

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-5209-2002

Date of decision: 14.01.2015

Nanak Chand and others

..... Petitioners

Versus

Nanak Chand

..... Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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. Shiv Kumar, Advocate for the petitioners.

Mr. AP Bhandari, Advocate for the respondent.

R.P. NAGRATH, J.

The instant revision has been filed under Section 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the Act'). The petitioner-landlords claimed that the demised shop was rented out to the respondent-tenant @ ₹ 650/- per month. The petitioners sought eviction *inter alia* on the grounds, (i) that the respondent had not paid or tendered the rent from 1.7.1993 to July, 1996; (ii) that the demised premises is required by the petitioners for their own need and *bona fide* necessity; and (iii) that respondent had changed the user of the demised premises for the purpose other than for which it

was let out.

2. The instant revision is confined only to the later ground of eviction and according to the petitioner-landlords, the respondent was given the shop in question on rent for the purpose of cycle repair work but he has started manufacturing shoes and this has resulted in diminishing the value and utility of the demised shop. It may be stated that in the original application for eviction filed in the year 1996, the ground that respondent had changed the user of demised premises for the purpose other than it was let out was not pleaded.

3. The respondent in the written statement denied the grounds of eviction and stated that he deals in seasonal work, sometimes he runs the cycle repair shop and sometimes deals in shoes and another time in different articles whichever is more profitable. After filing of the written statement originally by the respondent, the petitioners amended the eviction application to incorporate the ground of change of user of the demised premises for the purpose other than for which it was let. The respondent also pleaded that the shop in question was taken on rent by him in the year 1974 on a monthly rent of ₹ 125/- which was increased to ₹ 175/- per month in the year 1985. Rejoinder was also filed by the petitioners.

4. Learned Rent Controller framed the following issues from the pleadings of the parties:-

- “1. What is the rate of rent? OPP
2. Whether the tender is short and invalid? OPP
3. Whether respondent is liable to be evicted from

the demised premises on the grounds mentioned in the amended plaint especially on the ground of change the user from shop of cycle works to the manufacturing of shoe works? OPP

4. Whether the petitioners require the shop in question for their own use, occupation and necessity and the respondent is liable to be evicted from the shop on this ground? OPP
5. Whether the petitioners have no locus standi to file the present petition? OPR
6. Whether the petitioners have no cause of action to file the petition? OPR
7. Whether the petitioners are estopped from filing this petition by their own act and conduct? OPR
8. Relief.”

5. The learned Rent Controller and the Appellate Authority have given the concurrent findings that the rate of rent was ₹ 175/- per month and that tender of rent made on the first date of hearing was legal and valid. The ground of personal need and occupation of the petitioners-landlord was also rejected. The learned Rent Controller, however, held that the petitioners have been able to prove that the respondent had changed the user of the premises in question for the purpose other than it was rented out. According to learned Rent Controller, the premises was rented out for cycle repair work but the respondent had changed its user, inasmuch as he has started business of

manufacturing and sale of shoes and by accepting this ground set up by the petitioners, the eviction order 20.12.2001 was passed. In appeal, the learned Appellate Authority, disagreed with the findings of learned Rent Controller on the above issue and by accepting the appeal vide judgment dated 8.8.2002, set aside the order of eviction dated 20.12.2001 passed by the learned Rent Controller.

6. I have heard learned counsel for the parties and carefully perused the orders passed by the Courts below and also the records.

7. Learned counsel for the petitioners confined his arguments only with regard to the issue of change of user of the premises for a purpose other than for which it was let out.

8. The present is a case where there was no rent agreement in writing executed by the respondent in order to say that the premises was let out for restricted purposes of carrying out a cycle repair shop. The respondent categorically stated as RW-1 that he does not manufacture the shoes but only sells the readymade shoes by purchasing from the market. According to the respondent, he carried on the cycle repair shop for 12 years initially and is dealing in the sale of shoes for the past about 8 years. The respondent was examined in the year 2001. PW-2 Gopi Chand was examined by the petitioners in support of the fact that Gopi Chand got rented out this shop from the predecessors of the petitioners. In cross-examination, he stated that the respondent sells the shoes by manufacturing the shoes himself and also by purchasing readymade shoes from the market. Gopi Chand, however, cannot be believed on the version that respondent is also manufacturing the shoes because this

witness tried to support the incorrect version of the petitioners that the premises was rented out to the respondent in the year 1980 @ ₹ 650/- per month. This version has been disbelieved by both the Courts below. Out of the petitioners, only Karam Chand-petitioner No. 2 appeared in the witness-box as PW-3 and in cross-examination, he stated that he cannot say since when the respondent started the shop of sale of shoes in the shop in question but volunteered that it was started after the filing of instant petition for eviction. As already observed, the petition was originally filed in the year 1996. The evidence led in the case as well as the pleadings would rather suggest that this ground was the main ground to seek eviction of the respondent though it has assumed significance because of the acceptance of plea by the learned Rent Controller, though there was no substantial evidence in support of the plea.

