
(1992) 12 P&H CK 0076
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1652 of 1885

Kuldip Kaur and Others

APPELLANT

Vs

Brij Lal

RESPONDENT

Date of Decision : 07-12-1992

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13(3), 14, 15(5)

Citation : (1993) 103 PLR 503 : (1993) 1 RCR(Rent) 407 : (1993) 1 RCR(Rent) 481

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

Bench : Single Bench

Advocate : Ashwani Kumar Chopra, for the Appellant; D.N. Tanwar, for the Respondent

Final Decision : Allowed

Judgement

H.S. Bedi, J.—The present petition is directed against the order of the Appellate Authority, Ferozepur, whereby the appeal filed by the landlord-petitioner against the order of the Rent Controller, dismissing the petition for eviction of the respondent-tenant from the demised premises has been dismissed.

2. The facts giving rise to the petition are given are hereunder :--

The petitioner filed an application u/s 13 of the East Punjab Urban Rent Restriction Act II of 1949 (hereinafter called "the Act"), for eviction of the respondent on May 26, 1976, interalia, on the ground that the demised premises which is a shop consisting of three rooms on the ground floor, had become unfit and unsafe for human habitation. This application was dismissed on July 26, 1978, by the Rent Controller with the finding that though the building required extensive repairs, it had not been proved by the, petitioner that it had become unfit and unsafe for human habitation. While this matter was still pending, before the Rent Controller, the respondent received a notice from the Cantonment Board, Ferozepur, u/s 126 of the Cantonment Board Act, 1924, calling upon him

to make necessary repairs to the demised premises failing which the building would be demolished by the Board itself. The respondent thereafter (i.e. on January 21, 1978) filed a suit for injunction against the Cantonment Board as also the petitioner seeking to restrain them from demolishing the demised premises. This suit was dismissed on April 20, 1979 and the appeal filed thereto was also dismissed on September 7, 1981. The Second Appeal in this Court was also dismissed on July 19, 1982, with the observation that the house in question was not capable of repairs and it was in a dilapidated condition. The respondent also filed an application u/s 10 of the Act which too was dismissed with the finding that the allegations that the petitioner had removed the bricks from the roof of the demised premises, had not been proved. It was in this situation that the petitioner filed yet another application on January 22, 1981, u/s 13 of the Act, seeking eviction of the respondent inter-alia once again on the ground that the premises in question had become unfit and unsafe for human habitation and the respondent was, therefore, liable to be evicted. The case of the petitioner now was that a substantial portion of roof of the demised premises had fallen down after dismissal of the earlier application on July 26, 1978.

3. The application was opposed by the respondent by filing a written statement and it was stated therein that the dismissal of the earlier application on July 26, 1978, barred the second application in view of provisions of Section 14 of the Act. On the question raised, the Rent Controller framed the following issues:--

(1) Whether the respondent is liable to be evicted from the premises in dispute on the grounds in the application ? OPA

(2) Whether the application is barred u/s 14 of the East Punjab Urban Rent Restriction Act ? OPR

(3) Relief.

4. Issue Nos. 1 and 2 being interlinked were decided together and the Rent Controller vide his order dated December 2, 1983, dismissed the application holding that there was no change of circumstances between the dismissal of the earlier application and the filing of the second one and, therefore, the eviction was not warranted. The Rent Controller also recorded the finding that bricks had been removed from the roof of the demised premises by some mischievous person, who could well be the petitioner himself so as to make out a ground for eviction of the respondent. On the matter being taken up in appeal the findings of the Rent Controller were affirmed by the Appellate Authority, Ferozepur, although the latter also found that some portion of the roof of the demised premises had in fact fallen down and this finding was recorded on the basis of statement of the respondent himself, wherein he admitted in his cross-examination that a portion of 10" X 8" of the roof of one room had fallen. Aggrieved by the order of the Rent Controller, as also the Appellate Authority, the present petition has been filed

