

(1995) 01 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2294 of 1984

Ganga Sahai Chanan Ram and Others	APPELLANT
Vs	
Babu Ram alias Babu Singh	RESPONDENT

Date of Decision : 06-01-1995

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13(2)

Citation : (1995) 110 PLR 475 : (1995) 1 RCR(Rent) 478

Hon'ble Judges : H.S. Bedi, J

Bench : Single Bench

Advocate : M.L. Sarin and Hemant Sarin, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Bedi, J.—The present petition is at the instance of the tenant whose ejectment has been ordered by the Appellate Authority, while reversing the order of the Rent Controller.

2. The facts of the case are as under:-

The petitioner M/s. Ganga Sahai Chanan Ram was inducted into the shop in question as a tenant on a monthly rent of Rs. 27.50. As the rent was not being paid to the landlord-respondent, an application for eviction was filed on 6th of December, 1978 before the Rent Controller, Faridkot on various grounds, firstly that with effect from 17th October, 1975 upto the date of filing of the application, the tenant was in arrears of rent, and secondly that the shop in question was in a dilapidated condition and had become unfit and unsafe for human habitation. On the first date of hearing the petitioner-tenant tendered the rent and costs and the first ground of ejectment, therefore, became redundant.

3. On a consideration of pleadings of the parties, the Rent Controller framed the following issues:-

1. Whether the demised premises are unfit and unsafe for human habitation ? O.P.A.

2. Whether the respondent has committed such acts which have impaired the value and utility of the demised premises materially? O.P.A.

3. Relief.

The Rent Controller found that both the issues were not proved and therefore, dismissed the application. Aggrieved thereby, the landlord filed an appeal, which as already indicated above, has been allowed. The appellate authority found that the evidence of Shri Kanwarjit Singh Brar (P. W. 6) XEN, P. W. D. (B&R), who was an expert witness produced by the landlord was liable to be believed in preference to the expert evidence tendered by the petitioner in the shape of Shri S.S. Jawanda (R. W. 1). The appellate authority was, however, primarily influenced by the fact that the photographs produced and duly exhibited before the Rent Controller clearly did indicate that the building was in a dilapidated condition and unfit and unsafe for human habitation. The appeal was, accordingly, allowed and the ejectment of the tenant ordered. Hence, this petition.

4. Mr. Sarin, learned counsel appearing for the petitioner has urged that the photographs relied upon by the appellate authority did not pertain to the demised premises but were of the adjoining shop. In support of this plea, Mr. Sarin has referred to an application filed before the Rent Controller on 26th of February, 1980 in which it had been mentioned that the photographs in question had been filed in a civil suit in some other litigation and that the landlord - Babu Ram was called upon to admit or deny the said photographs. A look at the statement would indicate that the Rent Controller on 28th of February, 1980 directed that the notice be issued to the opposite side, but it is admitted by Mr. Sarin that no subsequent proceedings took place on that application. During the course of arguments, I had asked Mr. Sarin to point out any evidence in support of his plea but he expressed his helplessness in the matter and stated that there was no other evidence except the application in question. I have considered this argument and find that it is totally misconceived. The photographs were duly exhibited on the basis of the statement made by Shri Brij Mohan, proprietor of Nice Photo Studio, Faridkot, who took photographs and produced them along with the negatives in the Court. A look at the Photographs in question does indicate that the shop in question is in a very poor condition and that the assertion of the petitioner that it has become unfit and unsafe for human habitation was fully borne out.

5. Mr. Sarin has next argued that the petition for ejectment was mis-conceived inasmuch as, no material particulars had been given therein with regard to the nature of the defect in the property. This argument too, is without merit. In the eviction petition itself, it has been clearly mentioned that the shop in question had become unfit and unsafe for human habitation and as such the further

requirements as to the nature of the defect in the building was to be proved by the evidence. This has been proved by the evidence of Kanwarjit Singh, XEN and the photographs referred to above.

6. Mr. Sarin has lastly argued that the evidence produced by the petitioner herein was unreliable. This argument is also not acceptable for the reasons already recorded by the Appellate Authority.

7. The present petition is, therefore, devoid of merit and is dismissed. However, it is directed that in case, the petitioner clears all the arrears upto date and further deposits the rent at the agreed rate in advance before the Rent Controller, and also furnishes an undertaking within four weeks to vacate the premises in dispute at the end of three months, the petitioner will be allowed three month's time to vacate the premises and during that period, the petitioner will not be dispossessed.