

(2000) 02 P&H CK 0049
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2041 of 1995

Maman Chand Gupta and Others

APPELLANT

Vs

Lakhpat Rai and Others

RESPONDENT

Date of Decision : 22-02-2000

Acts Referred:

Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 13(2), 13(3), 15(6)

Citation : (2000) 125 PLR 411 : (2000) 2 RCR(Rent) 38

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

Bench : Single Bench

Advocate : R.S. Mittal and Sudhir Mittal, for the Appellant; S.K. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.—The present revision petition has been filed by Maman Chand Gupta and others (hereinafter described as "the petitioners") directed against the order passed by the learned Rent Controller, Narnaul, dated 12.11.1992 and of the learned Appellate Authority, Narnaul, dated 13.2.1995. The learned Rent Controller had dismissed the application for eviction filed by the petitioners and the said order had been upheld by the learned Appellate Authority.

2. The relevant facts are that the petitioners filed eviction application against the respondents. Amongst the large number of grounds that were taken, the surviving grounds of eviction which require consideration are non-payment of rent, the property having become unsafe and unfit for human habitation and change of user of the suit premises. The case of the petitioners is that the suit property was let to the respondents at a monthly rent of Rs. 2/- w.e.f. 16.12.1954 vide rent note Exhibit PW5/A. It was prayed that the respondents are liable to be evicted because they have not paid the arrears of rent from 1981 till the filing of petition on 12.6.1986 besides house tax. It was also asserted that the property in dispute had been let as a shop but the respondents are using the same as a godown; and, lastly, the suit property has become unfit and unsafe for

human habitation.

3. The petition for eviction had been contested. The respondents' claim was that they had tendered the rent and the house tax. Therefore, the respondents were not liable to be evicted. It was further asserted that right from the inception of the tenancy, the suit property is being used as a godown for storing gunny bags and domestic articles. The respondents had been carrying on the business of commission agent in foodgrains in the market at Narnaul. Thus, it was denied that the user of the property has been changed. Needless to mention that it was even denied that the suit property has become unfit and unsafe for human habitation.

4. The learned Rent Controller had framed the issue. It was held that the suit property is being used from the beginning as a godown. There was no change of user. It was further held that the rent had been tendered and the ground of eviction was not available that the respondents have failed to pay or tender the arrears of rent. The question as to if the property had become unsafe and unfit for human habitation was also answered against the petitioners. As mentioned above, the appeal filed against the said order also failed as a result of which the present revision petition has been preferred.

5. The first ground pressed while assailing the order of the learned Rent Controller and the learned Appellate Authority was that the suit property has become unsafe and unfit for human habitation. According to the learned counsel, it is an old structure and the evidence on the record shows that cracks have appeared and the door have been destroyed by moth and ants. Both the authorities have returned the findings adverse to the petitioners.

6. It is true that it is in evidence that the building in question is more than 100 years old but the age of the building by itself is not a factor to conclude that the property has become unsafe and unfit for human habitation. It has to be established by evidence that the condition of the premises is that it has become unfit and unsafe for human habitation.

7. The evidence on the record shows that there were some cracks that are stated to have occurred. The building expert of the petitioners, Mr. Pushkar Raj Gupta, had stated that there are certain cracks but the details and the nature of the cracks had not been mentioned. The statement, therefore, was rightly rejected to be vague. In the absence of it being shown that the suit property has become unfit and unsafe for human habitation, there is no ground to upset the concurrent findings of fact.

8. The main stress, however, was on the ground of non-payment of rent. According to the petitioners' learned counsel, on the first date of hearing, the rent tendered was Re. 1/- less and, therefore, the respondents were liable to be evicted. However, the respondents' learned counsel highlighted that on the same day noticing that they had tendered the rent which was Re. 1/- less than what was due, they submitted an application with the learned Rent Controller for

depositing the same in the court of the Rent Controller.

