

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 4180 of 2007

Date of Decision : 05.04.2018

Baseshar Nath Trust

....Petitioner

Versus

Sat Pal Sehgal

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjay Vij, Advocate
for the petitioner.

Mr. Ashwani Bakshi, Advocate
for the respondent.

Surinder Gupta, J.

This is revision petition filed by Baseshar Nath Trust (Regd.), Ambala Cantt against order of Appellate Authority, Ambala reversing order passed by learned Rent Controller whereby respondent was ordered to be ejected from the demised premises on the ground that he has ceased to occupy the demised premises since December, 1992 without any reasonable cause.

2. Case of petitioner, in brief, is that the premises comprising of two rooms of house no. 3301/10, Baseshar Nath Trust building, Akbari Road, Ambala Cantt was let out to respondent-Sat Pal Sehgal at the monthly rent of ₹80/- besides taxes @ 5%. Ejectment of the respondent-tenant was sought on the ground of non-payment of rent from 01.04.1989 to 30.04.1994 and that the tenant has ceased to occupy the demised premises continuously since 1992 and premises was lying locked since then without any reasonable cause as respondent had shifted to Karnal

with all bag and baggage after locking the premises.

3. The respondent denied the rate of rent and the plea of the revision-petitioner that he has ceased to occupy the demised premises and has shifted to Karnal. He averred that he is occupying the house in question and living in the same.

4. Pleadings of parties led to framing of the issues as follows:-

- (i) What is the rate of rent? OPP
- (ii) Whether the tender is short and invalid, if so its effect? OPP.
- (iii) Whether the petitioner has ceased to occupy the demised premises for a period of more than four months without reasonable cause, if so its effect? OPP.
- (iv) Relief.

5. In support of his case, revision-petitioner has examined Harkash Kumar as PW-1, Sunil Dutt Sharma as PW-2 and Jagat Parkash as PW-3 while the respondent-tenant examined himself as RW-1.

6. On the issue of rate of rent, learned Rent Controller held that it is ₹80/- plus 5% tax and the rent tendered by the respondent-tenant was short and invalid. On the issue, as to whether respondent has ceased to occupy the demised premises, learned Rent Controller observed that in the absence of any evidence including electricity bill of the demises premises, it is proved that respondent has ceased to occupy the same without any reasonable cause.

7. Not satisfied, the respondent-tenant preferred appeal and

learned Appellate Authority reversed the finding of learned Rent Controller that rate of rent of the demised premises is ₹80/- per month. This finding was recorded on the basis of receipts Ex. P1 to Ex. P-5 pertaining to the year 1975-1976, vide which rent was paid @ ₹20/- per month. The finding of learned Rent Controller that the respondent has ceased to occupy the demised premises was also reversed with the observations that non-preparation of vote of respondent at the given address and in the absence of credible evidence to this effect, this presumption cannot be drawn that the tenant has ceased to occupy the demised premises for a period of four months immediately preceding presentation of the present petition.

8. Against the finding of Appellate Authority, landlord has filed this petition.

9. Learned counsel for petitioner has pressed for ejectment of respondent only on the ground that he has ceased to occupy the demised premises since long.

10. If a tenant ceases to occupy the demised premises, landlord is not supposed to have any documentary evidence in this regard. He can prove this fact only by leading oral evidence. Onus is on the tenant to prove that he is in possession of the demised premises. In case of **Dayal Chand vs. Smt. Chandi, 2004 (1) PLR 218**, the evidence before learned Rent Controller was non-payment and non-consumption of electricity bill for continuous period of four months. It was argued that this sole factor is not a ground to arrive at the conclusion that tenant has ceased to occupy the demised premises. Hon'ble Bench in para 4 of the above

Judgment observed as follows:-

“4. I do not find any merit in the only contention of the petitioner, as referred to above. It has specifically been mentioned in paragraph 10 of the judgment passed by learned Appellate Authority that by passing an order of eviction reliance is not being placed only upon the fact that the disputed premises had remained without any electricity for August, September, October and November, 1984 but also upon the statements of PW1, PW2 and PW3. This is not a case where eviction order has been passed on the sole ground that there was no consumption of electricity for a continuous period of four months. That apart to, a specific question put to learned counsel representing the petitioner as to whether the petitioner led any evidence to show that any business had since been transacted in the premises in dispute, which, concededly is a shop the forthright and candid answer is 'No'. This Court is of the considered view that in the kind of case in hand, the positive evidence could be led only by the tenant. In other words, if the shop had been occupied or the tenant had not ceased to occupy it, he had to lead positive evidence to show to the contrary. Insofar as the landlord is concerned, he cannot show the non-acts of occupancy and,

therefore, the burden that is upon the landlord to prove the non-occupancy of premises, is discharged when he leads reliable evidence even though oral, that the tenant had ceased to occupy the shop. I may reiterate here that it is not possible for landlord to lead evidence in negative.”

