

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

CR No. 2732 of 2002 (O&M)
Date of decision: March 25, 2015

Sh. Rattan Chand Sharma

...Petitioner

Versus

Nikka Ram

...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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

Present: Mr. Samrath Sagar, Advocate,
for the petitioner.

None for the respondent.

K. KANNAN, J. (Oral)

1. The petition is at the instance of the landlord who obtained an order of eviction on the ground that the tenant had ceased to occupy for four months prior to the filing of the petition. There were other grounds also taken by the landlord for taking eviction from the Rent Controller. In appeal, the decision of the Rent Controller was set aside. The point that falls for consideration is whether the appellate court was justified in reversing the judgment on reasoning of the Rent Controller as regards the landlord's plea that the tenant had ceased to occupy the premises.

2. The counsel would take me to the judgment of the Rent Controller that has examined the evidence of a personnel from the Electricity Board to say that the premises had been permanently locked; there is no recording of consumption of electricity and filed the copy of the

consumption card as PW3/1 and PW/2. The petition itself had been filed in the year 1990 and the witness examined in 1998 for all that period, there had been no electricity consumption. The landlord had also placed reliance on the fact that the tenant had not paid the professional tax which he would have paid, if he had been carrying on the business at the premises since the Cantonment Rules require the payment of professional tax by every occupants of the building who was carrying on business. The Rent Controller considered the explanation given by the tenant that he used to go, open the shop and sit there for some hours and come away and cited various decisions of this court to hold that an 'occupation' means actual use of the building and did not mean mere visiting the building, opening for some time and closing it. Adverting to the cross-examination addressed to the tenant that he had not paid the professional tax from the building which he was said to be occupying, the Rent Controller found that the response of the tenant was evasive and he was not prepared to say that either he was not paying the professional tax or he made the payment but the tax receipts were not available. The landlord attempted to show at the trial that the tenant was actually having cloth business in yet another shop in the same town and he was paying tax for the same. All these important aspects were duly considered and the Rent Controller found that the petitioner's case of the tenant's ceasing to occupy the premises as having been established.

3. The appellate court has reversed the finding by holding, inter-alia, that the landlord was not able to recall and give specific date from when the premises remained closed. The requirement under law is that the tenant must cease to occupy at least four months prior to the date the petition was filed. If the landlord makes such averment in the petition that

should satisfy the requirement of law and it was not necessary to spell out any specific date. Indeed evidence was available through PW3 that the shop had remained permanently closed from 1990 that it must have been taken as corroborative of the landlord's assertion that the tenant has ceased to occupy the premises. Even the finding of the court below that the tenant's evidence that he was having an oven in the premisses for his bakery business and that he did not require any electricity ought to have been taken only as an evasive reply for if a tenant did not require electricity connection, he would have only sought for surrender of the electricity connection and he would not have merely allowed it to be disconnected for non-payment of electricity charges and by non-user. The electricity is not seen any longer as a luxury or comfort but it is even seen to be an absolute necessity for residential or non-residential purpose. We are not considering the case of a hutment in the village. On the other hand, we are considering the building which is a business premise and a property as falling with the Jalandhar cantonment area. It is inconceivable that any occupied building which is actually put to use could have been put to use without any electricity connection. The appellate court must have called the respondent's bluff but chose to buy an unconvincing story to allow the appeal with shoddy reasoning.

4. The order of the appellate court is set aside and the eviction order passed by the Rent Controller is restored.

5. The revision petition is allowed.

March 25, 2015
prem

(K.KANNAN)
JUDGE