

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

686

Date of decision: 17.07.2018

1. CR No.3488 of 2007 (O&M)

M/s Unisystem Pvt. Ltd.

..... Petitioner

Versus

Chand Rani (deceased) through LRs

..... Respondent

2. CR No.4367 of 2007 (O&M)

Chand Rani (deceased) through LRs

..... Petitioner

Versus

M/s Standi Pack Pvt. Ltd.

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Arun Jain, Sr. Advocate with
Mr. Lokesh Sinhal, Advocate
for the petitioner (in CR-3488-2007)
for the respondent (in CR-4367-2007).

Mr. M.L. Sarin, Sr. Advocate with
Ms. Hemani Sarin, Advocate
for the respondent (in CR-3488-2007)
for the petitioner (in CR-4367-2007).

ANIL KSHETARPAL, J. (ORAL)

Vide this common judgment, I shall be disposing of two revision petitions bearing CR No.3488 of 2007 and CR No.4367 of 2007. Both the revision petitions are concerning one building. Petitioner-Unisystem Pvt. Ltd. in CR No.3488 of 2007 is tenant on the first floor whereas M/s Standi Pack Pvt. Ltd. (respondent in CR No.4367 of 2007) is tenant on the ground floor. Learned counsel representing the parties are

also common. It is not in dispute that both the companies are sister concerns.

CR No.3488 of 2007

Tenant-petitioner is in the revision petition against the order passed by the Appellate Authority ordering eviction on the ground that the tenant has ceased to occupy the rented premises for a continuous period of more than four months before filing of the rent petition without reasonable cause.

In the present case, the landlord filed a petition with the assertions that the tenant has closed down the business and the premises is lying unused for more than 26 months. During the pendency of the petition, a Local Commissioner was appointed by the Court to carry out local investigation and submit a report. The report submitted by the Local Commissioner is Ex.R-1 dated 19.07.1999 on the record. Relevant part of the report reads as under:-

“That the suit property marked by letters ABCD shown in the site plan situated on the first floor. The lock was closed to reach the upstairs and key was demanded and was opened by the person present on the spot. When I entered into the first portion of the ground floor then found that it was full of dust and kabara was lying in all the rooms. It seems that the same were lying closed for the last several years. They were full of cobwebs. There was a toilet in the last towards South. It was full of dust also and cobweb and seems that the same was not used for the years together. The kabara was not of daily use and same was dumped being waste.”

(Note – 'Kabara' is garbage.)

Along with the report, a rough lay-out plan was also prepared which shows that there were seven rooms and a hall on the first floor

(rented premises). It is admitted case of the parties that there is no electric connection and the tenant is occupying first floor of the premises numbered as 15/2. It is also not in dispute that in the adjoining premises i.e. 15/1 belongs to the tenant-petitioner.

In the written statement while replying to para 4(i), the tenant-petitioner took following stand:-

“The respondent is carrying on its business of manufacturing of corrugated boxes in the adjacent plot and the demised premises is being occupied by the respondent for the purposed of storage of raw materials, machine parts, chemicals used in manufacturing process. The question of ceased to occupy the premises does not arise at all.”

Local Commissioner was examined by the tenant as RW-2. He while appearing in the witness-box stated that the first floor of the premises in dispute is having all garbage (waste material) and the premises has not been used for number of years. He also stated that there was lot of dust on the garbage lying there. On the basis of aforesaid evidence, the Appellate Authority ordered eviction.

This Court has heard learned senior counsel for the parties and with their able assistance gone through the record of the case.

Learned counsel for the tenant has submitted that the space was being used for storage and therefore, no production activity was required to be proved by the tenant. Learned counsel while referring to the written statement has submitted that the manufacturing activity of the corrugated boxes was being carried out in the adjoining premises which are owned by the petitioner (tenant) and therefore, the premises in question was only being used for storage purposes. Hence, he submitted that there was no evidence that the petitioner has ceased to occupy. Learned counsel has

further submitted that as per the provisions of the Act, it was necessary for the landlord to plead that the tenant has ceased to occupy without reasonable cause for a continuous period of four months. He pointed out that in the petition, the pleadings in this regard are lacking as without reasonable cause has not been pleaded.

