
(1986) 02 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No 544 of 1979

Smt. Shahina and Others

APPELLANT

Vs

Ashok Kumar

RESPONDENT

Date of Decision : 05-02-1986

Acts Referred:

Citation : (1986) 1 RCR(Rent) 538

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

Bench : Single Bench

Advocate : Anand Sarup and Mr. Manoj Swaroop, for the Appellant; Pandit Satrajit, Arihant Jain, H.L Mehtani and Mr. Amarjit Marken, for the Respondent

Judgement

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

2. Ashok Kumar, landlord, sought the ejectment of his tenants from the premises, in dispute, which formed part of a residential building They were let out as a shop, and are in the nature of a deorhi of the building inasmuch as the landlord has the right of passage through the same to the other portion of the building. They were let out originally to Mohd Firoz, tenant, who died on May 13, 1968. The ejectment application was filed on April 26, 1974, inter alia on the ground that after the death of the original tenant Mohd. Firoz, the premises were occupied by Abdul Rehman (who also died during the pendency of the proceedings before the Rent Controller on December 13, 197). He was in sole occupation of the premises. After the death of Abdul Rehman, his widow Mst. Shahina and his sons and daughters occupied the premises. The premises remained close for a continuous period of four months preceding the application for eviction, without any sufficient cause Therefore, the tenants were liable to be ejected from the premises on that ground. The premises were let out for tailoring business whereas after the death of Mohd Firoz, Abdul Rehman carried on the shoe business therein and now, karyana business was being carried on therein. The premises were alleged to be unsafe and unfit for human habitation as the

other portion of the building which is an integral part of the premises, in dispute, have fallen. In the written statement filed on behalf of the tenants, all the pleas raised by the landlord were controverted. The learned Rent Controller found that the tenants had sublet the premises to Abdul Rehman and after the death of Mhod Firoz they remained closed for about six months. Besides, they all required reconstruction as the same had become unfit and unsafe for human habitation. In view of these findings, the eviction order was passed. In appeal, the learned Appellate Authority, affirmed the findings of the Rent Controller on the question of subletting and that the premises remained closed for about four months without any sufficient cause. However on the question of the building being unsafe and unfit for human habitation, the finding was reversed. Ultimately, the eviction order was maintained on other grounds. Dissatisfied with the same, the tenants have filed this revision petition in this Court.

3. The learned Counsel for the Petitioners contended that there is no evidence on the record to prove the factum of the subletting because it has not been proved that Abdul Rehman was in exclusive possession of the premises and that he was paying any rent to the tenants. It was also contended that there is no evidence to show that the shop remained closed for a continuous period of four months as required under law. So far as the change of user was concerned, it was submitted that in the absence of any rent note, it could not be said that the premises were let out for any specific purpose and, therefore the question of change of user thereof did not arise. On the other hand, Pandit Satrajit, the learned Counsel for the landlord-Respondent also contested the finding of the Appellate Authority on the question of the building being unsafe and unfit for human habitation. According to the learned Counsel, even according to the finding of the Appellate Authority, the rest of the building had fallen down and was in a ruinous condition, but since it had no effect on the premises, in dispute, no ejectment could be ordered on that basis. According to the learned Counsel this view taken by the Appellate Authority was wrong in view of the Division Bench judgment of this Court in *Strdarni Sampran Kaur v. Sant Singh* (1983) 85 P. L. R. 449.

4. After hearing the learned Counsel for the parties and going through the relevant evidence on the record, I do not find any merit in this revision petition.

5. On the appreciation of the entire evidence, it has been concurrently found that the shop remained closed for a continuous period of four months after the death of the original tenant Mohd. Firoz and that it was sublet to Abdul Rehman after the death of the original tenant. I do not find any illegality or impropriety in the said findings of the authorities below. Apart from the above, even on the ground that the building had become unfit and unsafe for human habitation, it has been found by the Appellate Authority itself that the rest of the building had fallen down and was in a ruinous condition. It could not be disputed that the shop in dispute, is an integral part of the said building ; rather it is a deorhi in which the Plaintiff was given the right of passage by the civil Court as well. That being so, it

could not be held that the building had not become unfit and unsafe for human habitation in view of the Division Bench judgment of this Court in Sardarni Sampuran Kaur's case (supra).

6. In this view of the matter, the revision petition fails and is dismissed with costs. The Petitioners are allowed, two months' time to vacate the premises; provided all the arrears of rent, if any, and the advance rent for two months, are deposited with the Rent Controller within fifteen days along with an undertaking, in writing, that after the expiry of the said period of two months, the premises will be vacated and the vacant possession thereof would be banded over to the landlord.