows:

Rent: Rs. 1750.00

Costs: Rs. 35.00

Interest: Rs. 82.00

House-Tax: Rs. 200.00 at the rate of
_____Rs. 20/-(for the benefit
of the landlord)
In all Rs. 2067.00

7. The rent which was tendered on the first date of hearing was Rs. 2310/-. In these circumstances, the Rent Controller ought to have applied its mind that the ground for non-payment did not subsist with the tender. Still the learned Rent Controller chose to pass tile ejectment order. It shows that there was totally non-application of mind on the part of the (earned Rent Controller. A serious prejudice has been caused to the tenants. Rather a miscarriage of justice has been done to the tenants. The revision at court can always interfere in such like orders which have been passed without application of mind on the part of the Rent Controller.

8. Resultantly, the revision is allowed and the orders dated 30th May, 1980 and 8th September, 1981 are hereby set aside. The ejectment application u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 filed by the landlord stands dismissed. No order as to costs.