

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**Civil Revision No.7875 of 2015(O & M)
Date of Decision:26.11.2015**

Rakesh Kumar and another

....petitioners

Versus

Ashok Kumar Gupta

.....respondent

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not? YES**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Parveen K.Kataria, Advocate
for the petitioners

ARUN PALLI, J.(ORAL):-

Eviction petition preferred by the landlord-respondent was dismissed by the Rent Controller, Amritsar, vide order dated 25.08.2014. As an appeal preferred against the said order was accepted by the Appellate Authority, vide order dated 11.09.2015, and eviction of the tenant-petitioners was ordered, for they had ceased to occupy the demised premises i.e.a shop, the tenant-petitioners are before this Court.

Briefly, the case set out by the landlord-respondent was that tenant-petitioners had ceased to occupy the shop in question, without any sufficient cause, continuously, for a period of two years immediately preceding the institution of the eviction petition, and no business was being conducted therein.

In defence, it was pleaded, inter alia, that the tenant-petitioners were carrying on the business of readymade clothes and

garments in the shop since the year 1991 under the name and style; Krishna Print Store, and the shop was being regularly opened and closed. Further, the shop was full of stock consisting of clothes and garments and it was never kept closed for more than 2/3 days. Accordingly, it was maintained that the tenant-petitioners had not ceased to occupy the demised premises.

The Appellate Authority, on a consideration of the matter in issue and the evidence on record, concluded that the landlord-respondent had himself appeared as AW1 and proved his claim. He also examined Rajinder Kumar (AW2) and Balwinder Singh (AW3), who fully corroborated the case set out in the eviction petition. Hem Singh (AW4), proved the meter reading books i.e.Ex.AW4/1 to Ex.AW4/48, qua account No.A22HG250125L, installed in the demised premises. And, an analysis thereof, revealed that during the relevant period, there had been negligible consumption of electricity, which would rather show that no business was being transacted in the premises. In fact, just a bulb was kept on to ensure that the electricity meter remains in motion. The eviction petition was filed on 25.07.2008 and the electricity consumption for a period of four months, immediately preceding the institution of the petition, revealed as thus:

Month/year	Old Reading	New Reading
12/2007	6362	6365
02/2008	6365	6395
04/2008	6395	6404
06/2008	6404	6416
08/2008	6416	6428

Therefore, in December 2007, the consumption of

electricity was only 3 units and consumption in February 2008 was 30 units. In April 2008, consumption was only 9 units, whereas, in June and August 2008, 12 units each were consumed. Concededly, the tenant-petitioners were engaged in business of clothes and readymade garments and if the premises was indeed in use, the consumption of electricity would have been far more. Particularly, during the peak summer and winter seasons. In fact, one of the petitioners i.e. Rakesh Kumar, was a qualified Chartered Accountant by profession. And he did not even choose to appear as a witness. Only Sushil Kumar (petitioner No.2) appeared and deposed in terms of the case set out in defence. No doubt, tenant-petitioners had brought on record certain photographs to show that they were still in occupation of the premises but tenant-Sushil Kumar (RW2) conceded in his cross examination that he had no clue as to in which month or a year, those photographs were taken. Rather, he did not even know the name of the photographer who had taken those photographs. That being so, it was concluded that there was every possibility that those photographs were obtained during the pendency of the proceedings. Even otherwise, the tenant-petitioners failed to examine the photographer who purports to have taken those pictures. Not just that, the best evidence which the tenant-petitioners could produce, was the account books as also the bill books to show that some business was indeed being transacted in the premises. Concededly, tenant-petitioners failed to produce any such evidence. Though, it was maintained that the tenant-petitioners would purchase the goods vide kachha bills, but even no such evidence was brought

on record. Thus, an adverse inference was drawn against the tenant-petitioners. Though, Sushil Kumar (RW2), purports to have been purchasing goods from different concerns from Amritsar and Ludhiana, to run his business, but again, nothing was brought on record, least any cogent or credible evidence, to prove so. The argument that has been advanced by learned counsel for the petitioners that the onus to prove that the tenant-petitioners had ceased to occupy the demised premises strictly lay upon the landlord-respondent, which they failed to discharge, lacks conviction and cannot be countenanced. Likewise, reliance placed upon the decisions i.e. ***Sohan Lal and another vs. Gurbachan Singh, 1989 (2) RCR (Rent) 363, Faqir Chand vs. Faquir Singh and another, 1993(1) PLR 159, Geeta Bhalla and others vs. Krishan Kumar (dead) thorough LRs, (2007)147 PLR 645 and Kedar Nath vs. Rattan Chand, 1999(2) RCR (Rent) 444,*** would also not advance the case of the petitioners a bit. There cannot be any dispute with the proposition that initial onus to prove that the tenant-petitioners had indeed ceased to occupy the demised premises, lay upon the landlord-respondent. But having set out a specific case that the premises was lying shut for the past two years and no business was being carried therein, and having examined himself as as AW1, Rajinder Kumar (AW2), Balwinder Singh (AW3), who fully corroborated the case set out in the eviction petition, as also Hem Singh (AW4), who proved the meter reading books Ex.AW4/1 to Ex.AW4/48, landlord-respondent duly discharged the initial onus.

Needless to assert, thereafter, the tenant-petitioners were required to

rebut the claim of the landlord by adducing cogent and credible evidence and prove that they indeed were in occupation of the premises. And as set out in their written statement, a business of clothes and readymade garments was being transacted in the premises. Ex facie, petitioners had ceased to occupy the demised premises, for otherwise they could always produce the accounts and bill books, which could show that premises was in active use by the tenant. Likewise, tenant-petitioners could also adduce evidence to show as to how many employees or workmen were employed by them, which they would certainly need to run that kind of business. Further, documents showing the merchandise that they had bought and from whom to run this business. And, likewise, the goods that they had sold. In the absence of any such evidence, the only and the inevitable conclusion one could reach was that tenant had indeed ceased to occupy the demised premises. No other argument was advanced.

That being so, no interference in exercise of revisional jurisdiction under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949, is warranted. The petition being devoid of merit is accordingly dismissed in limine.

26.11.2015
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(ARUN PALLI)
JUDGE