5. Mr. Ashwani Kumar Chopra, learned counsel appearing for the petitioner, has

urged that the finding of the authorities below that there was no change of circumstances between the dismissal of the first application and the filing of the second is contrary to the evidence produced in the case as it has come on record that the roof had fallen about five months prior to the filing of the second application for eviction, as stated in para 4 of the replication. It has also been argued that it had been admitted by the respondent himself that a portion of 10" X 8" of the roof of one room had fallen down. It has also asserted that the finding of the authorities that the roof had been demolished by the petitioner himself, in order to make out a ground for eviction was obviously without basis, as the application u/s 10 of the Act had been dismissed by the Rent Controller on January 13, 1983. and the appeal filed thereto on March 12, 1985 by the same appellate Authority, who had passed the order impugned herein. It has also been urged that in the civil suit filed by the respondent against the Cantonment Board as also the petitioner for seeking permanent injunction, a finding had been recorded by this Court that the premises in dispute were beyond repair. Learned counsel has further contended on this basis that the petitioner was not himself responsible in any way in causing damage to the roof, as has been inferred by the Rent Controller, as also by the Appellate Authority. Reliance has also been placed on the un rebutted evidence of AW-1 P. N. Sharma, who was the expert produced by the petitioner, as no, expert had been produced by the respondent. In his inspection report this witness after examining the condition of the demised premises had recorded that they were unfit and unsafe for human habitation. The evidence of this witness was also corroborated by AW-5 Devinder Kumar, an Inspector of the P.W.D., and also by AW-6 Ajit Singh, a neighbour of the respondent, who also swore to the condition of the building and deposed that the premises were about 60 years old. It has also come in evidence that the roof of the premises had fallen because of extreme vibrations as the premises were being used as a workshop where a 20 Horse Power Motor had been installed for the purpose of running a grinder, drill and lathe.

6. After hearing the counsel for the parties, I find that the petition deserves to succeed. It would be noticed that the primary ground on which the authorities below decided the case, was that the earlier application for eviction having been dismissed in July, 1978, the present application was not maintainable as there has been no change of circumstances between the date of decision of the earlier application and the date of filing of the present one and as such, the subsequent application was barred by virtue of the provisions of Section 14 of the Act. This finding, to my mind, is erroneous for the simple reason that between the date of dismissal of the previous application and the filing of the subsequent application for eviction, a substantial portion of the roof of one of the rooms constituting the demised premises had fallen down. From the evidence on the record, it appears that it took place about five months prior to the date of the filing of the second application i e. on January 23, 1981. From a reading of the various Court battles between the parties, it appears that the condition of the demised premises was extremely poor, warranting immediate replacement or repair. The judgment in

Ram Chander v. Kedar Nath (1954) 56 P.L.R. 18. cited by the authorities below, does not help the case of the respondent whatsoever, in view of the finding recorded above that there had been a change of circumstances between the dismissal of the first eviction application and the date of filing of the second application. As a matter of fact, the judgment in Inder Dass v. Hem Rap 1987 92 P.L.R. 642 clearly applies to the facts of the present case. In this case, an application u/s 13 of the Act was filed seeking eviction of the tenant on the ground that the premises had become unfit and unsafe for human habitation. The said application was dismissed and thereafter the roof of the building fell down which led to the filing of the second application under the same provisions of the Act. The tenant claimed that the subsequent application was barred u/s 14 of the Act but this claim was negated by the High Court and it was held that the change of circumstance made the bar created u/s 14 of the Act inapplicable. It was further held in this case as well as in Kailash Chander Bhai v. Mangal Singh Sachdeva 1983 (1) R.C.R. 413. if a substantial part of the building becomes unfit and unsafe for human habitation, the tenant is liable to be evicted from the premises even if the tenanted premises are otherwise fit and safe for human habitation. The finding of the Appellate Authority that the roof was admittedly damaged but it was so damaged by the petitioner himself or by some one at his instance, is without basis. It is to be noted that in the application u/s 10 of the Act, the Rent Controller found that the premises could not possibly be repaired by placing bricks on the roof and that it was not proved that the damage to the roof had been caused by the petitioner himself so as to make out a case for eviction.

7. In the civil suit filed by the respondent which was decided against him right upto High Court, a categorical finding had been recorded by this Court to which reference has already been made to the effect that the shop in question was not capable of repairs and it was in a dilapidated condition. This finding of fact recorded by the civil court, to my mind, completely demolished the case of the respondent.

8. Mr. Tanwar, learned counsel for the respondent, has urged that the findings of fact recorded by the authorities below should not be lightly interfered with in the revisional jurisdiction. In this connection it is to be noted that the jurisdiction of this Court u/s 15(5) of the Act is much wider than the revisional jurisdiction u/s 115 of the CPC and this Court can, at any time, after satisfying itself as to legality or propriety of an order, may pass such order as it deems fit. I am of the view that the findings of the fact recorded by the authorities below is based on a complete misreading and misinterpretation of the evidence.

9. For the reasons recorded above, the present petition is allowed. The orders of the Rent Controller and the Appellate Authority are set aside and the eviction of the respondent is ordered. He is, However, allowed three months time to vacate the premises in dispute. No order as to costs.