

(1999) 12 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1638 of 1982

Smt. Padma Sharma and Another	Vs	APPELLANT
Madan Lal Khanna and Others		RESPONDENT

Date of Decision : 14-12-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
East Punjab Urban Rent Restriction Act, 1949 — Section 13, 13(2)

Citation : (2000) 124 PLR 853

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

Bench : Single Bench

Advocate : Rohit Suri and Hemani Sarin, for the Appellant;

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.—Smt. Padam Sharma and another (hereinafter described as "the petitioners") have preferred the present revision petition directed against the order of the learned Rent Controller, Amritsar dated 15.10.1979 and of the "Appellate Authority, Amritsar dated 18.1.1982. The petition for eviction filed by the petitioners had been dismissed and the said order had been upheld by the Appellate Authority.

2. The relevant facts are that petitioners had filed a petition for eviction asserting that they are the landlords of the suit premises. Madan Lal Khanna was stated to be the tenant. It was alleged that arrears of rent have not been paid and further that the tenants had converted the suit premises from residential to non-residential. Lastly the plea raised was that the tenants referred to above has sublet the premises to respondent No. 2 without the consent in writing of the petitioners. Another plea taken up was that the premises were required by the petitioners for their self occupation.

3. The petition for eviction was contested. It was pointed that earlier also the petitioners had filed an eviction"petition. The same was dismissed by the

Appellate Authority on 10.10.1975". Thus, the petitioners were estopped from filing the second petition. On merits it was stated that no rent was due. it was denied that nature of the premises or user thereto has been changed. The respondents' case was that it had been taken for business purposes and is being used as such. It was further contended that there is no subletting of the premises. The assertion that the petitioners require the property for themselves and members of their family was also denied.

4. The learned Rent Controller held that principles of res judicata would bar the filing of the petition on the same ground of eviction. Otherwise also on merits of the matter, the learned Rent Controller found that grounds of eviction were not established and the petition accordingly was dismissed. The petitioners preferred an appeal. The learned Appellate Authority approved the findings of the learned Rent Controller, Amritsar. it was concluded that the petitioners do not bona fide require the suit premises and that the same has not been sublet. It was further held that the property was a shop and there was no change of user. Aggrieved by the same, the present revision petition has been filed.

5. At the time of arguments only the petitioners' learned counsel appeared. There was no appearance on behalf of the respondents.

6. Learned counsel for the petitioners urged that the learned Rent Controller as well as the Appellate Authority were in error in concluding that principles of res judicata were attracted. He further urged that in any case the grounds of eviction were established and, therefore, the impugned orders should be set aside. According to him the earlier judgment between the parties of the learned Appellate Authority will not operate as res judicata.

7. It goes without saying that strict provisions of the CPC will not apply to the proceedings under the East Punjab Urban Rent Restriction Act, 1949 (for short "the Act"). Only those provisions of the Code would be made applicable which the Act specifically declares to be applicable to such proceedings. So far as principle of res judicata is concerned, indeed though it is a part of the Code of Civil Procedure, but it is a well recognised principle in all judicial proceedings. Even if CPC does not apply, necessarily the Controller while deciding the controversies has as far as possible to act in accordance with the provisions of the Code of Civil Procedure. It is settled that even principle of justice would not permit a party to be vexed for the same cause all over again. The rules of the game therefore, would permit the Controller to invoke the principle of res judicata.

8. Ex.PW1/1 is the copy of the judgment of the learned Appellate Authority, Amritsar. Perusal of the same reveals that earlier a petition for eviction had been filed by the petitioners. Amongst other grounds of eviction, the ground taken was that the respondent-tenants had sublet the premises, he has materially impaired the value and utility of the property. The grounds of eviction were held to have not been proved. Once the controversy had been adjudicated between the

parties by a Court of competent jurisdiction namely the Appellate Authority, indeed unless there is change in the circumstances of the petitioners have any other ground, they cannot file the eviction petition on the same cause. Necessarily, the petitioners must establish that there is some fresh subletting of the premises or that the value and utility of the property had been impaired after the decision of the earlier petition.

9. In the present case in hand, there is no averment on behalf of the petitioners that after the decision of the earlier petition, there is any such act on behalf of the respondents whereby the value and utility of the property has been impaired or user changed. Otherwise also perusal of the judgment referred to above shows that it had been admitted therein that property was a shop. Thus, it was let for commercial purpose. It cannot be inferred thus that there is change of user. Presently also chit fund business is carried on. There is no other act to show that any such construction has been set up which will impair the value and utility of the premises. The authorities, therefore, rightly concluded that the said ground is not available. Same is the position with respect to the ground of subletting. In addition to that respondent No. 2 is a Joint Stock Company and respondent No. 1 is it's Managing Director. When legal control is with respondent No. 1, the inferences that it is a case of subletting cannot be drawn. The other grounds were not even pressed because they were not proved. The result is obvious.

10. For these reasons, the revision petition being without merit must fail and is dismissed.