
(1992) 01 P&H CK 0123
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 175 of 1991

District Bhatinda Khadi Gram Udyog Karya Karta Sangh	APPELLANT
Vs	
Amarjit Pal and Others	RESPONDENT

Date of Decision : 06-01-1992

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13(2), 15(5)
Punjab Relief of Indebtedness (Deposit in Court) Rules, 1935 — Rule 7

Citation : (1992) 101 PLR 575 : (1992) 1 RCR(Rent) 664 : (1992) 1 RCR(Rent) 532

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : H.L. Sibal and R.K. Handa, for the Appellant; Ashok Aggarwal and Subash Goyal, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—This civil revision is directed against the order of learned appellate authority upsetting the order of learned Rent Controller, Bhatinda, dated 3-12-1986, whereby petition u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act) filed by the landlord was dismissed.

2. Udhey Chand filed a petition u/s 13 of the Act seeking ejectment of the petitioner from the demised premises consisting of two rooms situated in Dhobi Bazar, Bhatinda on the allegation that he had let out the same to one Pitamber Dutt, Manager, Kasturba Sewa Mandie (for short the "Mandir") for a period of one year through a rent note dated 11-1-1960 on a monthly rent of Rs. 85/-. It was also alleged that house tax was payable by said Pitamber Dutt. Ejectment was claimed on the grounds, namely, (i) rent and house tax from 1-1-1982 onwards have not been paid; (ii) Mandir had sub-let the premises to Bhatinda Khadi Gram Udyog Karya Karta Sangh, Dhobi Bazar, Bhatinda ; and (iii) the demised premises forming part of residential building is required by the landlord

for his personal use and necessity as accommodation already in his possession is not sufficient for his need, and that he requires the demised premises for his son who is practising as an Advocate.

3. On notice of the petition, petitioner appeared on 26-9-1983 and tendered rent for the period from 1-7-1983 to 31-12-1983 at the rate of Rs. 35/- p.m. amounting to Rs. 510/-, Rs. 70/- as house tax, Rs. 11/- as interest and cost, Rs. 40/- assessed by the Rent Controller but the same was not accepted by, the landlord on the ground that the petitioner is not his tenant. On merits, the petitioner controverted the allegation made in the ejectment application and maintained that he is a direct tenant. It was also stated in the written statement that rent from 1-1-1982 onwards had already been deposited in Treasury under the order of Senior Sub-Judge, Bhatinda. The ground of personal necessity was controverted by saying that the premises being a shop, the same could not be got vacated on the ground of personal necessity.

4. On the pleadings of the parties, the following issues were framed by the learned Rent Controller:-

1. Whether the premises in dispute are a part of a bigger residential building bearing municipal No. 4557 ? OPA

2. Whether respondent No. 1 has sublet or transferred his rights to respondent No. 2 without the consent of the applicant? OPA

3. Whether respondent No. 1 is liable to be ejected for non-payment of rent ? OPA

4. Whether the premises in dispute are required by the applicant for his own use and occupation ? OPA

5. Whether the present application is not maintainable since the previous order filed on petition between the parties is final? OPR

6. Whether the present application is mala-fide ?

7. Whether the applicant is estopped by his acts and conduct from filing this petition ? OPR

8. Relief.

5. The learned Rent Controller, after appreciating the evidence on record, dismissed the ejectment application holding that the demised premises are shop and the earlier judgment passed in the earlier case operates as res judicata between the parties and the landlord cannot reagitate the matter on the plea of sub-letting by the Mandir to the petitioner.

6. Under issue No. 3, petitioner was held not liable to be ejected from the demised premises on the ground of non-payment of rent as costs assessed by the learned Rent Controller on the first date of hearing were tendered by the petitioner along with rent from 1-7-1983 to 31-12-1983 but the same had not

been accepted by the landlord. The Rent Controller was also of the view that the deposit made by the petitioner u/s 31 of the Punjab Relief of Indebtedness Act was a valid tender and the deposit so made by the tenant was available to the landlord on the first date of hearing. On appeal, the learned appellate authority upset the judgment of the Rent Controller and passed an order of ejectment against the petitioner on the ground that notice of the deposit of rent u/s 31 of the Punjab Relief of Indebtedness Act was not validly issued to the landlord and thus the tender was not valid in law. Petitioner has now challenged the order of the learned appellate authority by way of this civil revision.

7. Shri Hira Lal Sibal, Senior Advocate, counsel for the petitioner contended that the rent due on the date of application already stood deposited under the order of the Court u/s 31 of the Punjab Relief of Indebtedness Act and thus no order of ejectment could be passed against the petitioner on the ground of non payment of rent.

8. On the other hand, Shri Ashok Aggarwal, Senior Advocate, learned counsel for the landlord vehemently argued that no intimation whatsoever was sent of the said deposit and the amount so allegedly deposited by the petitioner was not available to the landlord on the first date of hearing and thus the appellate authority rightly passed an order of ejectment against the petitioner. He also contended that on the first date of hearing, while tendering the rent for the period from 1-7-1983 to 31-12-1983 petitioner never informed the landlord that the rent had already been deposited under orders of the Senior Sub-Judge.

