

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 1306 of 2015 (O&M)

Date of decision : February 24, 2015

Karamjeet

... Petitioner

vs.

Pratishth Mandir Murti Thakur Shyama Ballabji (Trust)

... Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Shiv Kumar, Advocate
for the petitioner.

Surinder Gupta, J

The revision petitioner was a tenant in shop No.21 owned by respondent-Trust @ ₹175/- per month as rent. Respondent filed petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, seeking ejectment of respondent from the demised premises for non payment of rent w.e.f. 1.1.1999 and that the revision petitioner has ceased to occupy the demised premises as the shop was lying closed since 1999. The revision petitioner in his reply admitted his tenancy but alleged the rate of rent as ₹145/- per month instead of ₹175/- per month as alleged by the respondent. He further alleged that the rent up to February, 2007 had already been deposited by him and he was using the shop as office for the purpose of property dealing.

Learned Rent Controller held that the respondent had failed to prove the rate of rent as ₹175/- per month plus house tax and the prayer of seeking ejectment on the ground of non payment of rent was declined.

The revision petitioner was ordered to be ejected from the demised premises on the ground that he has ceased the occupy the same. While reaching the conclusion, the learned Rent Controller observed as follows :-

- i) *There was no electric connection in the demised premises which had been disconnected in the year 1985 and this fact was admitted by the revision petitioner himself.*

- ii) *The plea of the revision petitioner that he has been using the electricity by taking connection from the tenant in the adjoining shop was held as not proved.*
- iii) *The plea of the respondent that he was carrying on business in the demised premises was also not proved.*
- iv) *Statements of PW-2 Chaman Lal, PW-3 Radhey Krishan and PW-4 Nand Kishore was relied upon to reach the conclusion that the premises was lying closed and the revision petitioner was not carrying on any business in this premises.*
- v) *The official of the Electricity Board appeared as witness in this case and it was never suggested to him that the electric connection in the demised premises has been taken from the adjoining shop.*

Not satisfied, the revision petitioner preferred appeal before the Appellate Authority, Faridabad, which was also dismissed.

Learned counsel for the revision petitioner has argued that specific plea was taken by the revision petitioner that he is consuming electricity by taking election connection from the adjoining shop. He is a petty property dealer as such could not produce any record of his business or account books. The absence of the electric connection and non production of record of business cannot be taken as a circumstance against the revision petitioner to reach the conclusion that he has ceased to occupy the demised premises. He has relied upon the observations made in case ***Faquir Chand (deceased) through his L.Rs vs. Faquir Singh and another*** 1993 (1) PLR 159; ***Ram Chand Sharma vs. Thakur Dass*** 2006 (1) PLR 69 and ***Geeta Bhalla and others vs. Krishan Kumar (dead) through L.Rs*** 2007 (3) PLR 645.

On perusal of paper book, order passed by the learned Rent Controller and the judgment of the first appellate court, I find no factual or legal error in conclusion arrived at by the above authorities under the Rent Act that the revision petitioner has ceased to occupy the demised premises. Admittedly, there is no electric connection in the demised premises. The ejectment petition was filed in the year 2007 and a specific plea was raised that the shop is lying closed since 1999. The appellant is an old tenant in

the demised premises. It cannot be believed that he had been carrying on the business of property dealer in the demised premises but keeping no record of any transaction carried out by him during this long period. It is totally unbelievable that he was carrying on business without electric connection particularly during extreme summer and winter. This plea that he had taken the electric connection from the neighbouring shop is just an after thought rather it reflect that he could not carry on his business without electricity. The electric connection of the revision petitioner was lying disconnected since long and he had never approached the respondent-landlord for allowing him the electric connection or moved a petition before the Rent Controller for direction to the respondent-landlord to provide him electric connection. No evidence has been produced that any payment of electric energy consumed by him was made to the tenant in the adjoining shop. Even if the tenant in the adjoining shop had appeared to support the revision petitioner on this score, his testimony can be discarded in the absence of any evidence regarding payment of electricity charges. It has come on record that many litigation with the tenants in different shops and the respondent are pending. In these circumstances, one tenant will come forward to support the other tenant and there is nothing unusual and unnatural in it. The citations referred by the learned counsel for revision petitioner have been perused but these are not applicable to the facts and circumstances of the present case. In the case of ***Ram Chand Sharma vs. Thakur Dass*** (*supra*), the tenant had produced the evidence that he was carrying on the business of petty shop keeper. While relying on the evidence produced by him it was observed that non production of account books or income tax return have no impact and did not lead to the conclusion that tenant had ceased to occupy the shop. In the case of ***Faqir Chand (deceased) vs. Faqir Singh and another*** (*supra*), the Cobbler who was a tenant in the shop had given explanation that electric connection was disconnected as he could not pay the electricity bill. In these circumstances non consumption of electricity was not accepted as evidence enough to conclude that the premises had remained unoccupied. In case of ***Geeta Bhalla and others vs. Krishan Kumar (dead) through L.Rs*** (*supra*) it was proved that the tenant was carrying on business in the demised premises and on this account the plea of landlord that the tenant had ceased to occupy the

demised premises was discarded. The observations of the above referred cases are not applicable to the facts and circumstances of the present case.

It is not a case where electric connection had not been disconnected due to incapacity of revision petitioner in payment of electricity charges. No evidence was produced by revision petitioner that business was being carried out in the tenanted premises and the learned Rent Controller has committed no error while recording the findings that the tenant has failed to prove that he was doing business in the premises and had not ceased to occupy the same.

Learned counsel for the revision petitioner has argued that as per respondent shop was lying closed and none occupied the same since 1999 but the petition was filed in the year 2007 and no explanation has been given for the delay. The delay in filing the petition shatters the plea raised by the respondent. In case the revision petitioner had ceased to occupy the demised premises in the year 1999, the respondent would have filed the ejectment petition immediately after the expiry of period of four months.

This fact that the respondent has filed the petition after a considerable long time of the closure of the shop by the revision petitioner is not a circumstance which in any manner affects the merits of the case. The premises is not owned by the individual rather it is owned by a Trust and usually it takes long time for the Trust or Societies to come forward seeking ejectment of tenant.

This revision petition has no merits.

Dismissed.

(Surinder Gupta)
Judge

February 24, 2015

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