(2007) 07 P&H CK 0080

In the Punjab And Haryana At Chandigarh

Uttam Chand (Dead) through LRs. Ashok Kumar and Others APPELLANT

Vs

Jawahar Lal and Others RESPONDENT

Date of Decision : 04-07-2007

Acts Referred:
Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 15(6)

Citation : (2007) 4 CivCC 309 : (2007) 4 PLR 108 : (2007) 4 RCR(Civil) 337 : (2007) 2 RCR(Rent) 419

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—This revision petition has been filed u/s 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 against the order passed by the Appellate Authority, whereby the legal heirs of Hari Kishan (respondents No. 1 to 4 in the ejectment application) have been ordered to be evicted from the demised premises on the ground that they had sub-let the demised premises to respondent No. 5 without the consent of the landlord and also on the ground of non-payment of rent as the arrears of rent were not validly tendered by the legal heirs of Hari Mishan, tenant.

2. In nutshell, the case of the landlord is that the shop in dispute was rented out to Hari Kishan son of Uttam Chand at the monthly rent of Rs. 80/-. He was exclusively doing his business in the said shop as sole proprietor. He died in a road accident in the year 1982. After his death, his legal heirs, namely, his widow Smt. Sarla Devi, minor daughter Santosh @ Rakhi, his mother Smt. Parwati and his father Uttam Chand (who were impleaded as respondents No. 1 to 4 in the ejectment application) came in possession of the shop. Subsequently those legal heirs sub-let the shop in question to Ashok Kumar, another son of Uttam Chand at the monthly rent of Rs. 800/- without the consent of the landlord. Now said Ashok Kumar is exclusively doing his business in the said shop as sole proprietor. It was further the case of the landlord that Hari Kishan was regularly paying the

rent to him, but after his death, his legal heirs had not paid the rent and the landlord claimed the arrears of rent from 1.6.1982 to 30.6.1985. On 11.10.1985, the landlord filed the ejectment application on the grounds of non-payment of rent and sub-letting. Respondent No. 1, Smt. Sarla Devi did not contest the application. However, the other legal heirs (respondents No. 2 to 4) and the alleged sub-tenant (respondent No. 5) contested the ejectment application.

3. In the written statement, the contesting respondents took the stand that the shop in dispute was never let out to Hari Kishan. Actually, it was rented out by the landlord to Uttam Chand. It was further pleaded that Hari Kishan used to sit in the shop with his father Uttam Chand, who was in exclusive possession of the same. After the death of Hari Kishan, Ashok Kumar (respondent No. 5) was assisting his father in the business. It was further pleaded that the business being run in the shop, was the joint business of the respondents. Therefore, it was alleged that the demised premises was not sub-let to respondent No. 5. On the first date of hearing, the respondents tendered the arrears of rent along with cost and interest as assessed by the Rent Controller.

4. The Rent Controller accepted the stand of the respondents that the shop in dispute was let out to Uttam Chand alone and Hari Kishan and respondent No. 5 Ashok Kumar were running the business in the shop with respondent No. 4 being his sons. Therefore, it was held that there was no sub-letting of the demised premises. Regarding non-payment of rent, it was held that the arrears of rent along with cost and interest, as assessed by the Rent Controller, were tendered on the first date of hearing, therefore, non-payment of arrears of rent became redundant.

5. On appeal by the landlord, the Appellate Authority reversed the order of the Rent Controller and passed ejectment order-against the respondents on the grounds of sub-letting as well as non-payment of rent. Against the said order, the instant revision petition has been filed.

6. Learned Counsel for the petitioners conceded that in view of the judgment of the Supreme Court in Rakesh Wadhawan and Ors. v. Jagdamba Industrial Corporation and Ors. 2002 131 P.L.R. 370, the impugned order of ejectment of the tenants on the ground of non-payment of rent is not sustainable. Both the learned Counsel addressed the arguments only on the issue of sub-letting.

