

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

CR No.394 of 2018 (O&M)
Date of decision : 10.09.2018

M/s Jindal Hardware Store and another

...Petitioners

Versus

Prem Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aayush Gupta, Advocate for the petitioners.

Mr. Sandeep Bansal, Advocate and
Mr. Arun Bansal, Advocate and
Ms. Anjali Ram, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The tenant-petitioner is in the revision petition against the order passed by the Rent Controller ordering his eviction affirmed by the Appellate Authority in appeal.

The respondent-landlord had pleaded that the tenant has ceased to occupy the shop in question for the last 6-7 years and the ceasure to occupy the demised premises is more than the statutory period of four months. The necessary pleadings in the petition, are extracted as under:-

“B) That respondent has ceased to occupy the demise shop for the last more than 6/7 years and is indulge in business of the Govt. under the unemployment scheme with Indian Oil Corporation having its Unit with LPG under the name and style of M/s Raikot Gas Agency having its office and

residence at Idgah Road Raikot. The period of ceased to occupy the demise shop is more than the statutory period of 4 months.”

In reply, the tenant pleaded as under:-

“Sub para B is wrong and denied. It is wrong that the respondent has ceased to occupy the demised shop for the last more than 6-7 years as alleged. The fact that respondent is running Raikot Gas Agency in no way means that he ceased to occupy the demised premises. The statutory period of 4 months alleged by the petitioner is meaningless as the ground of ceased to occupy does not exist. As a matter of fact the respondent and his brother are having many a business including the hardware business in the demised premises and the Gas Agency. The hardware business in the demised premises is being regularly and continuously carried on by the respondent. The respondent is being helped in his business by his brother.”

The parties were permitted to lead evidence and the learned Rent Controller held that the tenant has failed to prove or produce any evidence to prove that the shop in question was being opened and any business was being conducted.

It has been found that there was consumption of two units of electricity in the months of June and July 2010 whereas the consumption in the months of February and March 2010 is three units and two units in the months of December 2009 and January 2010 and one unit in the months of October and November, 2009 and there was no consumption of electricity for a period of six months from April to September 2009.

It may be noted that the tenant claims that he is carrying on

business of trading in hardwares in the premises in question.

Learned Rent Controller, after noticing these facts, ordered the eviction.

In appeal, the tenant-petitioner challenged the order of the Rent Controller on the ground that the words “without reasonable cause” has not been pleaded.

Learned Appellate Authority after considering these aspects of the matter and after relying upon the judgment passed by this Court, reported as 1988(1) RCR (Rent) 675, Sohinder Singh Vs. Barinder Singh, dismissed the appeal.

In para 5, this Court has held as under:-

“5. The first contention raised by the learned counsel for the petitioner is that the respondent did not make a categorical averment in his application for ejectment that the tenant has ceased to occupy the shop for a continuous period of four months without reasonable cause. His submission is that since the words “without reasonable cause” are not adumbrated in the ground of eviction, the essential ingredient of clause (v) of Section 13(2) of the Act having not been pleaded, the eviction application is to be dismissed on this technical ground alone. He had placed reliance for this proposition on Lady Doctor Asha Bawa v. Smt. Champa Dhawan and another 1981(1) Rent L.R. 196, 1981(2) RCR 722, I, however, do not agree with this contention for the simple reason that the context in which this ground of eviction was alleged by the respondent and contested by the petitioner makes the averment of the aforesaid essential ingredient wholly unnecessary as would be seen from the above pleadings of the parties. While the

case of the respondent is that the petitioner has ceased to occupy the shop in dispute and has in fact shifted his business to another shop, the defence of the petitioner is that he has not vacated the shop in dispute and is in fact using the same as a godown and deliver office in addition to carrying on business in his shop near Chowk Dholewal, Miller Ganj, Ludhiana. Therefore, in my view, the authorities under the Act have rightly adjudicated on the question whether the respondent is using the shop in dispute as a godown and delivery office or he has ceased to occupy the same. It is not a case where landlord is required to plead and prove that the tenant has ceased to occupy the shop without reasonable cause.”

