

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

C.R. No. 2801 of 2017 (O & M)

Date of decision: 12.05.2017

Sita and others

....Petitioner(s)

Versus

Resham Kaur

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Vikas Bali, Advocate,
for the petitioners.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed against the orders of eviction passed by the Rent Controller, Jalandhar dated 28.10.2016 whereby, eviction has been ordered on the ground of cease to occupy. The said finding has been upheld by the Appellate Authority vide Order dated 07.03.2017, which is also under challenge.

A perusal of the paper book would go on to show that it was the case of the respondent that her husband namely Joginder Singh had inducted Satpal as a tenant in August 1994 @ ₹2,000/- per month and was running a medical hall in the name and style of Paul Medical Hall. On account of the business premises being locked for the last more than six months, ejectment was sought on the ground that there were arrears of rent from 01.12.2001 @ ₹350/- per month and the shop was lying locked for a period of more than four months immediately before the filing of the petition. It is to be noticed that the petition was instituted on 15.07.2014. Resultantly, it was averred that the electricity consumption of the shop was very low as compared to the period when the shop was being occupied and the shop was also having foul smell since it was lying locked.

The defence of the present petitioners was that the landlord was a habitual litigant and filed earlier ejectment petitions on different false grounds which had been dismissed. It was denied that the shop was lying closed. The landlady examined herself and placed on record the earlier orders passed inter se the parties and the photographs of the premises and also examined the linesman of the Punjab State Power Corporation Limited with regard to the electricity connection which was in the name of Joginder Singh. Petitioner No. 3 examined himself and evidence was closed by order.

The Rent Controller held that there was a relationship as such between the parties of landlord and tenant and accordingly the rate of rent was held to be ₹350/- per month as was already assessed during the provisional assessment. On the issue of cease to occupy the premises, it was noticed that the electricity connection was in the name of Joginder Singh and the meter reading showed the consumption from February 2014 to August 2014 as NIL. It was further noticed that Satpal Singh, husband of petitioner no. 1 and father of petitioner nos. 2 to 5 had expired on 16.01.2015 and there was admission as such that his license to run the chemist shop was cancelled by the concerned authority after conducting a raid in the year 2010. The photographs Exs.P-7 to P-9 which had been produced on record were also not denied by the said witness who failed to produce any record of the sales of the shop in question. Resultantly, a finding was recorded that the landlady was justified in seeking eviction on the ground of cease to occupy and eviction was ordered.

The Appellate Court has also examined the evidence independently and the findings which have been recorded by the Rent

Controller. Keeping in view the statement of the Linesman that there was no electricity energy consumed from the electric meter installed in the name of Joginder Singh w.e.f. 02.02.2014 to 05.08.2014 and the meter reading was static at Sr. No. 19133, the findings as such of cease to occupy have been accordingly rightly validated.

Counsel for the petitioner filed an application for leading additional evidence bearing C.M. No.10750-CII of 2017 and also an application for amendment of the written statement bearing C.M. No. 10751-CII of 2017. It has accordingly been contended that a writ petition is pending in this Court bearing No. 1230 of 2014 wherein, the challenge has been raised to the cancellation of the license and the upholding of the said order by the Appellate Authority on 08.10.2013. Therefore, necessary facts were sought to be brought on record. Prayer for amendment to be allowed in the written statement was made that there was a reasonable cause as such on account of the cancellation of the license and it should be, thus, adjudicated as to whether the tenant was not liable to be evicted on account of the said action having been taken by the State against the licensee.

A perusal of the orders dated 09.02.2010 and 08.10.2013 which have now been appended alongwith the copy of the writ petition would go on to show that the same were passed well before the petition was filed as noticed on 15.07.2014. It was always open to the petitioners to have taken the said ground before the Rent Controller and plead that there was reasonable ground as such due to which the shop could not be used. As noticed, a contrary plea rather was taken that the shop was being used for the purpose it was let out and the tenant had not ceased to occupy. The amendment which is now sought would, thus, be in contradiction to the plea

taken, which cannot be allowed keeping in view the settled principle in ***Revajeetu Builders and Developers vs. Narayanaswamy & Sons and others, 2009 (10) SCC 84*** that a somersault cannot be permitted.

Even otherwise, due diligence has to be pleaded for allowing an application where the amendment is to be permitted at a belated stage. In the present case, after two Courts have decided the issue against the petitioners, the application for amendment has been filed. In such circumstances, this Court is of the opinion that both the applications for amendment and for leading additional evidence cannot be allowed at this stage.

This Court is dealing with the controversy in revisional jurisdiction. The Apex Court in ***Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh, 2014 (9) SCALE 657*** has held that this Court is not sitting as a second Court of fact and it is only to examine whether there was any illegality or irregularity committed by the authorities while passing the orders under the East Punjab Urban Rent Restriction Act 1949. As discussed above, the authorities are well justified in ordering eviction on the account of ceasing to occupy and the findings are based on a factual matrix which the landlady has successfully proved.

In such circumstances, no ground is made out for interference in the orders passed by the authorities below and the present revision petition is accordingly dismissed in limine.

12.05.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No