7. After hearing the arguments of the learned Counsel for the parties and perusing the record of the case, I do not find any ground to interfere in the order of ejectment passed by the Appellate Authority in exercise of the revisional jurisdiction of this Court. It is the case of the landlord that the shop in question was let out to Hari Kishan and before his death, he was exclusively doing business in the same as sole proprietor and was regularly paying the rent to the landlord, but after his death, his legal representatives did not pay the rent to the landlord and instead sub-let the demised premises to Ashok Kumar-respondent No. 5 for a consideration without the consent of the landlord.

8. On the other hand, the respondents (now petitioners) took the stand that the demised premises was taken on rent by Uttam Chand respondent No. 4 and in that premises he started joint family business in which his sons Hari Kishan and Ashok Kumar were assisting. It is further the case of the petitioners that prior to the death of Hari Kishan, he was assisting his lather in the business and after his death, his another son Ashok Kumar started doing business in the premises to help his father in the joint business. Therefore, it was submitted that it was not a case of sub-letting.

9. Admittedly, no rent note was executed at the time of letting out of the premises. No receipt or counterfoil of the receipt about the payment of rent to the landlord has been placed on record by either of the parties. In order to prove the alleged sub-letting, the landlord examined himself as PW4 and further examined PW1 - Ashok Kumar, House Tax Clerk to prove the assessment register of the Municipal Committee, Palwal in which Hari Kishan has been shown in occupation of the demised premises as a tenant. He has also examined PW5 - Vir Bhan, Clerk of the Excise and Taxation Department, Palwal to prove that as per the record of the Sales Tax Department, Hari Kishan used to run the business in the name of ''Chug Radios'' as proprietor of the said shop and after his death, his brother Ashok Kumar was doing the business as sole proprietor of the said shop. In the record of the Sales Tax Department, Uttam Chand was not shown running the business in the shop either individually or as joint family business. The landlord also examined PW2, who deposed that the shop in question was let out to Hari Kishan.

10. In this case, a claim petition was filed by the legal heirs of Hari Kishan under the Motor Vehicles Act with regard to the death of Hari Kishan. In the said claim petition, Uttam Chand appeared as a witness. His statement has been placed on record by the landlord as Ex.P2. In that statement, he has categorically stated that his son Hari Kishan was a radio mechanic and was doing the business in the shop under the name of ''Chug Radios''. At that time, Uttam Chand had not stated that the business of Chug Radios is a joint family business. The landlord also placed on record the statement of Smt. Sarla Devi, widow of Hari Kishan in the claim petition. The said statement is Ex. P3 in the record. In that statement, she also stated that her husband was running a shop under the name of ''Chug Radios''. He was paying rent to the landlord at the rate of Rs. 807/-per month. She further stated that after the death of her husband, she was thrown out of the matrimonial home and her daughter was forcibly kept by her in-laws. These facts also do not support the case of the petitioners.

11. On the other hand, Uttam Chand appeared as RW1 and Ashok Kumar as RW2. They have also examined two other witnesses, namely, RW3 - Mohan and RW4 - Ganesh Chauhan. The Rent Controller held that the shop in dispute was let out by the landlord to Uttam Chand-respondent No. 4 alone and his sons Hari Kishan and Ashok Kumar were running the business in the said shop along with him being his sons. Therefore, it was not a case of sub-letting. He has recorded

the said finding on the basis of the statements of Uttani Chand and Ashok Kumar. In his statement, Uttam Chand had stated that he had taken the shop in dispute on rent from Radha Kishan @ Rs. 807/- per month and started his joint family business in the said shop. He further stated that his three sons were assisting him in the business and after the death of Hari Kishan, his another son Ashok Kumar was assisting him in the joint business being run in the said shop.

