

(2008) 12 P&H CK 0205

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1877 of 2008

M/s. Agar Chand Ram Phal Jain
and Others

APPELLANT

Vs

Rakesh Kumar and Others

RESPONDENT

Date of Decision: Dec. 17, 2008

Acts Referred:

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

Citation: (2010) 1 RCR(Rent) 107

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Advocate: Arun Jain, with Mr. Amit Jain, for the Appellant; S.K. Pipat with Mr. Ramanjit Singh, for the Respondent

Final Decision: Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.

Three sons and three daughters of Om Parkash preferred eviction petition u/s 13 of the East Punjab Urban Rent Restriction Act for eviction of M/s. Agar Chand Ram Phal Jain which has been contested by its partners Agar Chand and Ramphal Jain.

2. The case set out in the eviction petition is that shop portion measuring 10" x 36" on the ground floor bearing Shop.No.1722, Main Bazar, Manimajra was rented out to the tenant at the rate of Rs.300/- P.M. It was further stated that original landlord Om Parkash had expired on 15.09.1990 and his sons and daughters became co-owners of the property. It was further stated that late Om Parkash had filed an eviction petition in 1984 which was not accepted. The grounds for eviction taken were that the shop has become unfit and unsafe for human habitation as it is in a dilapidated condition. Further it was stated that tenant is in arrears of rent. Along with these grounds, ground of personal necessity was also pleaded that Rakesh Kumar is engaged in the business of preparing, selling and stitching of air bags and

school bags from one small room which is on rent with him and landlord qua that room is pressing hard to vacate the premises. It was also stated that accommodation with Rakesh Kumar was insufficient and unsuitable. It was further stated that Udesh Kumar petitioner No.3 has grown up and is unemployed. He has studied upto 10th class and is interested to run the business of general merchant. The eviction petition was filed on 09.09.1997.

3. Notice of the eviction petition was issued. A written statement was filed in which it was stated that there was no ground available for eviction of commercial property. No notice has been served. The tenant has paid the rent on 15.01.1995 along with interest. It was also stated that petition is bad for non-joinder of parties as Chand Bai mother of the landlords had died on 10.03.1998 and her name had not been struck off. On merits, ground of personal necessity and building has become unfit and unsafe for human habitation were also denied.

4. The Rent Controller had formulated the issues. Landlord Rakesh Kumar himself appeared as PW1 and examined Udesh Kumar another co-owner PW2 and Gurmukh Singh PW3 and Bharat Bhushan PW4. Bharat Bhushan is landlord qua Rakesh Kumar where he is carrying on business of preparation of air bags and school bags.

5. The ground of non payment of rent was not accepted as rent had been tendered. The Rent Controller held that Rakesh Kumar PW1 and Udesh Kumar PW3 who is co-owner have proved the ground of bona fide requirement and personal use. However, ground of eviction that building has become unsafe and unfit for human habitation was not accepted. Aggrieved against the same, an appeal was filed. The Appellate Authority held that ground of personal necessity is made out and had dismissed the appeal filed by the tenants. Aggrieved against the same, present revision petition has been filed.

6. Mr. Arun Jain, senior counsel ably assisted by Mr.Amit Jain has vehemently stated that Bharat Bhushan appearing as PW4 has not proved his ownership regarding the premises where Rakesh Kumar is a tenant. He has also not proved any rent note/rent deed. Therefore, plea of the landlord that he is a tenant under Bharat Bhushan PW4 ought not be accepted.

7. In the present case, not only Rakesh Kumar but Udesh Kumar require the premises for their personal use. Admittedly, Udesh Kumar had grown up and is unemployed. Shri Jain has stated that Udesh Kumar was carrying on business in a shop where the incident of fire had taken place. Mr.Jain has stated that since both Rakesh Kumar and Udesh Kumar were in occupation of other properties, their need for personal necessity is not made out. He state that whether they were occupying the premises as a tenant or in any other capacity is immaterial. Statement of Mr.Bharat Bhushan that he was requesting them for vacation of premises should not be accepted. Admittedly, Rakesh Kumar is carrying on business of stitching of school bags and air bags. He has also made a statement that premises with him are

not suitable and are insufficient. Udesh Kumar has also stated that because of fire, he cannot carry on business, therefore, shop is required by them. The need of the landlord is to be seen from his perspective. The Courts has also to examine the need of the landlord only on the touchstone whether the same is required for bona fide personal necessity or greed. In the present case, the tenant who is in occupation of the premises since 30 years at the rate of Rs.300/- P.M. cannot dictate his terms to the landlord to carry on the business from other premises. It cannot be said that since the landlord of Rakesh Kumar has not produced any document regarding his ownership, therefore, no heed should be paid to his oral request.

8. Mr.Pipat, learned senior counsel assisted by Mr.Ramanjit Singh has stated that in the present case out of the profits generated by the tenant from the demised premises, he has purchased two adjoining shops in the same locality. This Court need not dwell on this part of the argument.

9. In view of the above observations, no ground is made out to interfere in the concurrent findings of fact arrived at by two Courts below while exercising revisional jurisdiction and the revision petition is dismissed.

10. At this stage, Mr.Jain state that since the petitioners are running the shop, reasonable time be granted to them to deliver peaceful and vacant possession of the demised premises to the landlord. The tenants are granted two months time to vacate the premises.