On the other hand, learned counsel for the landlord while drawing attention of the evidence produced on file has pointed out that there was shift in the stand taken by the tenant in the written statement. In evidence, RW-1 R.K. Shukla and RW-4 M.D. Sanwal has stated that the premises is being used as an office and the staff members conduct there daily business from the premises in dispute. He while drawing attention to the evidence of the Local Commissioner and his report, submit that it is proved on file that the premises has not been used for number of years. While replying to the argument of learned counsel for the petitioner-tenant, learned counsel for the respondent-landlord submitted that the second argument of lack of necessary pleading has neither been raised before the Rent Controller nor before the Appellate Authority and therefore, the petitioner should not be permitted to raise such plea for the first time in revision petition.

This Court has evaluated the submission of learned counsel for the parties. In the considered opinion of this Court, the judgment passed by the learned Appellate Authority does not suffer from any illegality or perversity. The report of the Local Commissioner which has been extracted above is specific. It clearly records that the premises has not been used for quite sometime. It is reported by the Local Commissioner that only garbage was lying there having lot of dust on it. Even the toilets which were there in

the premises were having cobwebs and had not been used for quite sometime. Still further, the Local Commissioner was examined by the tenants themselves. The Local Commissioner while appearing in the evidence has reiterated his report and rather strengthened the hands of the landlords. As regards the argument of learned counsel with regard to lack of pleadings, it will be noticed that the tenant cannot be permitted to take the landlord by surprise. The tenant should have objected to the failure of the landlord to give necessary particulars at the time of written statement giving opportunity to the landlord to move an application for amendment. At the stage of revision, the petitioner cannot be permitted to raise a fresh argument which has not taken before the Courts below.

In view of the aforesaid discussion, this Court does not find that the order passed by the learned Appellate Authority needs any interference.

CR No.4367 of 2007

This is with respect to the ground floor of the same building. The revision petition has been preferred by the landlord challenging the orders passed by the learned Rent Controller affirmed by the Appellate Authority dismissing the petition seeking eviction of the tenant (respondent herein) on the ground of cease to occupy without any sufficient cause for more than 4 months. It is pleaded that the tenant has ceased to occupy the premises on rent for more than a period of 26 months.

It is not in dispute that the total premises is an industrial shed covering more than 6,000 square feet area. The premises was leased out for carrying out manufacturing activity.

The petition was filed on 25.03.1998 along with an application

for appointment of Local Commissioner. However, the Rent Controller immediately did not appoint a Local Commissioner resulting in grant of an opportunity to the tenant to make arrangements. In the considered opinion of this Court, in such circumstances, Rent Controller should immediately appoint a Local Commissioner and get investigation done and secure a status report of the premises. In the present case, also an application was filed for appointment of Local Commissioner which was opposed, however, the same was allowed and relevant part of the report of the Local Commissioner is extracted as under:-

“That the suit property is marked by letters ABCD as shown in the site plan which on the ground floor on visit of the spot. It was found that the electric meter was found dead and there was only old reading of units as 00218. There was some machines which were junked (Rusted). In the centre of the premises there was one machine over which two labourer were found working with the help of the Generator. Some file covers were lying Eastern side of the premises. There is a office towards North-East side of the premises. Some corrugated boxes were lying in the premises. There was one punching machine also. Some trunks were stored towards Eastern side. There was one truck parked in the premises and some goods were being loaded, hence I submit my report accordingly.”

Learned Rent Controller and Appellate Authority dismissed the petition. In the considered opinion of this Court, the authorities below have committed an error in refusing to evict the tenant. The reasons for the conclusion being drawn by this Court are as under:-

1. On careful examination of the report of Local Commissioner, it is apparent that electricity meter was found dead. The Director of the tenant-company Sh. S.C. Singhal has admitted that the company does not have any record of electricity usage or payment thereof from January, 1996

to January 1998. It has also come on record that the electricity meter was permanently disconnected on 16.05.2001. In a national capital region, it is hard to believe that a manufacturing activity and an office can be run without proper electricity connection.

