
(1998) 05 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3318 of 1984

Smt. Naurati Devi and Others

APPELLANT

Vs

Hans Raj and Others

RESPONDENT

Date of Decision : 28-05-1998

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13(2), 15(5)

Citation : (1998) 120 PLR 74 : (1998) 2 RCR(Rent) 80

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : M.L. Sarin and Hemani Sarin, for the Appellant; Summet Mahajan and Manju Dwivedi, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.—The present revision petition has been filed by Smt. Naurati Devi and others, hereafter described as petitioners, directed against the order of the learned Rent Controller, Ludhiana, and that of the Appellate Authority, Ludhiana, dated 28.7.1982 and 12.11.1984 respectively. Learned Rent Controller, Ludhiana had passed the order of eviction against the petitioners and their appeal had been dismissed by the Appellate Authority, Ludhiana.

2. Relevant facts are that respondent-landlords filed a petition for eviction alleging that Gujjar Mal, predecessor-in-interest of the petitioners, was a tenant in the suit premises, rent note was executed. Gujjar Mal died on 24.1.1976. Petitioners who are heirs of Gujjar Mal became tenants by operation of law. The tenants were alleged to have not paid the arrears of rent as well as house tax. It was claimed that they had sublet the property to third person (respondents No. 7 to 11 in the eviction application) and using the said property as a godown for stocking of soda ash bags. The property is being used for the purpose other than it was let. Needless to state that the ground of eviction on account of non-payment of rent after rent was tendered did not survive.

3. The petition for eviction was contested by the petitioners. It was asserted that it is bad for partial eviction. It was denied that the property has been sublet to any third person. It was not denied that Gujjar Mal was earlier tenant in the property in question. The defence was that the property was let out for running of business and for storing the goods. It is being used as such. It was denied that it is being used only as godown.

4. Learned Rent Controller had framed the issues and it was concluded that the property had been sublet to respondents No. 7 to 12 (in the eviction application). It was based on the fact that the petitioners had failed to establish that they were in possession and running their business. It was further held that the property in question was let as a shop. It is being used as a godown and even on the ground of change of user, order of eviction was passed.

5. Petitioners preferred an appeal. Learned Appellate Authority held in terms that no reliance can be placed on the report of the Local Commissioner to held that the property has been sublet. The Local Commissioner was held to have not even visited the property. On that ground the findings of the rent Controller were upset. However, it was concluded that it is established that the property in question was let out as shops and are being used as godown and not as a shop i.e. contrary to the purpose for which it was let out. On that ground the order of eviction was affirmed. Aggrieved by the same, present revision petition has been filed.

6. Though learned Appellate Authority, as referred to above, had affirmed the order of eviction but the findings of the Rent Controller that the property had been sublet had been upset. As mentioned above, learned Appellate Authority had recorded that sub-letting of the premises to third person is not proved. Learned counsel for the respondent wanted to assail the findings of the appellate Authority in this regard. Objection was immediately taken that in the absence of cross-objections such a finding cannot be assailed.

7. The said contention of learned counsel for the petitioners indeed necessarily must be repelled. It is not necessary that cross-objections must be filed. When the respondent-landlords did not have a right to challenge the order which was for eviction of the petitioners, they certainly can support the judgment on any other aspect regarding which a finding has been given adverse to the respondents. It becomes un-necessary to ponder further in this regard. Reference may be made with advantage to the decision of the Supreme Court in the case of Vriddhachalam Pillai Vs. Chaldean Syrian Bank Ltd., and Another, . While dealing with a similar question it was held by the Supreme Court that when there is a finding adverse to the respondent, he can support the order and assail those findings. In paragraph 32 of the judgment, it was held as under:-

"Learned counsel for the appellant raised a short preliminary objection that the learned Judge of the High Court having categorically found that there was an antecedent debt which was discharged by the suit-mortgage loan only to the

extent of Rs. 50,000/- and odd and there being no appeal by the Bank against the finding that the balance of the Rs. 80,000/- had not gone in discharge of an antecedent debt, the respondent was precluded from putting forward a contention that the entire sum of Rs. 80,000/- covered by Ex. A and B went for the discharging of antecedent debts. We do not see any substance in this objection, because the respondent is entitled to canvass the correctness of findings against it in order to support the decree that has been passed against the appellant".

