(2016) 08 P&H CK 0210

In the Punjab And Haryana At Chandigarh

Case No : CR No. 4646 of 2016 (O&M)

Mohinder Kumar	APPELLANT
Vs	
M/s Allied Properties	RESPONDENT

Date of Decision : 08-08-2016

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13

Citation : (2017) 1 PLJ 174 : (2017) 1 RCRCivil 166 : (2016) 2 RCRRent 501

Hon'ble Judges : Augustine George Masih, J.

Bench : Single Bench

Advocate : Divanshu Jain, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Augustine George Masih, J.—CM No. 14280-CII of 2016

Exemption is granted from filing certified copies of the impugned orders and Annexures P-1 to P-12 and the same are taken on record, subject to all just exceptions.

Application stands disposed of.

CR No. 4646 of 2016

Challenge in this revision petition is to the order dated 12.03.2014 passed by the Rent Controller, U.T. Chandigarh, whereby, petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, (hereinafter referred to as ''Rent Act'') preferred by the respondent-landlord seeking eviction of the petitioner-tenant from a shop on the ground of cease to occupy for a period of more than 4 months, has been allowed, appeal against which, preferred by the petitioner has been dismissed by the Appellate Authority, Chandigarh, vide its order dated 21.04.2016.

2. Facts in brief are that the shop in question which is booth No.211, Sector 37-C, Chandigarh, was owned and possessed by Shri Sudesh Chander son of Shri

Gur Parshad and Smt. Usha Rani wife of Shri Prem Pal and through their Power of Attorney, the said shop was let out by Mrs. Nirmal Joshi vide agreement dated 24.05.1990 and handed over to the petitioner. Thereafter, the said shop was sold vide sale deed dated 20.05.2008 to the respondent-firm which stood transferred in its name vide transfer letter dated 03.06.2008. Respondent, thus, became the owner/landlord of the premises. Arrears of rent were claimed w.e.f. 02.09.2008 which were tendered by the petitioner and therefore, the said ground cease to operate as thereafter also, the rent was being regularly paid. The other ground which was pleaded for seeking eviction under Section 13 of the Rent Act was cease to occupy the premises without any sufficient cause for a period of more than 4 months. In support of this, it was asserted that shop in question is closed and the petitioner had shifted his business to Shop No.206, Sector 48, Motor Market, Chandigarh, which has been allot to him under the Rehabilitation Scheme of the Chandigarh Administration. On the basis of the evidence led by the parties, the Courts below have come to a conclusion that the respondent-landlord has been able to establish that the petitioner has ceased to occupy the premises in question ordering the eviction of the petitioner.

3. It is the contention of the counsel for the petitioner that the judgments passed by the Courts below cannot sustain as the findings are based upon conjectures and surmises. It has been contended that there is no evidence on record which shows that the shop in question remained closed and locked from June, 2008 to 2012. He asserts that there are bald assertions on the part of the respondent-landlord and the evidence, which has been led, is that of Budh Ram (PW-1) who is Lower Division Clerk, Electricity Department, Sub-Division No.7, Sector 35-C, Chandigarh, who had stated that the electricity connection was disconnected in the month of June, 2008 and has been reconnected in June, 2012. Counsel contends that it has not been mentioned anywhere in his evidence that the shop was lying locked during this period, rather he has admitted that he had not gone to the spot nor is it his duty to take the meter-reading but he had deposed on the basis of the records alone. He contends that merely because there has been no consumption of electricity during this period, cannot be taken as a ground to conclude that the shop has been lying locked in the said period. It has further been asserted that the shop had remained closed off and on and that too because of the serious illness of the father of the petitioner i.e. Krishan Lal Maghoo. Medical bills and cards have been produced in Court by the petitioner. In support of this assertion, he places reliance upon the judgment passed by this Court in Kuldip Chand v. Kishori Lal, 2009 2 RCR(Rent) 81.