9. After hearing the learned counsel for the parties, I am of the considered view that this civil revision deserves to succeed. It is not disputed before me that the petitioner made an application before the District Judge, Bhatinda, on 12-4-1983 for depositing rent for the period from 1-1-1982 to 30-6-1983. The District Judge entrusted the said application to the Senior Sub-Judge, who for the purposes of rent Act, is also the Rent Controller. Learned Senior Sub-Judge vide order dated 26-4-1983, allowed the petitioner to deposit the rent. In pursuance of the order dated 26-4-1983, petitioner deposited a sum of Rs. 1,760/- towards rent in the treasury vide challan No. 581. When receipt of the deposit was produced before the learned Senior Sub-Judge, he directed that intimation be sent to the landlord of the deposit. On 6-6-1983, the Senior Sub-Judge after finding that the notice of deposit was not issued in proper form, again directed for issuance of notice in proper form informing the landlord about the deposit of arrears of rent coupled with house-tax so that he may collect the same. He further ordered that service be got effected for 25-7-1983. On 25-7-1983, after finding that the landlord had refused to accept service of notice, the Senior Sub-Judge consigned the file to the record room as he was of the view that no further action is called for.

10. Section 31 of the Punjab Relief of Indebtedness Act with reference to payment of arrears of rent u/s 13(2) (i) of the East Punjab Urban Rent Restriction Act, 1949, came up for consideration before the Hon'ble Supreme Court in the case of Mangat Rai and Another Vs. Kidar Nath and Others, ,

wherein it was observed as under:-

"From the plain and unambiguous language of Section 31 it cannot be spelt out that the Act applies only to a particular type of debtors and creditors between whom there was an agreement for payment of interest. Section 31 has been couched in the widest possible terms and the legislature has advisedly not used the word "debtor" in Section 31 so as to confine the provisions of the section only to the "debtor" defined in the said Act and to no other but the legislature intended to embrace within its fold all persons owing money including tenants who are in arrears."

11. A similar view was taken by the Hon'ble Supreme Court in Sheo Narain Vs. Sher Singh, .

12. The contention of learned counsel for the landlord that no intimation was given to him of the deposit of rent under the orders of the Senior Sub-Judge, is devoid of any merit. The learned Rent Controller, in order to determine as to whether proper notice was sent to the landlord and the landlord having refused to accept the notice summoned the file and after perusing the sommoned file, found as under:-

"It is quite evident from the file that the learned Senior Sub-Judge after deposit of arrears of rent by respondent No. 2, ordered issuance of notice about that deposit to the applicant. This order was passed by him on 30-4-1983 and notice to the applicant was issued for 6-6-1983. Notice in proper form was not issued by the office for 6-6-1983 and the learned Senior Sub Judge ordered that it be issued again to the applicant for 25-7-1983. On 25-7-1983 report received was that applicant has refused to accept service. The learned Senior Sub-Judge, then ordered that no further action is called for and the papers by consigned."

13. Thus, I am of the view that the landlord had the information before the first date of hearing that the rent due on the date of the application had already been deposited by the tenant in the Court of the Senior Sub-Judge. Incidentally the present ejectment application was also tried by the Senior Sub-Judge as Rent Controller. Therefore, arrears of rent deposited by the tenant in the treasury to the credit of the landlord were lying in the very Court of Rent Controller in which the landlord subsequently filed the ejectment application. The arrears of rent were thus available to the landlord on the first date of hearing.

14. The other contention of learned counsel for the landlord that the notice of deposit was not sent in terms of Rule 7 of the Punjab Relief of Indebtedness Act (Deposit in Court) Rules, 1935 is also devoid of any merit because Rule 7 only says that notice of the deposit should be sent by registered letter, acknowledgement due, at the expense of the debtor. In the present case, substantial compliance of the rule was made when notice was sent to the landlord through the agency of the Court and the landlord refused to accept the notice.

15. The learned appellate authority, while upsetting the order of the Rent Controller, took into consideration that according to the rent note, three months' rent was to be deposited or paid in advance and the tenant having failed to deposit three months rent in advance, the tender so made is not valid. This reasoning of the appellate authority is also not tenable because admittedly rent note was not executed by the petitioner. Rather the landlord was claiming ejectment of the petitioner also on the ground that he is a sub-tenant under the Mandir to whom the premises were let out. Petitioner never claimed in his ejectment application that there was an agreement between the petitioner and the landlord that the rent for three months' in advance was to be paid by the tenant. In this view of the matter, the finding of the learned appellate authority cannot be sustained in law.

16. Resultantly, this civil revision is allowed. The order of the learned appellate authority is set aside and that of the Rent, Controller is restored. However, parties are left to bear their own costs.