8. Same view prevailed with the decision of Madhya Pradesh High Court in the case of Ram Charan Singh v. Brij Bhushan Pandey 1996 (2) RCR 382.

9. The attention of the court was further drawn towards the decision of the Supreme Court in the case of Firm Sagarmal Vishnu Bhagwan v. Gauri Shankar and Ors. 1988 HRR 619. It was held by the Supreme Court that if only a revision petition had been filed, the High Court could not interfere in the findings of fact arrived at. In this regard conclusion drawn was in paragraph No. 11 of the judgment which reads as under:-

"In the facts and circumstances of this case it is not necessary for us to go into the question whether the appeal heard by the High Court was one u/s 100 CPC or one in exercise of its revisional powers left intact by the proviso to Section 22(2). In whichever way the matter is viewed the High Court could not have launched upon a probe into the correctness of the findings on issue No. 3 by the Courts below after it had concluded that the striking off of the defence by the Appellate Court and the decreeing of the suit on that score could not be sustained. If the second appeal was one preferred u/s 100 CPC the finding of the Courts below on issue No. 3 did not involve any substantial question of law. Even if the finding was wrong it was only a finding of fact or at best a finding on a mixed question of law and facts and nothing more. The High Court had failed to notice that the respondent had not filed any cross-objection in the second appeal to challenge the correctness of the findings on issue No. 3 by the Courts below. Alternatively, if the appeal was only a revision preferred to the High Court by virtue of the proviso to Section 22(2), the High Court had no jurisdiction to interfere with the concurrent findings of the courts below on issue No. 3 because the finding did not suffer from any order in the exercise of the jurisdiction vested in the courts below".

10. It is patent from the aforesaid that a finding of fact had been arrived at by the Appellate Authority in term that the Local Commissioner had not visited the site. He had not even gone inside the shop and his report could not be relied upon. The said finding cannot be upset u/s 15(5) of the Act. The conclusion, therefore, are obvious that though no cross-objections were necessary, still the findings which are based on evidence and are erroneous cannot be upset. This contention of the respondents must fail.

11. Reverting to the main ground of eviction that the property had been used for

a purpose other than it was let out, reference can well be made to Section 13(2) (ii)(b) of the East Punjab Rent Restriction Act, 1949 (for short "the Act") which reads as under:-

"(ii) that the tenant has after the commencement of this Act without the written consent of the landlord -

(a) xx xx xx xx xx xx (b) used the building or rented land for a purpose other than that for which it was leased; or

12. It is obvious from the perusal of the ground of eviction which find favour with the Rent Controller and the Appellate Authority that there has to be a consent in writing of the landlord and tenant should not use the building for a purpose other than it was leased. If there is a purpose of a letting, in that event if it is used for any other purpose, namely, when it is change of user, the ground of eviction would come into play.

13. The respondent-landlord had appeared as AW1 and had stated that the property was let out as a shop. Besides that Rent agreement Exhibit A1 has also been proved on record. It describes the property as a shop but specifically it does not mention that it cannot be used for any other purpose or it should only be used as a shop.

14. In the first instance, the said rent note was assailed on the ground that it is an unregistered document and, therefore, it cannot be read into evidence. But this contention necessarily has to be stated to be rejected. Firstly, it is not a rent agreement or in other words, a lease deed. Since, it is not a lease deed, it would not require registration. Otherwise also, even if for sake of arguments, it has to be assured that it did require registration, the document could be read for collateral purposes to see the purpose for which it was let out. The question is settled by the findings of the Supreme Court in the case of Rai Chand Jain v. Miss Chandra Kanta Khosla 1991(1) RCR 128. It was held as under:-

".....Firstly, the lease deed Ex. P1 dated 19th May, 1978 executed both by the appellant and the respondent i.e. the landlady and the tenant, Rai Chand Jain, though unregistered can be considered for collateral purposes and as such the findings of the Appellate Authority to the effect that the said deed cannot be used for collateral purposes namely to show that the purpose was to lease out the demised premises for residential purposes of the tenant only is not at all legally correct. It is well settled that unregistered lease executed by both the parties can be looked into for collateral purpose....."

15. In other words, even if it be taken to be lease agreement, it could be seen for collateral purpose to see that the property had been let for a particular purpose.

