

(1998) 06 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 4023 of 1997

Punjab Projects and Construction Pvt. Ltd. and Others	APPELLANT
Vs	
Smt. Kuldeep Kaur and Others	RESPONDENT

Date of Decision : 30-06-1998

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13

Citation : AIR 1999 P&H 128 : (1998) 120 PLR 178 : (1998) 2 RCR(Rent) 181

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : M.L. Sarin and Hemani Sarin, for the Appellant; Raman Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—Smt. Kuldeep Kaur respondent is a co-owner and landlady of house No. 72, Sector 8-A, Chandigarh constructed on a 4 kanal plot. The ground floor of the house was rented out to the petitioners for residential purposes through a rent note dated 20-9-1986 at the rate of Rs. 5500/- per month. The landlady is in occupation of the entire first floor of the house and also the garage on the ground floor. She sought ejectment of the tenants from the ground floor on the ground that she and her husband required the same bona fide for their personal use and occupation. It is alleged that the landlady and her husband are suffering from numerous ailments and the doctors have specifically forbidden them from climbing stairs to avoid exertion. The landlady is stated to be suffering from hypertension and heart disease (Angina). It is her case that she along with her husband wants to occupy the ground floor of the house.

2. In response to the notice issued by the Rent Controller the tenants appeared and filed their written statement denying the relationship of landlord and tenant between the parties. It was alleged that Shri D. K. Madan had only signed the rent deed on behalf of respondent 1 and that the premises had been let out to the said respondent by Shirinder Pal Singh and Pritinder Singh who are the

owners of the house. It is further alleged that the landlady was only their general attorney and, therefore, the petition was not maintainable. It was further alleged that the landlady is a widow and did not marry Tejinder Singh Sandhu. It is also pleaded that the landlady lives in U.S.A. most of the time where her sons are settled and that she comes to Chandigarh only for short periods. It is denied that the landlady suffers from any ailment. On the other hand, it is pleaded that she enjoys good health. From the pleadings of the parties, the Rent Controller framed the following issues :--

- "(1) Whether the respondents are in arrears of rent as alleged? Opp.
- (2) Whether the premises in dispute are required by the petitioner for her personal use and occupation as well as for her family members? Opp.
- (3) Whether there exists relationship of landlord and tenant between the parties? Opp.
- (4) Whether the petition has been filed with mala fide intention? OPR
- (5) Relief."

3. On a consideration of the oral and documentary evidence led by the parties, the Rent Controller found issue no. 3 in favour of the landlady and against the petitioners herein and came to the conclusion that there exists the relationship of landlord and tenant between the parties. Issues no. 2 and 4 were also decided in favour of the landlady and against the petitioners and it has been found that the landlady and her husband both suffer from heart ailment and that they have been forbidden to climb stairs on that account. It has also been found that their need to occupy the ground floor of the house was genuine and that the landlady requires the demised premises for her personal use and occupation as well as for her family members. As a consequence of the findings recorded on issues No. 2, 3 and 4 the petition was allowed and the petitioners herein were ordered to be evicted from the premises in dispute. Feeling aggrieved by the order of ejectment the petitioners filed an appeal before the appellate authority which has been dismissed on September 9, 1997 and the findings recorded by the Rent Controller affirmed. Hence, the present revision petition.

4. When this petition came up for motion hearing on 29-9-1997 I did not find any ground to interfere with the concurrent findings of fact recorded by the courts below as in my view those findings did not suffer from any irregularity muchless any illegality warranting interference by this court. The learned counsel for the petitioner, however, contended that in view of the undertaking given by the landlady in para 6(b) of the ejectment petition wherein she had undertaken to put the tenants in possession of the first floor in case they were interested in retaining the premises, she should be directed to implement that undertaking and that the petitioners were entitled to shift to the first floor. Notice of motion was issued which was limited only to this question.

5. I have heard counsel for the parties and am of the view that the petition

deserves to be dismissed. The learned counsel for the petitioners contended that since the landlady is not adhering to the undertaking given by her in the ejectment petition, it should be presumed that her need to occupy the ground floor was not genuine and bonafide. The contention is being noticed only to be rejected. It is true that the landlady gave an undertaking that the tenants could shift to the first floor in case they were interested in retaining the premises but this offer was spurned by the tenants before the Rent Controller when B. S. Majie appeared as RW 2. He stated in his cross-examination that he was not prepared to shift to the first floor. Shri M. L. Sarin, learned senior counsel appearing for the petitioners conceded during the course of arguments that his client Shri B. S. Majie was a very hefty person and could not climb the stairs and it is for this reason that he did not initially accept the offer of the landlady. He further stated that his client was now trying to reduce his weight and that he is willing to shift to the first floor. Since the tenants had turned down the offer of the landlady it is not open to them to turn around and say that the landlady should be bound by the undertaking given by her in the ejectment petition. I also find no merit in the contention of the learned counsel for the petitioners that merely because the landlady is not adhering to her undertaking it should be presumed that her need to occupy the ground floor was not genuine. The courts below have concurrently found that she and her husband both suffer from heart ailment and have been advised not to climb the stairs. This finding, in my opinion, goes a long way to establish the bona fide requirement of the demised premises by the landlady.

6. In the result, the petition fails and is hereby dismissed leaving the parties to bear their own costs.