
(1990) 10 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2128 of 1988

Shri Kishan Chand and Another	Vs	APPELLANT
Shri Gurjinder Singh Arora, Advocate and Another		RESPONDENT

Date of Decision : 12-10-1990

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13, 13(2), 15(1)

Citation : (1991) 99 PLR 196 : (1991) 1 RCR(Rent) 153

Hon'ble Judges : J.V. Gupta, C.J

Bench : Single Bench

Advocate : Ram Murti Chadha, for the Appellant; V.K. Jhanji and Ravinder Arora, for the Respondent

Final Decision : Dismissed

Judgement

J.V. Gupta, C.J.—This is tenant's revision petition against whom the eviction order has been passed by both the authorities below.

2. The premises in dispute are a part of Property No. 38, bearing municipal property No. 1638/2 40 MCA situated in Bazar Bakarwana, Shaheed Bhagat Singh Road, Amritsar. The original owner of the demised premises was Ram Lubhaya, AW 5 Kishan Chand, tenant was inducted by him vide rent note. Exhibit AW5/1 dated October 23, 1959. Subsequently, the said Ram Lubhaya sold the suit property vide three sale deeds in the year 1983 to Gurjinder Singh Arora, Advocate. He filed the ejectment application on August 26, 1985, on the following grounds ;

1. Non-payment of rent since July 9, 1982 ;
2. Change of user. The demised premises were alleged to have been given on rent for the sale of bicycles to Kishan Chand respondent but he started manufacturing bicycle parts and cycle pumps under the name and style of Nirmal Industries without the written consent of the landlord ;

3. Censing to occupy the premises without any sufficient; cause Kishan Chand tenant was alleged to have ceased to occupy the premises in dispute without sufficient cause for more than four months It was also averred that the tenant shifted his business from the demised premises to plot Nos. 39 to 42 Basti New Partap Nagar, Amritsar and surrendered exclusive possession of the property to his son Sudesh Kumar, respondent No. 2 in the year 1971

4. Sub letting the demised premises. Sub-letting was alleged by the tenant in favour of his son Sudesh Kumar, respondent No. 2. It was alleged that Sudesh Kumar, respondent further sublet the premises to one Jagmohan respondent No. 3; and

5. Materially impairing the value and utility of the premises. The tenant had materially impaired the value and utility of the demised premises by breaking Che floor, constructive of parchhatis and the breaking of the thara of the demised premises.

3. The tenant and his son Sudash Kumar who was alleged to be the sub tenant, controverted the allegations made in the ejectment application. Their case was that the demised premises were taken on rent by Kishan Chand, but not for the specific and sole purpose of sale of bicycles The shifting or" the business to Basti New Partap Nagar by Kishan Chand was also denied. It was pleaded that Sudesh Kumar respondent, was his son and there was no question of sub-Jetting as they were joint and had a common mess Though the installation of air compressor was admitted, but it was pleaded that it was only to is inflate the tubes of the bicycles of the customers, The parting of possession in favour of Sudesh Kumar respondent or Jagmohan was specifically denied. The tenant did not admit having changed the user of the premises or having sublet the same or having ceased to occupy them or having made any material alteration therein, as alleged. Jagmoban who was respondent No. 3, in the ejectment application filed his written statement supporting the case of the landlord, but later on be absented himself and never appeared in the witness box either. The learned Rent Controller found, that on the. date of first hearing, tender was made by tenant Kishan Chand and the alleged sub-tenan Sudesh Kumar jointly and, therefore, the leader was illegal and invalid. It was further held that the shoping dispute was let out to Kishan Chand only for the sale of bicycles, but it was being used for the manufacturing of bicycle parts which amounted to change of user. The learned Rent Controller also retirned the verdict that the tenant Kishan Chand sublet the premises, in dispute, in favour of Sudesh Kumar, his son, who is in exclusive possession of the shop in dispute as a subtenant. It was also determined that the premises in dispute were further sublet by Sudesh Kumar in favour of Jagmohan from 1983 up to the middle of 1984, He also found that the value and utility of the premises in dispute had been impaired by the tenant. In view of these findings, the ejectment order was passed on April 8, 1987, In appeal, the learned appellate authority affirmed the said findings of the Rant Controller except on the ground that the tenant had materially impaired the

value and utility of the demised premises. Consequently, the eviction order was maintained vide order dated August 6, 1988.

