

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 39 of 2016 (O&M)
Date of Decision : 04.07.2016

Vinod Kumar

....Petitioner

Versus

Miss Elizabeth and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. I.P.S. Kohli, Advocate
for the petitioner.

Surinder Gupta, J.

This revision has been filed by Vinod Kumar against the concurrent findings of Rent Controller, Batala and Appellate Authority, Gurdaspur under the East Punjab Rent Restriction Act whereby the demised premises, which is a shop and two rooms adjoining and behind the shop situated on Cinema Road, Batala, was ordered to be vacated on the ground that petitioner-Vinod Kumar, who was let out the demised premises, has sublet the same to respondent no. 3-Anil Kumar.

2. The demised premises was let out to petitioner-Vinod Kumar vide rent note dated 11.06.1993. Respondents no. 1 and 2 (landlords) besides taking other plea seeking ejectment of petitioner from demised premises alleged that the petitioner has transferred the leasehold rights in favour of respondent no. 3-Anil Kumar without their consent and permission. It was respondent no. 3, who was running his business of sale of *petha* (a sweet made of pumpkin). The petitioner has his own business at Amritsar.

3. The above plea of respondents no. 1 and 2 was refuted by

petitioner-Vinod Kumar with the averment that respondent no. 3-Anil Kumar was his close relative and was working in demised premises in the capacity of worker, who had been helping and assisting the petitioner in the trade of manufacturing and sale of confectionary items.

4. Learned Rent Controller on the basis of evidence on record concluded that respondent no. 3-Anil Kumar was a sub-tenant in the demised premises and was running the business therein exclusively. While reaching the above conclusion, it took note of oral evidence and the fact that telephone no. 221221 was installed in the demised premises in the name of respondent no. 3 on his application. Respondent no. 3 and his family have also their votes on the address of demised premises. Petitioner-Vinod Kumar in order to prove that he is carrying on the business in the demised premises and respondent no. 3 was his helper, failed to produce any evidence regarding the conduct of business by him in the demised premises or could produce any account books, income tax return or any evidence whatsoever to substantiate his plea. Learned Rent Controller also took note of the fact that in another ejectment application filed against Rama Gupta, relative of petitioner, a plea was raised that respondent no. 3 was helping her as worker and was not being given any salary and observed that respondent no. 3 could not work as helper at two places i.e. with Rama Gupta and also with petitioner. This plea taken in that ejectment petition that respondent no. 3 was not being paid any salary, was also discarded in view of high cost of living and the school fees of three children of respondent no. 3.

5. Learned counsel for the petitioner has argued that both the Court have relied on the telephone connection and votes of family of

respondent no. 3-Anil Kumar at the address of demised premises but this do not prove sub-tenancy. In order to prove that petitioner-Vinod Kumar had sublet the demised premises to respondent no. 3, it was required to prove on record that the business being run in the demised premises was under the exclusive control and management of Anil Kumar.

6. Subletting is a secret arrangement between the tenant and sub-tenant regarding which it is not possible for the landlord to have any direct evidence. He can prove the same by leading circumstantial evidence. The fact that respondent no. 3 is living in the demised premises with his family and has telephone connection in his name at the address of demised premises not only indicate but prove his exclusive possession. The onus had shifted on the petitioner to prove that he was conducting the business in the demised premises and respondent no. 3 was helping him as worker. It was fairly conceded during course of arguments that no such evidence was produced by the revision petitioner. It is not believable that the petitioner was carrying on the business of sweet/confectionary shop in the demised premises but was not having account or record of said business. As stated by the petitioner and his witnesses that he was having income of ₹15,000/- to ₹20,000/- from business and had also purchased a property worth ₹5 lacs in the name of his sister (wife of respondent no. 3-Anil Kumar), learned Rent Controller has rightly observed that it is highly improbable that a person who earns so much and can gift a property worth ₹5 lacs to his sister from the income earned from his business, but is not maintaining the account book of that business.

7. On perusal of judgments of both the Authorities under the

Rent Act, I find no legal or factual infirmity therein calling for any interference in this revision, which has no merit.

Dismissed.

July 04, 2016
jk

(SURINDER GUPTA)
JUDGE