
(2000) 05 P&H CK 0157
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 456 of 1983

Harinder Singh

APPELLANT

Vs

Bali Ram Sansari Lal

RESPONDENT

Date of Decision : 08-05-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
East Punjab Urban Rent Restriction Act, 1949 — Section 13(2), 15(5)

Citation : (2000) 126 PLR 572 : (2000) 2 RCR(Rent) 81

Hon'ble Judges : S.S. Sudhalkar, J

Bench : Single Bench

Advocate : R.K. Aggarwal, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sudhalkar, J.—Predecessor of petitioner-landlord had filed an eviction petition in the court of learned Rent Controller, Patiala on the ground that the respondent-firm was in arrears of rent and it has ceased to occupy the rented shop for a continuous period of four months without reasonable cause. The eviction petition was dismissed. The appeal filed over the same was also dismissed and hence this revision petition has been filed by the landlord.

2. I have heard learned counsel for the petitioner. None has appeared for the respondent.

3. Counsel for the petitioner has argued on the point of non-user for four months. According to the case of the landlord, the respondent is a commission agent and the shop rented out to him is situated at Anaj Mandi, Patiala. According to the petitioner, respondent firm had ceased to occupy the shop for a continuous period of four months without any reasonable cause and it has shifted their business to a new shop in new Anaj Mandi, Sirhind Road, Patiala and had kept the rented premises in a locked condition. To this allegation, the reply of the respondent is that the allegations are wrong and the shop in question was not

kept locked. It is contended that the auction of the seasonal crops had been stopped by the notification of the Government and the same now takes place in New Mandi, Sirhind Road as well as in other purchase centre. The Head Office of the respondent firm remains in the rented shop at Anaj Mandi, Nabha Gate, Patiala and the firm has been carrying on its business of accounts of purchase and sale, and dealing with its customers etc. at that very shop as usual as before. It is further contended in the reply that the respondent-firm has been using the premises in dispute for storing its goods etc.

4. Both the sides have examined the witnesses in this case. AW1 is the husband of the deceased petitioner Parkash Kaur. AW2 Mastan Singh has been examined to show that the shop had remained closed. AW3 Sardari Lal has been examined to show that they had seen the shop remaining closed. AW4 is the Clerk of the Market Committee, Patiala and he had produced the licence of the respondent Ex.AW4/1 which showed that the shop is situated in new Anaj Mandi, AW5 is the electricity Meter Reader who has deposed that according to meter reading books and the ledger, the reading was taken on 30.9.1978 which was nil. It was taken earlier in July, 1970 and the reading taken on 30.9.1978 pertains to the period July, 1978 to 30.9.1978. He has further deposed that the meter reading book also shows that the shop was lying closed from November, 1978 onwards and the shop was closed when Meter Reader went to shop for meter reading from November. 1978 to April, 1980. He has further deposed that before July, 1978 meter reading was being done and electricity was consumed.

5. Respondent has examined RW1 Parmar Chand son of Bali Ram, who has stated that he is a partner of the respondent-firm. He has deposed that shop in dispute never remain closed except on Sundays and they are running their business from that shop. It is his statement that they have opened a branch in the new Grain Market ever since the Government has stopped the procurement there. He has further stated that Head Office of the said firm is in the rented shop and they do all type of money transactions with the farmers in the said shop and sell cattle feed. It is further stated that they maintain the accounts of the said firm there. He has further stated that the address of their firm in the records of Income Tax and Sales Tax Departments is that of the shop in dispute. He has produced copies of the orders of the Income Tax and Sales Tax Departments.

6. RW2 is Gurcharan Singh s/o Gurdial Singh. He has stated that he knew the firm respondent. They are his commission agents and he brings his produce at the shop of the respondent firm in the Grain Market of Sirhind Road. He has also stated that after leaving their produce at new Grain Market, they settle their accounts at the shop in old Grain Market. He has further stated that they have been purchasing oil cakes from the shop of the respondent in the old market. He has also stated that he has never seen the shop closed.

7. RW3 is Norata Singh son of Sampuran Singh. He is a cultivator and has deposed that Bali Ram was his commission agent and on the date of his

deposition former was his commission agent He has stated that he brings his produce at the shop of the respondent-firm situated in new Grain Market while they settle their account at the old Grain Market at the shop of the respondent-firm. He has also stated that he has never seen the shop closed.

8. RW4 is Ram Murti son of Kundan Lal. He has stated that he knew the parties. Respondent's shop was adjoining to his shop. He has never seen the shop in dispute closed for more than one or two days nor did it remain closed for a continuous period of four months.

9. Here in this case oral evidence is from both the sides. However, there is documentary evidence also from the side of the parties. The respondent has produced copies of the Sales Tax and Income Tax orders. However, the address on such documents will be as written by the tax payer while filing the returns. Learned counsel for the petitioner has heaved on the evidence of absence of use of electricity. The lower appellate Court has relied on the case of Karam Chand Joshi v. Kartar Singh and Ors. 1977 RCR 327 in which it has been held that non-consumption of electricity does not lead to the conclusion that the premises remain unoccupied. In that case it has been held that from the deposition of the witnesses it could not be said with certainty that any meter reading was at all done from June, 1968 to March, 1969 and, therefore, it could be for that reason that no consumption was shown in the meter reading book. This is the finding in that case. More so, regarding the question of burden of proof which also assumes importance, the petitioner has examined witnesses to show that the respondent is not occupying the shop in question. In this particular case, it is an admitted fact that the respondent has, subsequent to the lease, occupied another place in new Anaj Mandi.

10. In these circumstances, the burden was on the respondent-firm to show that they were using the rented shop. The electricity meter reading is an evidence and an important one because prima facie non-consumption shown by the Meter Reader can lead to a presumption that no electricity is consumed unless proved otherwise. Moreover, even according to the case of Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, also the party in possession of the best evidence has to produce the same and it cannot withhold such evidence even on the ground that the burden of proving of a particular issue is not upon the said party.

11. In the present case, it is not proved that the electricity meter was out of order. Moreover, even it is presumed for the sake of arguments that the Meter Reader might not have gone regularly and when he had gone to the shop in question, it might have been closed at that moment but the respondent could have shown the meter reading and from the meter reading, could have shown to the Court that the consumption (if any) was for the period in question. According to the counsel for the petitioner, this has not been done.

12. As a result, it cannot be said that the respondent has discharged his burden. Moreover, according to the respondent-firm, they have got the Head Office of the

firm at the shop in dispute where they do all type of money transactions with the firms and they maintain the accounts of the firm. If this is so, it cannot be said that respondent could not have used electricity at all.

13. Therefore, in addition to the oral evidence (which has been led by both the sides), the circumstance which arises regarding non-consumption shown by the electricity reading, assumes importance and the burden of proving user of the shop in question had then to be discharged by the respondent and therefore, the presumption of non-user of the said shop can be said to have been arisen in favour of the petitioner and it was for the respondent to prove the user by explaining the presumption that has arisen. This having been not done, I find that the Courts below have not decided the case in correct interpretation of the principle of burden of proof. This being so, the petitioner can be said to have proved the non-user of the shop in question for more than four months, as alleged.

14. As a result, this petition is allowed. The judgments of both the Courts below are set aside and the Rent Petition is allowed. It is ordered that the petitioner shall be entitled to obtain the possession of the shop in question.