4. Earlier this revision petition was allowed vide order dated 6th February, 1990 on the short ground that the tenant was liable for ejectment on the ground of subletting to his son, Sudesh Kumar. The other two grounds subletting of the premises to a third party Jagmohan and the change of user by the tenant were not gone into. However, the tenants went to the Supreme Court against this order dated 6th February, 1990. The Supreme Court found that the said finding of the High Court could not be sustained and since the "High Court has not adverted to the other two grounds of eviction i.e. change of user by the tenant and subletting of the premises to a third party Jagmohan, remanded the matter for reconsideration. It is how this matter has again come up for hearing before this Court

5. The learned counsel for the tenant-petitioners submitted that there was no evidence to hold that there was any change of user or that the premises were being used for manufacturing purposes. According to the learned counsel, the said finding has been arrived at by misreading of the evidence. Moreover, argued the learned counsel, there was an erroneous admission of the tenant regarding the horse power being used in the premises. According to him only 1/2 horse power was there and not 1 horse power as has been found by the authorities below.

6. As regards the question of subletting of the premises to a third party i.e. Jagmohan, it was submitted that his admission was obtained by the landlord under coercion and an affidavit to that effect was filed by Jagmohan and in view of the said affidavit, the admission made by Jagmohan was of no consequence. On the other hand, the learned counsel for the landlord respondents submitted that both the authorities below after appreciating the entire evidence have concurrently found that the tenant has changed the user of the premises in dispute in violation of the purpose of letting.

7. From the evidence produced by the parties, it has been found that there are two electric connections granted by the Municipal Corporation. Electricity Department, in the name of Sudesh Kumar out of which one is for Industrial light connection and the other is for one phase motor connection. It was, therefore, held that the evidence proved convincingly that an Industrial Electric connection has been granted in the name of Sudesh Kumar petitioner in the premises in dispute for 1 horse power motor and the business of threading work on the part of the cycle spare parts is being conducted and a licence for the purpose of sales tax has also been obtained for the manufacturing business. The learned Appellate Authority therefore, found that "I am in agreement with the learned Rent Controller that an industrial activity is going on in the premises in dispute, whereas the purpose of letting was only for sale of cycles. The situation is worse for the appellants because it is not only the cycle repairs but the manufacturing activity which is being conducted in the shop in dispute."

8. It is not in dispute that the premises were let out vide rent note Exhibit AW 5/1 dated 23rd October, 1959, for doing the business in cycles, whereas the tenant started the industry in the name of Nirmal Industries in the year 1986. The Rent Controller appointed the Local Commissioner to find out the position at the spot and it was on the basis of the report of the Local Commissioner that the abovesaid finding were arrived at. It was held by this Court in Ram Parkash v. Nathu Ram 1984 (1) R. C. R. 214, that when the premises were let out for selling cycle parts -tenant installing machinery and manufacturing cycle spare parties there in it, amounted to change of user. In some what similar circumstances in Chander Kumar and Ors. v. Smt. Daropadi Devi (198-2) 94 P.L.R. 660, it was held that when the shop was let out for running the tea-stall and the tenant started manufacturing of the pens by installing of machines in a portion of the demised premises, it amounted to change of user. In view of the abovesaid authorities and the findings arrived by the two Courts below, I do not find any illegality or impropriety jurisdiction as to be interfered with in the revisional jurisdiction.

8. As regard the sub-letting to Jagmohan, reliance has been placed by the petitioner on his affidavit Exhibit RW 7/1. Admittedly, Jagmohan was never produced in evidence by the tenant to state that he filed his written statement under the pressure of the landlord. The landlord had no occasion to cross-examine him and therefore, the affidavit of Jagmohan filed by the tenant was of no avail. Moreover, both the authorities below have found that even Sudesh Kumar sublet the premises in dispute in favour of Jagmohan. There is no illegality in the said finding either as to call for interference in revisional jurisdiction.

9. Consequently, this revision petition fails and is dismissed with costs. However, the tenant is allowed three months' time to vacate the premises; provided all the arrears of rent, if any, are deposited with the Rent Controller within one month with a further undertaking in writing that after the expiry of the said period, vacant possession will be handed over to the landlord and the rent for the said period is paid in advance by the 10th of every month.