9. As per rent agreement, the rent was payable by Bikrami Calendar. When rent is payable by Bikrami Calendar, it is well known that within three years a long month come that is a an extra month. The rent is to be paid month by month and that rent had to be paid for 37 months. The tenant had no option in such circumstances but to pay the rent for that extra month when the agreement is to pay as per Bikrami Calendar. To the same effect is the decision of this Court in the case of Smt. Sita Devi v. Chaman Lal and another (1985) 87 P.L.R. 113. It was held that when rent was short by one month which was "laund month", it was deficient. This is the reason why the shortage seemingly occurred.

10. Reverting back to the question in controversy, as mentioned above, it is not disputed that on the same day shortage of Re. 1/- was made up, which, in fact, was deposited on the same day. The learned counsel stated that this was not a tender of rent to the petitioners and, therefore, the ground of eviction was available. He relied upon the decision of this Court in the case of Shri Vinod Kumar v. Harbans Singh Azad (1977) 79 P.L.R. 144. The dispute was under the East Punjab Urban Rent Restriction Act, 1949. The question for consideration was as to what would be the first date of hearing. The landlord therein had filed ejectment application against the tenant. The tenant did not appear and proceeded ex parte. The order of ex parte was passed on 10.2.1967. It was adjourned for ex parte evidence. An ex parte order of ejectment followed. Subsequently, the tenant filed an application for setting aside ex parte order of eviction. The same was set aside and the case was adjourned for further proceedings. On that date, the tenant tendered the arrears of rent. The landlord refused to accept stating that the tender was invalid. It was held that the rent should have been tendered when ex parte proceedings were set aside.

11. Indeed, the petitioners' learned counsel cannot take advantage of the ratio decidendi of this decision. This is because of the difference between the East Punjab Urban Rent Restriction Act, 1949 and the Haryana Urban (Control of Rent and Eviction) Act, 1973. Sub-section (i) of clause (2) of Section 13 of the East Punjab Urban Rent Restriction Act, 1949, reads as under:-

"13(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied.

(i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable:

Provided that if the tenant on the first hearing of the application for ejectment after due service, pays or tenders the arrears of rent and interest at six per cent per annum on such arrears, together with the cost of application assessed by the Controller, the tenant shall be deemed to have fully paid or tendered the rent

within the time aforesaid."

The corresponding provision of the Haryana Urban (Control and Eviction) Act, 1973, on the contrary, is to be following effect:-

"13(2)(i): that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable:

Provided that if the tenant, within a period of fifteen days of the first hearing of the application for ejectment after due service, pays, or tenders the arrears of rent and interest, to be calculated by the Controller, at eight per centum per annum on such arrears together with such costs of the application, if any, as may be allowed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid:

Provided further that the landlord shall not be entitled to claim arrears of rent for period exceeding three years immediately preceding the date of application under the provisions of this Act."

12. Besides others, the significant difference relevant for the purposes of the present revision petition is that while in the Rent Act applicable to Punjab, on the first date of hearing of the application after due service, the tenant is bound to tender the arrears of rent or pay the same with interest and costs, in Haryana the provision of the Rent Act applicable to Haryana makes it clear that this facility is available within 15 days of the date of hearing of the application after due service. In both the cases, the tenant had a right to pay or tender the arrears of rent. Therefore, even if on the first date of hearing, there was some deficiency in the tender of rent and the tenant, who has the opinion to pay or tender the rent, had filed an application and with the permission of the Controller deposited the rent i.e. Re. 1/-, it cannot be taken that the tenant had committed a default. In that view of the matter, the contention of the petitioners learned counsel must fail.

13. The learned counsel had relied upon the decision of this Court in the case of *Narain Datt v. Kidar Nath and Ors.*, (1979) 81 P.L.R. 291. Once again, this was a decision under the East Punjab Urban Rent Restriction Act, 1949. The rent tendered was short by Rs. 1.60 paise. This Court held that though the amount was insignificant, still once the tender is not valid, the order of eviction would follow. But, as noted above, herein the position is different and, therefore, there is no ground to interfere in the order passed by the learned Rent Controller and the learned Appellate Authority because on the same day the rent had been deposited with the permission of the Rent Controller.