11. Firstly, I take the finding of learned Rent Controller observing that it is proved on record that the respondent has ceased to occupy the demised premises since December, 1992. While recording this finding, learned Rent Controller has relied on testimony of PW-3 Jagat Parkash, who has stated that the respondent has locked the demised premises in December, 1992 and shifted to Karnal and electric connection has since been disconnected. The documents on record (Ex. P-5 and Ex. P-6), which are copies of voter list, were also referred in support of above finding, as per which name of the respondent is missing from the voter list at the address of demised premises. Learned Rent Controller has observed that respondent has failed to produce even a single document to show that he is living in the demised premises. In cross-examination he admitted that he has ration card but the same was not produced. No bill of consumption of electricity was produced on record. Keeping in view these facts and circumstances, it was observed that testimonies of PW-2 Sunil Dutt Sharma and PW-3 Jagat Parkash are unrebutted and prove that respondent has ceased to occupy the premises since 1992 without any reasonable cause.

12. Appellate Authority, Ambala set aside the finding of learned

Rent Controller with observations in para 10 of the order, which reads as follows:-

“10. As far as the ejectment of the appellant-tenant on the ground that he ceased to occupy the tenanted premises is concerned this court is of the view that the findings of the learned Rent Controller are without any basis and substance. The learned Rent Controller has relied upon the copy of the voter list only. There are hundred of citizen in this country who do not wish to get the election cards prepared or exercise the right of franchise. The landlord could have led some evidence that the electric connection has been disconnected of the tenanted premises or there was some correspondence which was returned by the postal authorities with the remarks that the tenanted premises are lying locked. This court is of the considered view that simply on the ground of voter list it cannot be inferred that the tenant has ceased to occupy the tenanted premises. The learned counsel for the landlord vehemently argued that Jagat Parkash stated in so many words in his testimony that the tenant has ceased to occupy the premises and he has not been cross examined on that aspect of the case and as such it must be taken that the ground has been admitted by the tenant. With due respect to the

contention of the learned counsel for the landlord, this court is of the opinion that effective cross examination has been done on PW3 in as much as it has been suggested to him that the electric connection is still existing in the tenanted premises and the tenant is putting up in the tenanted premises. This court is thus of the view that credible evidence has not been led to show or prove that the tenant ceased to occupy the tenanted premises for a period of four months immediately preceding the presentation of the present petition.”

13. The issue involved in this case is as to whether respondent is residing in the demised premises. Respondent-Sat Pal Sehgal while appearing as RW-1 has stated that he is residing in the demised premises. Now the question, which arises for consideration is as to whether the Appellate Authority should have relied on this single line statement of respondent-Sat Pal Sehgal or have tried to find corroboration. The respondent is not having vote at the address of demised premises. The view taken by the Appellate Authority that a person may not have opted to get himself registered as voter, cannot be disputed but the respondent has not stated anything on this score. He has not explained as to why his name does not exist in the voter list. I am still of the opinion that if name of a person is missing from the voter list, the same cannot be taken as absolute evidence of the fact that he is not living at that place. The fact, which gives credence to oral testimony of witnesses of landlord/revision-

petitioner, who have deposed that respondent is not living in the demised premises, is non-production of any evidence in support of contention of respondent-tenant that he is living in the demised premises. Best evidence, which he could produce is the consumption of electricity bills as we are aware that Ambala falls in zone having extreme weather in summer as well as in winters. In summer one cannot think of living without fan and electric light is the basic requirement in every household. The respondent could produce bills of payment of electricity to prove that he is living at the spot and consuming electricity. He could produce other corroborative evidence like receipts of payment of water charges, sewerage charges etc. Non production of bills of payment of electricity leads to a presumption that the respondent is not living in the demised premises. Here, a question arises as to why respondent is retaining possession of demised premises despite shifting to Karnal. Answer is obvious as it is human nature to retain possession of tenanted premises for ulterior motive which is particularly reflected in this case as rate of rent was held to be ₹20/- per month for two rooms out of the property owned by a trust. Paying a meagre sum of ₹20/- per month will not pinch the respondent for retaining possession of two rooms and to compel the landlord to come to his terms. During pendency of this case, summons were sent at the Ambala address of respondent as he claims to be living there but the report was received that respondent is not living at the spot and is in fact residing at Karnal and the house was found locked. The reference to above report is made just to examine the plea of respondent that he is living in the demised premises. Though, this report cannot be

made basis of the plea of revision-petitioner that the respondent has ceased to occupy the demised premises and has left the same in December, 1992 but from the evidence on record, this fact was duly proved that the respondent is not living in the demised premises and has left the same for a period of more than four years without any sufficient cause. The Appellate Authority has committed grave error of law while setting aside the well reasoned judgment of learned Rent Controller. The order passed by Appellate Authority is illegal, perverse and not sustainable in the eyes of law, as such, is set aside and that of learned Rent Controller is restored.

14. As a sequel of my above discussion, this petition has merit and the same is allowed. The order passed by Appellate Authority, Ambala is set aside and that of learned Rent Controller is restored. The respondent is directed to vacate and hand over vacant possession of demised premises to the revision-petitioner forthwith.

April 05, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No