
(2000) 02 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2384 of 1981

Sudarshan Lal (Died) through his L.Rs. APPELLANT
Vs
Shrimati Bhushan Sehgal and Others RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:

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

Citation : (2000) 125 PLR 419 : (2000) 2 RCR(Rent) 36

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

Bench : Single Bench

Advocate : Harsh Rekha, for the Appellant; R.K. Gupta and R.K. Rana, for the Respondent

Final Decision : Allowed

Judgement

V.S. Aggarwal, J.—The present revision petition has been filed by Sudarshan Lal presently represented by his legal representatives. The same is directed against the judgment of the Appellate Authority, Gurdaspur dated 26.8.1981. By virtue of the impugned judgment, the learned Appellate Authority had set aside the order passed by the learned Rent Controller and instead passed an order of eviction against the petitioner.

2. The relevant facts are that the respondents had filed a petition for eviction against petitioner Sudarshan Lal with respect to the property in dispute. The suit property as a shop situated within the limits of municipal town Pathankot. It was earlier owned by Raghuwar Dass. The property in question was let by the said landlord. The eviction was claimed on the ground that the property had been let at a monthly rent of Rs. 75/-. There are outstanding arrears due from 1.10.1975 to 31.3.1978 and also from 1.4.1978 to 31.3.1979. It was also asserted that the property had been let for doing the embroidery work but the tenant is running a hotel in the said shop. The acts of the petitioner are nuisance. The petition for eviction was contested. The petitioner's claim was that the rent was only Rs. 30/- P.M. It was denied that there is any change of user of the premises or that

the acts of the tenant were a nuisance.

3. The learned Rent Controller had recorded the evidence and held that the rate of rent is only Rs. 30/- P.M. There was no balance amount due. A valid tender of the rent had been made at the rate of Rs. 30/- P.M. The learned Rent Controller further held that the property had been let for doing the business. There was no specific purpose settled and thus there was no change of user. The plea that it was a nuisance was also negatived. The respondents had preferred an appeal. The learned Appellate Authority rejected the claim that the acts of the tenant were nuisance. However with respect to the controversy about agreed rate of rent, it was held that it was Rs. 75/- P.M. It was further held that the premises had been let for doing the embroidery work and that presently a hotel is being run in the premises. The order of eviction accordingly was passed because the tender of rent was made at the rate of Rs. 30/- P.M. Aggrieved by the order of eviction, the present revision petition has been preferred.

4. On behalf of the respondents, preliminary objection was taken by the learned counsel that it is a finding of fact arrived at by the Appellate Authority and this Court, therefore, should not interfere.

5. The proposition of law is not in controversy keeping in view the strict rigors of Sub-section (5) of Section 15 of the East Punjab Urban Rent Restriction Act, 1949. This Court would only interfere if there is illegality or impropriety in passing of the order by the Appellate Authority. It would be an illegality if erroneous findings have been arrived at which are not based on evidence.

6. With respect to the ground of non payment of rent, it is in evidence that earlier also a petition for eviction had been filed. The rent was claimed at the rate of Rs. 75/-P.M. The petitioner took up the plea that rent is Rs. 30/- P.M. When the rent was tendered, the same was accepted by the counsel for the respondents-landlord. The counsel for the respondents-landlord made the following statement, copy of which is Ex.RW-2/1:-

"Statement of Sh. Radha Krishan Advocate for applicant.

The application is defective. I withdraw my application. I will file another application for recovery of rent at a correct rate and for ejectment. My application be dismissed.

RO&AC. Sd/- Radha Kishan Adv. Sd/- K.K. Garg. (in English) R.C. 10.1.78." Perusal of the said statement clearly reveals that it was admitted that the rate of rent claimed was not correct. The petition for eviction was withdrawn, though by way of abundant caution, it had been stated that the petition as such was defective. Thereafter, another petition for eviction had been filed. Therein too rent was only tendered at the rate of Rs. 30/- P.M. The statement was even made by Shri Radha Kishan, Advocate who appeared as PW-2. He admitted it to be correct.

7. This statement referred to above made by the counsel for the respondents-

landlord clearly shows that the rent could not be more than Rs. 30/- P.M. because while in the earlier petition in which the statement was made the rent was claimed at the rate of Rs. 75/- P.M. But still the learned counsel stated that he will file the subsequent petition with correct rate of rent. By no stretch of imagination, it can be taken to be that the rent was Rs. 75/- P.M.

8. The learned Appellate Authority had greatly been swayed by the fact that earlier tenant was paying Rs. 60/- P.M. as rent and, therefore, it cannot be believed that the said shop would be let again at a lesser rent. However, the Appellate Authority ignored an important fact. It had been noted by the learned Rent Controller. Earlier the tenant was in another shop. He had delivered possession of the same and in exchange taken the shop in dispute. This was the reason why lesser rent was settled. The explanation is valid and cannot be ignored.

9. The other oral evidence of the parties was basically self-serving. But the facts referred to above clearly show in the absence of any other material evidence that the Appellate Authority misconstrued the material evidence and fell into a grave error. It must be held that the rent was only Rs. 30/- P.M.

10. The second ground of eviction pressed has been about change of user. As per the respondent-landlord the property in question had been let for doing the embroidery work and now a hotel is being run therein. The learned Appellate Authority had drawn the inferences from the pleadings of the parties to contend that in the written statement it had not been alleged that property was let for doing any type of business. To appreciate this controversy, reference can well be made to the pleadings of the parties. In paragraph 5(c) of the petition, the grounds of eviction had been stated to be:-

"5(c). That the respondent is using the shop for purpose other than that for which it was leased to him. The shop was given for doing the embroidery works but now he has started a hotel in the shop." In the written statement in the corresponding paragraph, it had been pleaded:-

"It is entirely incorrect that the shop is being used for a purpose other than that for which it was let out. The shop is being used as Hotel since the life time of late Shri R.D. Sehgal and this ground even otherwise had not been taken up in the earlier two ejectment application."

Perusal of both the pleadings reveal that the petitioner-tenant had denied that it was let specifically for doing the embroidery work. Once there is no admission, on the contrary it was further alleged that even during the life time of Raghuwar Dass Sehgal, they had been using the property for running of the hotel. Merely because if it was not asserted that property could be used for any commercial purpose, is not a ground to hold that it is an admission that it was let for doing the embroidery work. The pleadings have to be read objectively and thus the inferences drawn by the Appellate Authority cannot be approved.

11. The initial onus is on the landlord to establish as to what was the purpose for which the property had been let. The respondents had not let the property. Therefore, the respondents were not competent to state the purpose of letting. When a landlord states that property was let for a particular purpose, then it has to be proved. In the present case that evidence is missing. It is admitted that earlier the predecessors-in-interest of the petitioner were doing the embroidery work and presently they started a hotel therein. The purpose of letting on basis of such a plea can only be taken to be commercial. When it is not established that it was let for a specific purpose, the findings of the Appellate Authority cannot be sustained. When no specific purpose is proved, merely change of user for one commercial purpose to the other will not make the ground of eviction available.

12. Keeping in view the aforesaid, it is obvious that the impugned judgment is not based on correct appreciation of material on the record and it cannot be sustained. The revision petition accordingly is allowed and instead the petition for eviction is dismissed.