14. In that event, the learned counsel urged that the property has been let as a shop and it was being used as a godown. Consequently, there is a change of

user. There is no written permission obtained from the petitioner. As per the rent agreement, the property had been described as a shop. Specifically it had not been mentioned as to for what purpose, it had to be used.

15. On the strength of the Full Bench decision of this court in the case of Des Raj v. Sham Lal (1980)82 P.L.R. 647 (F.B.), it was urged when the premises were described as a shop, it has to be used as a shop. In the cited case, the question formulated was:-

"Whether the identification of a demised premises as shop in the lease-deed, which otherwise is silent in regard to the purpose, per se spells out the purpose for which the premises in question is leased out or not is the legal question of some significance that arises for determination in this referred civil revision petition."

16. The Full Bench answered the same and held that it should be used only as a shop and could not be used as a godown. The precise findings are as under:-

"Coming now to the case in hand, the purpose to which a "shop" can normally be put being inherently different from the normal use to which a building described as "godown" is put, as already observed, the "shop" herein having been used exclusively as "godown", the conclusion in the light of what is held above, is inevitable that the tenant had changed the user and was liable to be evicted in terms of Section 13(2)(ii)(b) of the Act."

17. Reliance further was placed on the decision of the Supreme Court in the case of Rai Chand Jain v. Miss Chandra Kanta Khosla? 1991(1) RLR 76. Herein as per lease deed, the property was to be used for residential purpose and thereupon it was held that there could be change of user. In the present case in hand, as pointed out above, it has not been specifically so stated and consequently the ratio decidendi of this decision will not help the petitioners. Reliance further was placed on the decision of this Court in the case of Yogdheyan Singh and Others Vs. Devki Nandan and Others, . The facts were that the lease was of a vacant piece of land. The lease deed indicated that the right was granted to the tenant to construct the houses subservient to the main purpose which was setting up of a factory. Subsequently, when the factory stopped running, the property was being used exclusively for residential purpose. It was held that it would be change of user and that waiver and acquiescence on the part of the landlord does not arise. As would be noticed hereinafter, Supreme Court has taken a view to the contrary and therefore, It is difficult to accept the ratio decidendi that even delay on the part of the landlord would not defeat the claim.

18. A Division Bench of this Court in the case of Kuldip Singh Vs. Shiv Saran Dass Rakesh Kumar and Others, , also held that if there is change of users by the tenant without written permission, acceptance of rent after change of user will be of no consequence. This is not the question in controversy in the present petition in hand. Hence. There is no hesitation in coming to the conclusion that this decision is of little avail to the petitioners.

19. In this regard, reference must be made to the decision of the Supreme Court in the case D.C. Oswal v. V.K. Subbiah and Ors. 1992 HRR 34. Herein, there was a change of user. No objection was raised by the landlord for seven years. After seven years, petition was filed for eviction alleging that there has been change of user. It was held that he was not entitled to claim eviction on this ground. Same view had been taken by this Court in the case of Baldev and Ors. v. Charanji Lal (1984) 86 P.L.R. 30. The landlord herein alleged that he premises were let for being run as a shop. It was being used as a godown. The rent note provided that the shop may be used by the tenant for his needs. From the very inception of the tenancy, it was used as a godown. This Court held that the ground of eviction was not available.

20. After scanning through various precedents, it is obvious that though it was described as a shop, it must be taken that initially the purpose of letting was that it was to be used as a shop. But the decision of this Court in Des, Raj's case (supra) will not help the petitioners. It has been found as of fact that for the last four decades before the filing of the petition, it was being used as a godown. There was no objection. It has also been found as of fact that it was being used as a godown even before the petitioner purchased the same. Therefore, must follow that in the peculiar facts the petitioner cannot seek eviction on the ground that there is a change of user. The decision of the Supreme Court in D.C. Oswald's case (supra) would come to the rescue of the respondents.

21. For these reasons, the revision, petition being without merit must fail and is accordingly dismissed.