

(2003) 02 P&H CK 0254
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1996 of 1988

Sh. Sham Lal Gupta

APPELLANT

Vs

Shri Kulwinder Singh

RESPONDENT

Date of Decision : 24-02-2003

Acts Referred:

Citation : (2003) 3 CivCC 341 : (2003) 134 PLR 704 : (2003) 2 RCR(Rent) 383

Hon'ble Judges : Adarsh Kumar Goel, J

Bench : Single Bench

Advocate : Vivek Sharma, for the Appellant; C.S. Nagra, for the Respondent

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—This revision petition challenges order of eviction passed by the courts below on the ground of change of user.

2. Respondent-landlord filed an application for eviction from suit premises alleging that though the shop was rented out for carrying on business of Karyana and other household merchandise, the tenant started Table Tennis Club which amounted to change of user. It was further alleged that the use of the shop as Club creates lot of noise which causes nuisance to residents of the locality.

3. The tenant contested the petition and submitted that under the agreement dated 10.10.1975, Ex.R.1, there was no prohibition to carry on any business except that of Halwai and using the shop as a club for playing table tennis did not create any nuisance nor the same was prohibited user. On consideration of evidence on record, the Rent Controller held that the shop was let out for running of business except that of Halwai but its user was changed by opening a table tennis club though no ground for nuisance was proved. The appellate authority affirmed the finding of the Rent Controller.

4. Learned Counsel for the petitioner submitted that in absence of any prohibition, change of one business to the other could not be held to be change

of user within the meaning of Section 13(2)(ii)(b). Reliance is placed on judgment of a Single Bench of this Court in Jagan Nath v. Dev Chawla (1987)89 P.L.R. 583 wherein it was held that where no specific purpose for letting out was proved and even if it is shown that the premises were used initially for one purpose and later on for another purpose, this will not amount to change of user, in Mohan Lal Vs. Jai Bhagwan, , it was held that where a building was rented out for the purpose of carrying on business, using it for another business will not amount to change of user as it will not in any way impair the utility of the building. In Gurdial Batra Vs. Raj Kumar Jain, it was held that where a shop was let out for rickshaw repairing business, business of selling TV sets could not be held to a purpose other than that for which the shop was let out. In Jagdish Lal Vs. Parma Nand, , it was held that mere change of business does not amount to change of user, unless agreement between the parties provides that the premises cannot be used for a purpose other than a particular business. Similar view has also been taken in recent decision of the Supreme Court in Bharat Lal Baranwal Vs. Virendra Kumar Agarwal,

5. The position of law appears to be that if particular business alone can be carried out under the agreement between the parties, switching over to a wholly unconnected business having no linkage with the earlier business and not being an allied or ancillary to the earlier business, ground of eviction may be made out but where there is no such prohibition under the agreement, then changing one business to another will not amount to change of user unless the category of the building itself is changed from the category of business to residential or industrial. In the present case, prohibition under agreement Ex.R.1 is in respect of Halwai business as noted by the Rent Controller in para 11 of the judgment. If that is so, there is not prohibition under the agreement from changing the business. As already observed, mere change of one business to another business is not by itself a change of user.

6. In view of the above, the view taken by the courts below cannot be sustained. This petition is allowed. The order of eviction passed by the courts below is set aside. Eviction petition filed by the landlord is dismissed.