2. Local Commissioner when visited, even service of notice to the tenant, it was found that the machines were lying in the premises were rusted. Only one machine was working in the centre of the premises. When Sh. V.K. Sehgal appeared on behalf of the company-tenant as DW-3, he stated that he does not know how many and what kind of machines are there in the tenanted premises. He only stated that there is a manufacturing unit of Unisystem in plot No.15/1 which is adjoining plot, a separate premises. He further stated that the respondent-tenant company-Standi Pack Pvt. Ltd. gets job work done from Unisystem. However, M/s Unisystem does not get any work done from M/s Standi Pack, i.e. the respondent-company. Still further, Sh. V.K. Sehgal when recalled for cross-examination on 25.08.2005, he admitted that he had not brought invoices and bills which were directed to be produced. Thus, the Court ought to have drawn adverse inference against the respondent-company.

3. The respondent-company produced attendance register of the employees from 1996. However, the attendance register does not bear the signatures of any of the employees. Number of employee employed are shown as 2-3. It is also admitted that the attendance register neither bears signatures of an employee nor any officer/owner of the company. Sh. S.C. Singhal when appeared in the evidence could not disclose as for how many employees', contributions have been deposited on account of ESI, EPF, FPF etc. He tried to explain that he has joined the company only as a

Director from 2004 and he has no knowledge before 2004.

4. On careful examination of the report of the Local Commissioner show that there was an office towards north eastern side of the premises but some corrugated boxes were lying in the premises. One punching machine was also available but office premises was not shown to be in working condition. Even the office premises is not shown to be having any electric connection.

5. In order to prove that some work is being carried out in the premises, certain invoices were sought to be produced. Most of the invoices are after the date of filing of the rent petition relating to the year 2004-05. The invoices which have been produced for the relevant period are not shown to have been issued on regular basis. Still further, these invoices are having address of Delhi and only factory premises is shown as 15/2 Mathura road, Faridabad. Such invoices are not sufficient to conclude that any manufacturing activity was going on at the relevant period. Ex.P-Y, the invoice No.55 produced to prove that some manufacturing activity is being carried is admittedly having overwriting at 16 places for which white (correction) fluid used for correction has been applied. Similarly, Ex.P-X, the another invoice has also been tempered with the white (correction) fluid. On reading of the lease deed, it is apparent that the premises was having an electric connection and it was agreed that the bill shall be paid by the tenant.

It is well settled that in case a petition is filed by the landlord alleging that the tenant has ceased to occupy, the burden is heavy on the tenant to prove that the assertions made by the landlord are incorrect.

If the evidence available on the file is tested on this basis,

tenant has failed to prove that it was continuing to carry out manufacturing activity. The Courts below erred in failing to examine the aforesaid aspects before deciding the case.

Still further, both the Courts have wrongly held that the entire onus to prove that the tenant has ceased to occupy is on the landlord. The landlord cannot be expected to lead evidence in negative. Once the tenant was asserting that he was using the premises for manufacturing activity. The positive evidence should have been produced to prove that fact by the tenant.

Rather on evaluating the entire evidence, it is proved that only one machine was shown to be working in the huge shed of 6,000 square feet only in order to create evidence and defeat the right which has accrued in favour of the landlady. Otherwise, dis-connection of the electricity, remaining machines lying in rusted condition clearly prove non-user of the premises for quite sometime. Only two labourers were found working with the help of generator clearly proves that an effort was made by the tenant to create evidence and in fact no manufacturing activity was being done regularly.

In view of the aforesaid, this revision petition filed by the petitioner-landlord is allowed and the orders passed by the Rent Controller affirmed by the Appellate Authority are set aside whereas CR No.3488 of 2007 is dismissed.

(ANIL KSHETARPAL)
JUDGE

17.07.2018
Dinesh Bansal

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No