
(1997) 04 P&H CK 0120
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 816 of 1996

Bimal Chand

APPELLANT

Vs

D.C.M. Ltd.

RESPONDENT

Date of Decision : 29-04-1997

Acts Referred:

Companies Act, 1956 — Section 630
Industrial Disputes Act, 1947 — Section 12(3), 25H

Citation : (1998) 92 CompCas 680 : (1998) 79 FLR 699 : (1997) 117 PLR 470 :
(1997) 3 RCR(Civil) 293 : (1997) 2 RCR(Rent) 113

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : M.L. Puri, for the Appellant; Ashok Aggarwal Subhash Goyal, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.—The respondent, D. C. M. Ltd., was running a textile mills at Hissar. The said mill was set up in the year 1955-56. The respondent-company had constructed a residential colony for its workers. The quarters were being allotted to the workers while they were in the employment of the respondent-company at Hissar. On the termination of the employment, the allottee was liable to vacate the quarters and hand over the same to the respondent.

2. By this common judgment, Criminal Revisions Nos. 816 of 1996 and 817 of 1996, can conveniently be disposed of together because all the petitioners are aggrieved by a similar order passed by the learned Judicial Magistrate and dismissal of the appeals by the learned Additional Sessions Judge at Hissar.

3. It has been contended by the respondent that the petitioners were employed in the company in the unit known as Hissar Textile Mills. Each of them had been allotted a quarter. The allotment was made during the course of the employment of the petitioners. There were certain unavoidable circumstances which were beyond the control of the respondent-company. The result was that the company

was closed, On closure of the said unit, the services of the petitioners were terminated in accordance with law. They ceased to be in employment of the company. The petitioners, thus, became liable to vacate the said quarters which they did not do so. A notice was issued to the petitioners to vacate the quarters but when they did not do so, it was followed by another notice. Finally, a complaint was filed u/s 630 of the Companies Act, individually against the petitioners.

4. The learned trial court served a notice to the petitioners to which they pleaded not guilty and claimed a trial, During the course of trial, the respondent produced two witnesses. In their statements u/s 313 of the Criminal Procedure Code, the defence of the petitioners was that the respondent-company was not the owner of the land and that they were in fact tenants in the property in question.

5. The learned trial court held that each of the petitioners was employed with the respondent-company. The quarters were allotted to them, to each of the petitioners, by virtue of their being in the employment of the respondent-company. The respondent-company closed its business at Hissar. The closure of the respondent-mill at Hissar was challenged by some workers. The writ petition was dismissed, The trial court further noted that a new unit in the name of D. C. M. Textiles was constructed. The version of the petitioners that they were tenants in the property was rejected. The trial court held that even being ex-employees or workers of the respondent-mill/company, they were liable to vacate the property. In these circumstances, the learned trial court allowed the petition and directed the petitioners to vacate the quarters within 30 days.

6. The petitioners had preferred an appeal but the learned Additional Sessions Judge did not find favour with the contentions raised. The appeal was dismissed.

7. The first and foremost question agitated on behalf of the petitioners was that they were tenants in the property and not licensees. In this regard reliance is being placed on the fact that in the receipts the expression "rent" had been used and that rent would only be paid by a tenant. Therefore, the petitioners must be taken to be tenants in the properties.

8. In the facts of the present case, the said contention is totally devoid of any merit because the question as to whether a person is tenant or licensee necessarily has to be determined keeping in view the intention of the parties. It has to be seen whether the documents create a lease or licence. The substance of the documents must be preferred to the form. The real test is the intention of the parties. Giving the payment a label of rent will not make a person tenant. A similar question arose before the Supreme Court in the case of Dr. H.S. Rikhy and Others Vs. The New Delhi Municipal Committee, . This was a dispute under the Delhi and Ajmer Rent Control Act, 1952. A similar argument had been advanced and was repelled by the following findings in paragraph 6 which reads (page 558) :

"It was also contended that it was admitted by the respondent that rent was

received and receipts for rent were granted by its agents. The use of the word "rent" is not conclusive of the matter. It may be used in the legal sense of recompense paid by the tenant to the landlord for the exclusive possession of premises occupied by him. It may also be used in the generic sense, without importing the legal significance aforesaid, of compensation for use and occupation. "Rent" in the legal sense can only be reserved on a demise of immovable property. Reference may be made in this connection to paragraphs 1193 and 1194 of Halsbury's Law of England (Third edition, Vol. 23) at pages 536-537. Hence, the use of the term "rent" cannot preclude the landlord from pleading that there was no relationship of landlord and tenant. The question must, therefore, depend upon whether or not there was a relationship of landlord and tenant in the sense that there was a transfer of interest by the landlord in favour of the tenant."