Learned counsel for the petitioners relied upon the judgment passed in the case of **Kedar Nath Vs. Rattan Chand, 1999(2) RCR (Rent) 444**, to contend that it is mandatory for the landlord to plead that the tenant cease to occupy the premises in dispute without sufficient cause for more than four months. The relevant discussion of the Court in the judgment cited by the learned counsel for the petitioner is extracted as under:-

“10. Faced with this difficulty the landlord submitted an application before the Appellate Authority and tried to seek an amendment by standing that the tenant has ceased to occupy the premises in dispute without any sufficient cause for the last more than five years. This application was dismissed by the Appellate Authority vide order dated 9.10.1980. This order has further not been challenged by the landlord in revision. Thus the admission made by the landlord in the application under Order 6 Rule 17 C.P.C. would show that his case is contradictory. In the main petition he alleged that the tenant has ceased to occupy the shop in question for the last one year but at the appeal stage

the landlord wants to make the allegations that the respondent has ceased to occupy the premises in dispute without any sufficient cause for the last 5 years. Be that as it may, we have to see what was the stand of the tenant in this regard. In the written statement, the tenant averred that the disputed shop was never closed by him and the allegations of the landlord are wrong, baseless and without an iota of truth. As a matter of fact the shop is used by the respondent for his business as a Halwai (confectioner). As I have stated above that this petition was filed on 8.5.1979. We have to examine whether the tenant has ceased to occupy the shop in dispute for a continuous period of four months without any sufficient cause prior to the date of the institution of the petition. I have also stated above that it is not the case of the landlord itself that the tenant has ceased to occupy the shop in question without any sufficient cause. On this ground alone the petition is liable to be dismissed. The landlord has not even pleaded the essential ingredients of the ground of ejectment. Both the courts have rightly come to the conclusion that the tenant has not ceased to occupy the premises. In order to succeed on this ground, it is obligatory on the part of the landlord not only to establish the closure of the tenanted premises by the tenant but also it has to be established that this closure of the premises was without any sufficient cause. What is a sufficient cause, it will be a question of fact. It is obligatory on the part of the landlord to establish that the tenant at all material times had conceived an intention to abandon his lessee rights and for that reason he was not interested to occupy the property. A temporary closure of the shop in question by the tenant will not make a ground for ejectment. It has come on record that respondent-tenant was carrying on the work of Halwai and he had the joint business with his brother. Further, it has

come from the statement of Jagdish Lal RW5 that sweets are being prepared in the shop in dispute by the tenant along with his brother. There is no cogent or reliable evidence led by the landlord to show that the tenant had ceased to occupy the shop in question without any sufficient cause.”

It is apparent from the reading of the aforesaid para that the learned Judge did not dismiss the petition of the landlord only on this ground. In the aforesaid case, the application for amendment of the petition was filed wherein different pleadings were set-forth. The Court further additionally noticed that there are no pleadings to the effect that the tenant has cease to occupy the building for a continuous period of four months before filing of the petition. In the present case, as is clear from the reading of the para reproduced above, this fact has been pleaded.

Still further, the Courts are meant to advance the substantive justice. The plea taken by the petitioner-tenant is hyper-technical. It is not in dispute that before the Rent Controller, the petitioner-tenant did not take this objection. Since the tenant did not take the objection at the very first opportunity, in the considered view of this Court, the tenant cannot be subsequently permitted to take hyper-technical objection to defeat the right which has accrued in favour of the landlord.

Learned counsel for the petitioners further submitted that the tenant had filed an application for additional evidence, which was dismissed by the Appellate Authority. This Court has examined the aforesaid order. The tenant is wanting to produce bills/bill book for the period from 01.04.2004 to 31.03.2010 and income tax return of the firm for the year 2002-2003 to 2011-2012. It may be noted that the petition was filed on

28.08.2010. As per the requirement of the Act, the landlord is to prove that the tenant has ceased to occupy the building for continuous period of four months prior to the filing of the petition. Even if these bills are taken into consideration, for the arguments sake upto 31.03.2010, still occupation upto that date at the most stands proved,. Still there is no explanation for a period of four months.

As noticed by the learned Rent Controller, the electricity consumption which has been proved by the landlord clearly proves that the tenant is not occupying the shop in question.

In view thereof, there is no ground to interfere.

Revision petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

10.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No