9. Learned Appellate Authority observed that from the reading of evidence of the petitioners it appears that they have failed to establish on record that the shop in question was given for a specific purpose. Learned Appellate Authority further observed as under:-

“19.The onus is on the landlord to establish as to what was the purpose for which the property had been let and the petitioners have miserably failed to prove that the premises in dispute were only let out for the purpose of cycle works. In the present case, this evidence is missing when no specific purpose is proved merely change of user for one commercial purpose to the other will not make the ground of

eviction available. Therefore, according to the appellant the purpose of the user still remains commercial and there was no clause prohibiting the appellant to change to any other business in the shop in dispute. It has been held by the Hon'ble Supreme Court in "Mohan Lal Vs. Jain Bhagwan" 1034, A.I.R. 1988 tenant switching over to another business than one for which tenancy was created. No possibility of any mischief or detriment to demised premises, so the tenant is not liable to be evicted. In the instant case no material change has been effected by the appellant as previously he used to work as cycle repairs whereas now he has start to work as selling of shoes."

The relevant case law has been discussed by the Appellate Authority to come to a definite finding.

10. The learned Appellate Authority rightly placed reliance upon a judgment in **Mohan Lal Vs. Jai Bhagwan, 1988 AIR (SC) 1034**, in which the facts were that the shop was let out for running the liquor business but the tenant changed the business to general merchandise and it was held to be not a change of user. Learned petitioners' counsel mainly placed reliance upon a later judgment of the Hon'ble Supreme Court in **Jagdish Lal Vs. Prama Nand, 2000 (1) Rent Control Reporter, 381**. The facts of the said case were that tenant was given the premises to carry on the business of '*Maniyari*' but he started a restaurant

and in the circumstances, it was held to be a change of user. That was a case in which there was a rent note executed by the tenant which stipulated that the premises was rented out for the business of 'Maniyari' [(General Merchant) Readymade & Cloth Merchant]. The facts of that case, therefore, were quite different where a business of restaurant was started in place of general merchant and cloth merchant business. The contention on behalf of landlord was that this shift of business was in itself a serious nuisance on account of the furnace which was ignited for making tea or boiling milk or preparing other eatables, including sweetmeat and, therefore, the term of lease deed that the shop could not be used for other purposes stood violated giving to the landlord a cause of action for seeking appellant's eviction. The Hon'ble Supreme Court held as under:-

“19. In the instant case, the premises in question was let out to the appellant for "Maniari" [(General Merchant) Readymade & Cloth Merchant] business. The setting up of a restaurant therein and serving tea and cold drinks would, in the circumstances of this case, amount to change of user within the meaning of Section 13. The redeeming feature, however, is that the appellant has reverted back to his original business during the pendency of the eviction petition before the Rent Controller and for many years now has been carrying on the original business. In these circumstances, where the change of business was only

for a very short period and the appellant, during the pendency of the eviction proceedings reverted to the original business which he is carrying on since then, and more particularly because all other grounds, namely, arrears of rent, structural alterations made in the premises in question and bona fide requirement of the landlord, on which the eviction of the appellant was sought, have been negated, we feel that the ends of justice would be better served if the appellant is allowed to stay in the premises in question as tenant, subject, however, to his paying rent at the rate of ₹ 1,500/- p.m. than the original rent of ₹ 600/- p.m.”

11. In **Gurdial Batra Vs. Raj Kumar Jain, (1989) 3 SCC 441**, a similar provision under Section 13 (2) (ii) (b) of the East Punjab Urban Rent Restriction Act, 1949 came to be considered. The shop was let out for cycle and rickshaw repairing business, but the tenant started the television business. The question which arose in that case was whether the premises had been used for a purpose other than that for which it was let out. The Hon'ble Supreme Court held that in the circumstances of the case, “the business of selling television sets” which was started by the tenant in that shop cannot be said to be a purpose other than that for which the shop was let out.

12. Learned petitioners' counsel relied upon **Mulakh Raj Vs. Neeraj Kumar, 2013 (1) Rent Control Reporter 262**, a judgment of this Court, in support of his contention. That was a case in which the

premises was let out for establishing a halwai shop, karyana and general merchants but the tenant started business of storing and selling cement. This Court affirmed the view taken by the learned Rent Controller and the Appellate Authority that this amounted to the change of user of the premises. It was found in that case as a matter of fact that the change of business was not merely in violation of the terms of the contract but also it was bringing about a commencement of a new activity that could prejudice the landlord. There was definite evidence led by landlord to contend that even apart from cement, there was also sand stacked outside and building materials had been placed outside the shop itself. A prejudice was clearly shown through evidence brought, which was not inconsistent with the plea that change of activity has resulted in some form of prejudice to the landlord. The facts of that case were thus quite different and should not be helpful to the petitioner-landlord.

13. In view of the aforesaid discussion, I find that the learned Appellate Authority has taken into account the principles applicable to such matters in the right perspective and there is no scope of interference in exercise of revisional jurisdiction.

14. There is no merit in the instant petition and the same is dismissed.

January 14, 2015
rishu

(R.P. NAGRATH)
JUDGE