
(1998) 07 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 210 of 1994

Shri Madan Mohan Kaphai	Vs	APPELLANT
Sh. Amar Nath Malhotra and Others		RESPONDENT

Date of Decision : 14-07-1998

Acts Referred:

Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 13, 15(5)

Citation : (1998) 120 PLR 120 : (1998) 2 RCR(Rent) 247

Hon'ble Judges : Iqbal Singh, J

Bench : Single Bench

Advocate : J.P. Mittal and B.D. Sharma, for the Appellant; M.L. Sarin and Himani Sarinm, for the Respondent

Final Decision : Dismissed

Judgement

Iqbal Singh, J.—Petitioner Madan Mohan Kaphai has preferred this revision petition against the order dated 15.12.1993 passed by the appellate Authority, Ambala, whereby eviction order has been passed against the petitioner from the premises in dispute.

2. Respondent No. 1 landlord Amar Nath Malhotra sought ejectment of petitioner Madan Mohan Kapahi and respondent Nos. 2 and 3 from the premises in question i.e. House No. 567/A, Masjid Mohalla Saudagar Bazar, Ambala Cantt, on the grounds inter alia that respondent Nos. 2 and 3 are in arrears of rent from 1.9.1985 to 31.10.1985; that respondent Nos. 2 and 3 have sublet the premises to the petitioner Madan Mohan Kapahi; and that he requires the tenanted premises for his own use and occupation as he has no other accommodation in the area of Ambala Cantt.

3. Respondent Nos.2 and 3 were proceeded ex-parte in the trial Court.

4. The ejectment application was contested by petitioner Madan Mohan Kaphai. In the written statement filed by him, he alleged that he is a tenant in the premises in question and has been paying the rent to the landlord-respondent

No. 1 who has been accepting the rent from the respondent Nos. 2 and 3 are not the tenants. He further stated that he was previously working as a Manager with the firm (respondent No. 3) which was ceased to exist and the landlord has made up the story of alleged subletting. He further stated that he tendered the arrears-of rent along with Interest and costs, but the same were refused by the landlord in the Court. The rent sent earlier through money order was also not accepted by the landlord. He further stated that he is in occupation of the premises in question since the very inception of the tenancy. He further stated that the landlord is permanently settled in Delhi in his old age with his son and had shifted to Delhi a few years back in order to settle there and left Ambala for good with all his bag and baggage and sold away his residential building where he was residing since long. In fact, the landlord wanted to sell the house in question and the eviction application has been filed so that he may be able to get a better price of the premises in question. It was denied that the petitioner is not occupying any other residential building in the urban area concerned and has not vacated any residential building in the same. It was also denied that the relations between the landlord and his son are strained.

5. The landlord filed replication to the written statement filed by the petitioner reiterating the contentions raised in the eviction application. It was further stated that the petitioner was working as Manager with the firm-respondent No. 3 and in that capacity he used to pay rent, but he had no right to tender rent being not tenant under the petitioner. The landlord denied that he wants to sell the premises in question. He stated that he wants to reside in Ambala Cantt. as he is settled in business there.

6. On the pleadings of the parties, the Rent Controller settled the following issue besides that of relief :-

"1. Whether the respondents are liable to be evicted from the disputed premises on the allegations contained in the petition? OPP.

7. The Rent Controller held that petitioner Madan Mohan Kaphai is the tenant in the premises in dispute since the inception of tenancy and respondent Nos. 2 and 3 are not the tenant. The Rent Controller further observed that the landlord does not require the premises in question for his personal use and that he wants to dispose of the same or let it out for a good rent. Regarding the ground of non-payment of rent by the petitioner, the Rent Controller observed that arrears of rent along with interest and costs were tendered, but the same were not accepted by the landlord, as such, the tenant is not liable to be ejected on the ground of non-payment of rent also. In view of these findings the Rent Controller dismissed the eviction application vide order dated 4.12.1991.

8. The landlord, aggrieved against the order passed by the Rent Controller went in appeal before the Appellate Authority who vide its order dated 15.12.1993 held that respondent Nos. 2 and 3 i.e. (i) Devinder Kumar Khanna Proprietor of M/s Badri Dass Kidar Nath Khanna Distributors for Parke Davis India Limited,

Delhi Road, Meerut (U.P.) and (ii) M/s. Badri Das Kidar Nath Khanna, 175/2 Anant Building Bank Road, Ambala Cantt., through Devinder Kumar Khanna, its proprietor were the tenants under the landlord-respondent No. 1 and they have not tendered the arrears of rent as demanded in the petition and the tender made by the petitioner was no tender in the eyes of law and, therefore, the petitioner Madan Mohan Kapahi and respondent Nos.2 and 3 are liable to be evicted from the premises in dispute on the ground of non-payment of rent. Regarding the ground of personal necessity of the landlord, the Appellate Authority did not agree with the finding recorded by the Rent Controller that the landlord wants to let out the house to some other person for good rent. The Appellate Authority observed that there was no evidence on which such a finding could be based. Resultantly, the Appellate Authority allowed the eviction application filed by the landlord-respondent No. 1 and passed ejectment order against the petitioner and respondent Nos. 2 and 3. Hence this revision petition.

9. I have heard Mr. J.R. Mittal, Senior Advocate, learned counsel for the petitioner and Mr. M.L. Sarin, Senior Advocate, learned, counsel for respondent No. 1 and have very carefully gone through the judgments rendered by the Courts below and the records of the case.

10. Admittedly, no receipt was ever issued by the landlord to the petitioner in his own handwriting admitting the petitioner to be his tenant. No doubt, he (landlord) had been receiving rent sent by the petitioner on behalf of respondent Nos. 2 and 3. This does not constitute tenancy between the parties. Money order coupons do not indicate tenancy in favour of sub-lessee (petitioner). Contention raised on behalf of the petitioner that respondent No. 2 and 3 used to pay rent through cheques to the landlord from the accounts of the petitioner cannot be accepted in the absence of any evidence in this regard. The best evidence to prove this, if it was a fact was to produce the books of accounts of respondents Nos. 2 and 3 or even the Bank account of the petitioner, which has not been done in this case. The findings recorded by the Appellate Authority on the question of relationship of landlord and tenant between the parties are well-reasoned and the same are hereby affirmed. In these circumstances, I hold that there is no relationship of landlord and tenant between the petitioner and respondent No. 1.

11. As regards the ground of personal necessity of the landlord, he is about 85 years old and at the fag end of his life has a right to live in his own house. The fact that he is living at Delhi with his son is no ground to deny him the right to live in his own house. He is residing with his son because he has no house to live in his old age. The apprehension of the petitioner that the landlord wants to sell the house in question or to give it at a higher rent is unfounded there being no such evidence on the record that the landlord contacted anybody to sell the house or to rent it out at higher rent. There is nothing on the record to show that eviction application was filed by the landlord without their being any bona fide necessity on his part. It may be added here that there is nothing to disbelieve

the testimony of the landlord that he is not having good relations with his son and daughter-in-law, which is not unusual in the modern trend of the society. The concept of joint family living is not liked now and the grown up children like to live independently.

12. For the foregoing reasons, I do not find any merit in this revision petition which is hereby dismissed learning the parties to bear their own costs.