12. Except the statements of Uttam Chand and Ashok Kumar that the shop was let out by Radha Kishan to Uttam Chand and he started his joint family business in the premises, there is no other evidence available on the record which supports the case of the petitioners. Rather, the landlord has led cogent and reliable evidence, according to which, Hari Kishan was doing the business as sole proprietor and was in exclusive possession and after his death, his brother Ashok Kumar came in exclusive possession of the shop and started business in the same as sole proprietor. Undisputedly, no consent was ever given by the landlord for sub-letting the premises to Ashok Kumar. As far as the House Tax Assessment Register is concerned, learned Counsel for the petitioners may be right while contending that in view of the decision of this Court in Bhagat Matu Ram (Died) Vs. Basati Ram Bhola, , the entries in the House Tax Assessment Register are not conclusive piece of evidence as they are made by the Municipal Authorities on the basis of information gathered by them for the purpose of maintaining register for collection of house tax, therefore, such entries by itself cannot determine the jural relationship between the parties. On the basis of such entries, an occupant of the premises may not be presumed to be the tenant. But the learned Counsel for the petitioners could not make out a case for discarding of the documentary evidence proved by the officials of the Sale Tax Department. There is a difference between the House Tax Assessment Register prepared by the Municipal Committee and the licence given by the Sales Tax Department to an assessee. The Municipal Committee prepares the House Tax Assessment Register on the basis of the information received whereas the Sales Tax Department issues the licence on the basis of the written application made by the assessee with certain documents in the shape of affidavit etc. It is necessary for a person applying for the Sales Tax licence to disclose that the definite premises is in his occupation where he wants the licence. He has to disclose in which capacity he is in possession of the premises.

13. In the instant case, the official of the Sales Tax Department has categorically proved that earlier Hari Kishan was running the business in the demised premises as sole proprietor. As per the record of the sales Tax Department, Uttam Chand was not related to the said business. Further, after the death of Hari Kishan, Ashok Kumar applied to run the said business as sole proprietor in the demised premises. The record of the Sales Tax Department clearly indicates that till April, 1982, Hari Kishan was in occupation of the premises and was doing die business as sole proprietor and after his death, Ashok Kumar was exclusively doing the business in the demised premises as sole proprietor. Further, as per the record, Uttam Chand was not shown related to the said business. The business

running in the shop was never being run as joint family business as claimed by Uttam Chand. Thus, in view of this evidence and the other supporting evidence available on the record, it has been clearly established that the demised premises was given on rent by Radha Kishan to Hari Kishan son of Uttam Chand. Therefore, in my opinion, the Appellate Authority after properly appreciating the evidence available on the record, has rightly set aside the finding of the Rent Controller to the effect that the demised premises was rented out by Radha Kishan to Uttam Chand.

14. Once it is proved that the demised premises was rented out to Hari Kishan and after his death. Ashok Kumar is running the business as sole proprietor, then the question arises whether the landlord has proved the alleged sub-letting. To prove the sub-letting, the landlord has to prove that the tenant has parted with exclusive possession in favour of the alleged sub-tenant and for a consideration. In my opinion, the landlord has proved that the demised premises is exchisively in possession of Ashok Kumar, the alleged sub-tenant, who was in exclusive possession of the shop in dispute and running the business as sole proprietor. Thus, the landlord has proved the parting of the exclusive possession of the demised premises to the alleged sub-tenant. Once the parting of the exclusive possession to the sub-tenant is established, then the presumption can be drawn qua the consideration. In this regard, reference can be made to the decision of the I Supreme Court in M/s. Bharat Sales Ltd. Vs. Life Insurance Corporation of India, .

15. In the instant case, the legal heirs of the tenant took the stand that the demised premises was let out by the landlord to one of the legal heirs of Uttam Chand and they have failed to prove that stand. There is no evidence available on the record which proves that the demised premises was let out by the landlord to Uttam Chand. There is also no evidence that the business being run in the shop is a joint family business. Rather, as per the evidence of the Sales Tax Department, earlier the business was being run by Hari Kishan as sole proprietor and after his death, the same business was being run by Ashok Kumar as sole proprietor. Thus, in my opinion, I do not find any force in the contention raised by the counsel for the petitioners supported by the judgments of this Court in Anil Kumar Vs. Sita Devi and Another, and Vinod Kumar and Another Vs. Sat Pal, , that in the instant case the landlord has not proved the ingredients of sub-letting. Undisputedly, Ashok Kumar is not the legal heir of deceased Hari Kishan and parting of the exclusive possession of the demised premises to him by the legal heirs of Hari Kishan for consideration amounts to sub-letting.

In view of the above, I do not find any impropriety or illegality in the impugned order passed by the Appellate Authority in exercise of the revisional jurisdiction of this Court.

Dismissed.