4. Further, because of the illness of father of the petitioner, there has been a financial crunch in the family because of which the petitioner was unable to deposit the electricity bills for few years. Statement of RW-1, Mohinder Kumar has been relied upon by the counsel for the petitioner where it he has been stated in his affidavit that the petitioner had never closed his shop continuously for more than 2 days since the year 1990 till date and the booth was opened regularly on daily basis. It has been argued by the counsel for the petitioner that

the Courts below have failed to consider that merely because the petitioner has opened another shop and has expanded his business would not be a ground for eviction and therefore, it cannot be accepted that the petitioner had shifted his business premises since the year 2002 from booth No.211, Sector 37-C, Chandigarh, (the demised premises) to SCO No.206, Sector 48-C, Motor Market, Chandigarh (the allot shop). He contends that the petitioner has been using the demised premises as a branch office which is being used for stocking/storage, placing and distribution of the auto spare parts, for which electricity supply is not required as the sale transaction period is very short for the reason that the material has to be picked-up from the head office and some from the branch office. The name of the firm i.e. M/s Maggu Auto still appears on the same. Counsel for the petitioner placed reliance upon the judgment of this Court in Sohan Lal and another v. Gurbachan Singh, 1990 1 RCR(Rent) 387 to contend that the non-consumption of electricity is not sufficient to hold that the tenant has ceased to occupy the premises.

5. Counsel has further asserted that the respondent became owner of the demised premises on 03.06.2008 when the transfer letter was issued in its favour as a consequence of the sale deed and eviction petition has been filed on 17.11.2008 merely after 5? months and the allegations that the shop in dispute has been lying closed for the last 4 years, cannot be sustained. Respondent was not aware of the fact about the closure of premises before its purchase and therefore, it could not have been asserted that the shop had remained closed for the last 4 years. The earlier landlord, till the sale, had not filed any petition for eviction on the ground of cease to occupy the premise. Had it been a fact the original owner/landlord would have got vacated the tenanted premises from the petitioner on the said ground of cease to occupy. In support of this contention, he places reliance upon the judgments in Dunlop India Limited v. A.A. Rahna & another, 2011 1 RCR(Rent) 354, Gauri Lal v. Gujar Mal through his Legal Representatives, 1993 1 RCR(Rent) 171, Geeta Bhalla & others v. Krishan Kumar (dead) through Lrs 2006 2 RCR(Rent) 379, Ramesh Chand v. Smt. Davki Devi @ Devi, 2003 2 RCR(Rent) 206.

6. An argument has also been raised that in the judgment passed by the Rent Controller Issue No.2 has wrongly been framed where the issue was "Whether the respondent is liable to be evicted from the demised premises on the ground of ceased to occupy the premises in question?OPR", whereas, the onus to prove should have been upon the respondent-landlord and not upon the petitioner. The Court had, therefore, wrongly proceeded on that assumption and returned the findings against the petitioner.

7. Assertion has also been made that the order of the Rent Controller in the concluding para of Issue No.5 (relief) shows that the petition for eviction has been allowed on the ground of change of user, which was not even a plea raised by the respondent-landlord. He, on this basis, contends that the impugned orders passed by the Courts below cannot sustain and deserve to be set aside

and the eviction petition filed by the respondent-landlord dismissed.

8. I have heard the learned counsel for the petitioner and with his able assistance, have gone through the impugned orders and the judgments on which reliance has been placed and have been referred to above.

9. The first argument which this Court proposes to deal is the assertion of the counsel for the petitioner that the learned Rent Controller has wrongly put the onus to prove Issue No.2 upon the petitioner as reproduced above, suffice it to say that the Appellate Authority in para 7 of its order has reproduced the issues which were framed by the Rent Controller, according to which the onus has been put upon the respondent. Further, perusal of the order passed by the Rent Controller would show that the onus has always been upon the respondent-landlord and not upon the petitioner and the Court has also proceeded to decide the case on that basis. The writing of ''OPR'' after the issue is merely a typographical error where instead of ''OPP'', ''OPR'' has been typed.

10. The second argument which requires to be dealt with at the threshold is the assertion of the counsel that the Rent Controller, in the order of eviction dated 12.03.2014 (Impugned), in the concluding para on Issue No.5 (relief), has mentioned that the eviction is ordered on the ground of change of user which again is a typographical error apparent on record as in the earlier part of the order all through the Court has only emphasised upon the factum of cease to occupy and the parties have also led their evidence primarily in this regard. The Court, on the basis of the pleadings and the evidence, had concluded that the petitioner had ceased to occupy the premises for more than 4 months continuously. The learned Lower Appellate Court has dealt with this point in para 29 of the order and this Court is in agreement with the same.

