

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.3899 of 2014(O&M)
Date of decision: 04.12.2015

Gurbachan Singh

... Petitioner

Versus

Tarsem Lal

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. J.S. Lalli, Advocate for the petitioner.
Mr. Aayush Gupta, Advocate for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Vide order dated 23.05.2011, Rent Controller, Ludhiana, had ordered eviction of the tenant-petitioner, for he had ceased to occupy the demised premises i.e. a shop, which forms part of property No.B XII 337, Shahpur Road, Ludhiana. As even an appeal preferred against the said order failed and was dismissed vide judgment dated 29.04.2014, tenant is before this court.

Briefly, the case set out in the ejectment petition was/is that the tenant had ceased to occupy the demised premises continuously for more than four months without any reasonable cause. In fact, the premises was/is lying locked since February, 1997, and the tenant had shifted his business

to shop No.9, Guru Nanak Complex, Dr. Gujjar Mal Road, Ludhiana.

In defence, it was pleaded, inter alia, that neither the tenant had ceased to occupy the shop in dispute nor the same was lying locked since February, 1997. The tenant was conducting a Cloth business in the premises under the name and style; "M/s Ajanta Textile". It was denied that he had shifted his business to shop No.9, Guru Nanak Complex, Dr. Gujjar Mal Road, Ludhiana.

On a consideration of the matter in issue and the evidence on record, both the authorities concurrently concluded that landlord-Tarsem Lal (PW1) appeared in support of his claim and proved his case. Likewise, his other two witnesses, namely, Bal Kishan (PW2) and Sushil Kumar (PW4), also corroborated the case set out in the ejectment petition. Sushil Kumar, Lower Division Clerk of Punjab State Electricity Board (PW4), testified that the consumption of electricity qua meter No.SK-09/0165 was nominal. Although, in his cross-examination, he (PW4) deposed that the said meter was installed in building No.338, whereas the demised premises formed part of property No.337. Accordingly, it was maintained by the landlord that the said witness was won over by the tenant. In any case, tenant could always produce the electricity bills to prove that the premises was indeed in use. Rather, in his cross-examination, he conceded that he had not

brought any electricity bills. Although, the record summoned by the tenant from the Income Tax Department was proved as Ex.RW3/7, but nothing could be deciphered therefrom to infer that the tenant was transacting any business in the premises. So much so, tenant himself admitted in his statement that the firm was registered in the year 1976-77, but he had not brought any record to show that he indeed was working in the premises from 1997 to 2004. He also conceded that he could not tell as to from whom he has been buying the Cloth to run his business. Still further, Anil Kumar (RW2) admitted in his cross-examination that the tenant had a shop at Dr. Gujjar Mal Road where, he was purported to have shifted his business.

I have heard learned counsel for the parties and perused the record.

The argument being advanced by learned counsel for the petitioner that the onus to prove that the tenant had indeed ceased to occupy the premises strictly lay upon the landlord, which he failed to discharge, lacks conviction and cannot be countenanced. Likewise, reliance placed upon a decision of this court in **Geeta Bhalla and others v. Krishan Kumar (dead) through LRs**, 2006(2) RCR (Rent) 379, does not advance the case of the tenant a bit, as is being demonstrated hereinafter. Of course, there cannot be any quarrel with the proposition that the burden of proof, to prove that the tenant

had ceased to occupy, is upon the landlord, which he apparently discharged. The case set out, in no uncertain terms, by the landlord was that the tenant had ceased to occupy the premises w.e.f. February, 1997 till the institution of the eviction petition on 21.04.2004. Landlord i.e. Tarsem Lal (PW1) appeared in support of his claim and fully proved his case. Likewise, Satpal Bansal (PW2) testified that tenant had since ceased to occupy the premises and the condition of the shop was badly effected. Bal Krishan (PW3) deposed that tenant had closed the shop in question and shifted his business to shop No.9, Guru Nank Complex, Dr. Gujjar Mal Road, Ludhiana. That being so, the landlord had duly discharged the initial onus and, thus, it was upon the tenant to adduce cogent evidence to rebut the claim of the landlord and substantiate his defence. Apparently, neither the account books nor the bill books were brought on record by the tenant to show that any such business was actually being carried out in the premises. Tenant claimed that a cloth business was/is being conducted in the premises under the name and style; "M/s Ajanta Textile". Naturally, to run any such business, he would first have to buy the required goods/articles from other manufacturers/dealers/distributors, but he apparently failed to even name any of those. Nothing was brought on record to show that he actually sold any merchandise, during these seven years i.e. from February, 1997 to 21.04.2004, while

conducting any such business. Not just that, he also failed to produce any electricity bill to show that there was a regular and normal consumption of electricity to run any such business. Likewise, nothing was brought on record to show that the tenant was even assisted by any staff or employees to transact business. And that was never the case set out by the tenant that he was a petty shopkeeper and was, thus, neither maintaining any accounts nor bill books to reflect his sales and profits. That being so, the only and the inevitable conclusion one could reach was that the tenant had indeed ceased to occupy the demised premises.

No ground is made out to interfere with the orders being assailed, in exercise of revisional jurisdiction, under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949. Petition being devoid of merit is accordingly dismissed.

December 4, 2015
Rajan

(Arun Palli)
Judge