16. It has further been urged that besides two shops, there are certain Kotharis, and, therefore, it cannot be taken that the property was only to be used as a shop. But in this regard once the rent note described it as a shop and there are

kotharis, necessarily it does not imply that it could be used as a godown: Certain, Kotharis are ancillary to the shop and in that view of the matter, some Kotharis to the shop cannot imply that it could be used as a godown or any such permission in writing would be in existence.

17. With respect to the purpose of letting and to show even if it was used as a godown the ground of eviction cannot be attracted. Reliance was placed on the decision of the Supreme Court in the case of Mohan Lal Vs. Jai Bhagwan, . This was a decision under the Haryana Urban (Control of Rent and Eviction) Act, 1973. The ground of eviction is identical as in the East Punjab Urban Rent Restriction Act, 1949. Herein the property has been let out for commercial purpose. The tenant switched over to another business but used it for commercial purpose. It was held that there was no change of user. The position herein is different. The contention of respondent-landlord is that it was let out as a shop but it is used as a godown. Therefore, on facts the case of Mohan Lal (supra) does not help the petitioners.

18. On the contrary, a Division Bench of this Court in the case of Dharam Raj and Another Vs. Roshan Lal and Another, . Herein the premises had been described as a shop in the rent note. It was used as godown or workshop. It was held that it amounted to change of user. In paragraph 15 of the judgment, it was held as under:-

"A review of the judicial precedents, in the context of the plaint meaning of the relevant statutory provisions, leave no doubt, that mere knowledge of the landlord of the change of user, may be even from the very inception of the tenancy, would not absolve the tenant from liability for ejection on that ground, in the absence of any written consent of the landlord to such change of user. This reference has thus to be answered accordingly."

19. Same view prevailed with the Single Judge of this Court in the case of Sunder Lal v. Sita Devi 1995 (1) RCR 43. Herein the property was let out for running of a shop. It was used as a godown. It was held that it amounted to change of user u/s 13(2)(ii)(b) of the Haryana Urban (Control of Rent and Eviction) Act, 1973. In fact, a full Bench of this Court in the case of Des Raj v. Sham Lal (1980) 82 P.L.R. 647 had dealt with this question in depth. The question under consideration was as to what is the effect when the rent note describes the property in dispute as a shop. The answer is provided in paragraph 14 of the judgment which reads as under:-

"This hypothetical discussion, is meant to emphasise that where a demised "building" is identified merely as "shop" then the same can be used only as a "shop", although various kinds of trade could be carried on therein, but if the said demised "building" came to be used later on exclusively as "residential building", then that would tantamount to the change of user. Similarly, if such a demised "buildings" was put to use exclusively as a "godown" (for the moment assuming that the expression "godown" connotes a "building" that is used for the

purposes of only stocking provisions therein), then that would tantamount to the change of user. The reason being that when the demised "building" is used as a "shop" it is being put to constant use by the lessee which, by implication, ensures its proper upkeep like timely repair, timely while-washing etc. but when a building is used as a "godown", which is merely used for dumping goods therein, such an upkeep may neither be possible nor, by implication, envisaged as such. A "godown" remains mostly closed while a "shop" remains most open".

20. The conclusion was further drawn in paragraph 15 of the judgment. It reads as under:-

"Accordingly, if the expressions "shop" and "godown" indicate two diametrically opposite purposes to which the respective premises so described can normally be put, then, when in a given lease-deed a building is identified as "shop" without any more, such premises cannot be used as "godown".

21. It is crystal clear from the aforesaid and establishes beyond pale of controversy that once in the rent note it is described as a shop the purpose of letting, in terms of decision of the Full Bench which binds, it must be taken that it was let out for use as a shop and not for use as a godown. Once the property is being used as a godown, it must be held that there is change of user.

22. Learned counsel for the petitioners urged that even when the witnesses had visited the place, they found that certain customers were there. In fact, it will not show that it was being used as a shop even if it is proved that certain customers were there to take the supply of goods. There are concurrent findings of fact that it was being used as a godown and in the face of aforesaid, it must be held that there is change of user. There is no ground to upset the order of eviction.

23. For these circumstances, the revision petition being without merit must fail and is dismissed. Petitioners are granted three months time to vacate the property in dispute.