11. Another plea which has been taken by the learned counsel for the petitioner is that the respondent became the owner/landlord of the demised premises only on 03.06.2008 and the eviction petition has been filed on 17.11.2008, which is only after 5? months and therefore, it could not be asserted that the demised premises was lying closed for the last 4 years as there is no evidence in support thereof. This contention of the learned counsel for the petitioner cannot be accepted in the light of the fact that as per the pleading, the sale deed is dated 20.04.2008 and the transfer of the property has taken place on 03.06.2008. As per the sale deed, the respondent became owner of the property on 20.04.2008 and there was, therefore, 7 months in between after the purchase of the demised premises. The requirement of the statute is to establish that the tenant has ceased to occupy the premises for the last 4 months which the respondent has been able to establish with ample evidence rather respondent has been able to establish that the tenant has ceased to occupy the premises as no electricity bill was paid from 20.09.2004 when the meter was disconnected because of non-payment of electricity bill till its restoration i.e. 08.02.2013, which is apparent from the statement of Budh Ram RW-4, Lower Division Clerk. Prior thereto, for the period 20.09.2002 till 20.09.2004, the bill which was supplied, was on the

basis of minimum average bill as the premises was lying locked as per the records. Further, as per the evidence which has been brought on record, it is not in dispute and as has been admitted by the petitioner in his cross-examination that the petitioner has been allot SCO No.206, Sector 48, Motor Market, Chandigarh, as per the Rehabilitation Scheme of the Chandigarh Administration and from the bills regarding the sale and purchase of the material and business transaction which has been produced pertain to the premises in Sector 48, Chandigarh. It has further been admitted by the petitioner that he is regularly filing sales tax returns from the year 2009 in respect of sales done from Sector 48 premise which has been allot to him since the year 2001. He has further stated that he could not produce any document to show any business transaction from the demised premises from the year 2003 to 2008 and that he had not employed any person in the demised premises for the said period. This clearly established that the tenant has shifted his business from the demised premises to the premises in Sector 48, Motor Market, Chandigarh, from where he is working. The above stated factual position leaves no manner of doubt that the Courts below have rightly come to a conclusion that the petitioner has ceased to occupy the premises. The findings, thus, recorded by the Courts below cannot be faulted with.

12. As regards the plea taken by the counsel for the petitioner that reasonable explanation for the closer of the demised shop has been given in the form of the medical record depicting the illness of his father which is reasonable cause for not using the premises in question. This plea also cannot be accepted in the light of the fact that there is no pleading in this regard in the written statement which has been filed. It is well-settled by now that in the absence of any pleading, evidence cannot be led. Further, the evidence which has been led cannot be relied upon without there being any basis to support the said evidence in the absence of the pleadings. The other party cannot be taken by surprise with regard to a plea which has not been taken in the written statement and thus, the evidence which is not based upon any pleading has to be overlooked, therefore, the said plea cannot be gone into. In the light of the above, the judgment in Kuldeep Chand''s case (supra) shall not be applicable to the present case.

13. The principle as has been laid down in Dunlop India Limited''s case (supra) cannot be faulted with rather the conclusions drawn therein and the principles when applied would go against the petitioner as it has been established that the petitioner-tenant has ceased to occupy the premises for more than 4 months as is the requirement of the statute. It may be added here that as per the judgment, the Supreme Court has gone to the extent of saying that the term cease to occupy would include if a tenant does not use the building for the purpose for which it is let out and uses it for some other purpose.

14. In the present case, the petitioner cannot be said to be occupying the building merely because he has put some material therein under his lock and key which would go against him as the petitioner has categorically taken a stand that

he had taken the demised premises for running a business of auto spare parts, whereas, he has admitted now that he is using the said demised premises for storage purposes. On this ground also, the present revision petition cannot succeed.

15. As regards the other judgments relied upon by the counsel for the petitioner in Gauri Lal'' case (supra), Geeta Bhalla''s case (supra) and Ramesh Chand''s case (supra), suffice it to say that the same are distinguishable on facts and the principles which have been laid down in these judgments is that the pleadings were that of non-user of the premises instead of cease to occupy and in these cases, there was no sufficient evidence on record establishing the continuous ceasor to occupy the premises for a period of more than 4 months, which is not the position in the case in hand.

16. In view of the above, finding no merit in the present revision petition, the same stands dismissed.

CM No. 14281-CII of 2016

17. In view of the order passed in the main revision petition, no order is required to be passed in the present application as the same has been rendered infructuous.

18. Disposed of as such.