9. Similarly, in the case of Konchada Ramamurthy Subudhi and Another Vs. Gopinath Naik, , the same question was considered and it was held that it is the intention of the parties which is the determining factor as to if a person is a tenant or a licensee. At this stage, reference with advantage may be made further to the decision in the case of Sardar Bhagwant Singh v. Shri Jagan Nath [1976] RCR 239. It was concluded therein that the use of the term "rent" or "tenant" is not conclusive. Whether a given transaction is one of lease or licence is a matter not of words but of substance. The decisive consideration is the intention of the parties. The intention can be gathered from the conduct and the surrounding circumstances.

10. Reverting back to the facts of the present case, it is obvious from the findings on the record that the petitioners were in the employment of the respondent. The quarters had been built for the employees. The same were allotted after the petitioners joined service at Hissar. Outsiders had never been allotted quarters. Obviously, the same were for the benefit of the workers. There was nothing to indicate that there was any intention to create a demise in the property. In the absence of any such intention, it must follow that the petitioners were not tenants in the property.

11. A feeble attempt was made to urge that the provisions of Section 630 of the Companies Act will not apply to the case of the employees particularly when the respondent claims that it had stopped its business at Hissar. To appreciate the said argument, reference with advantage may be made to section 630 of the Companies Act, which reads :

"630. (1) If any officer or employee of a company-(a) wrongfully obtains possession of any property of a company ; or

(b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act ;

he shall, on the complaint of the company or any creditor or contributory thereof,

be punishable with fine which may extend to one thousand rupees.

(2) The court trying the offence may also order such officer or employee to deliver up or refund, within a time to be fixed by the court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term which may extend to two years."

12. A perusal of the same indicates that no distinction had been made by the Legislature pertaining to an employee or an ex-employee. Further discussion becomes unnecessary because the matter in question is concluded by the decision of the Supreme Court in the case of Baldev Krishna Sahi Vs. Shipping Corporation of India Limited and Another, . An identical question had arisen for consideration. It was held that the term "officer or employee" existing in Section 630 of the Companies Act, applies even to past officers of the company. Keeping in view the said decision of the Supreme Court, the plea raised necessarily must be negatived.

13. There is another way of looking at the matter. There was a memorandum of settlement u/s 12(3) of the Industrial Disputes Act. The union of workers had agreed that workers would vacate the mill quarters within a period of one month. Once such a settlement had been arrived at, it would have a binding force on all the workers. One seeks support in this conclusion from the decision of the Supreme Court in the case of Ram Pukar Singh and Others Vs. Heavy Engineering Corporation and Others, . Since the settlement was having a binding force, it was improper for the petitioners to continue and take shelter under the pleas which are not tenable.

14. As a last resort it was submitted that the mill has been reconstructed and u/s 25H of the Industrial Disputes Act, the retrenched workers should be re-employed and in any case preference has to be given to them. However, it is not being disputed that the Labour Court at Hissar has not decided the reference in favour of the petitioners. In fact it was decided against the petitioners. Merely because some further litigation is pending that will not permit the petitioners to take shelter u/s 25H of the Industrial Disputes Act, till such time the findings are in their favour or it is permitted that they can take advantage of any provision of the Industrial Disputes Act that they are employees of the respondent. On this date, they cannot claim a right to continue in occupation of the property. We know from the decision of the Supreme Court in the case of Atul Mathur Vs. Atul Kalra and Another, that the object of Section 630 of the Companies Act, is to provide speedy relief to the company when the property has wrongfully been withheld by an employee or ex-employee. Herein more than a decade has expired but the petitioners had not vacated the property, They cannot take shelter thus or raise any such plea that they might succeed in some litigation.

15. No other argument was raised.

16. For these reasons, the revision petitions are dismissed. The petitioners are given 15 days" time to vacate the property.