

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 7929 of 2014(O&M)

Date of Decision:27.4.2018

Chiranji Lal Verma

---Petitioner

vs.

Raj Kishore Chaturvedi

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sanjay Mittal, Advocate for the petitioner
Mr. Ajay Jain, Advocate for the respondent

Rekha Mittal, J.

Challenge in the present petition has been directed against order dated 21.7.2014 passed by the Appellate Authority under the Haryana Urban (Control of Rent & Eviction) Act, 1973 (in short “the Act”) whereby appeal filed by the respondent-landlord against order dated 30.9.2011 passed by the Rent Controller dismissing application for eviction has been partly allowed and the petitioner-tenant has been ordered to be ejected from the tenancy premises on the ground of change of user.

Counsel for the petitioner, at the outset, would inform that he does not dispute correctness of the rent note dated 28.3.1974 whereby the shop in dispute was let out to the petitioner for a specific purpose of tailoring work. He has also not disputed that the petitioner is running a sweet shop and restaurant in the shop in question under the name and style of Rohila Mishthan Bhandar.

However, he has disputed claim of the respondent-landlord that the petitioner started work of Halwai in the shop in dispute since diwali 2004 with the plea that the petitioner is doing the business of sweet shop and restaurant since inception of tenancy. To assail findings of the appellate authority, counsel for the petitioner has two fold submission to make. It is argued that since the petitioner is doing the business of sweets shop and restaurant in the tenancy premises long before diwali 2004 and the respondent-landlord had been seeing the petitioner doing that business in the shop and even received rent knowing the factum of change of user, it amounts to implied consent and acquiescence of the landlord qua change of user of the shop in question.

The second submission made by counsel is that as the shop in question was let out for the purpose of business, may be tailoring work, change of business from one to another would not enure to benefit of the respondent-landlord to seek eviction of the tenant on the ground of change of user.

Counsel representing the respondent-landlord has supported the order passed by the appellate authority accepting plea of the landlord that the petitioner-tenant is guilty of change of user of the tenancy premises from tailoring work to that of sweets shop/restaurant. It is argued with vehemence that the appellate authority has not discredited evidence of the petitioner with regard to his doing business of halwai and restaurant much prior to 2004 but still held the petitioner guilty of change of user of the tenancy premises without written consent of the respondent-landlord. It is argued with vehemence that neither knowledge of change of user will amount to written consent nor the factum of receipt of rent after change of user would enure to benefit of the petitioner more particularly in the circumstances that in all the rent receipts issued since creation of tenancy, proved and marked as exhibits, Chiranji Lal Verma has been described as a tailor. In addition, it is argued that there is no concept of acquiescence or implied consent to be a substitute for written consent of the

landlord required for change of user of the tenancy premises, in view of provisions of the Act.

To refute contention of the petitioner that present user of the premises will not amount to change of user as the building was let out for doing business of tailoring, it is argued that business of sweets shop and restaurant is neither an allied business nor ancillary to the business for which the premises was let out. It is further argued that setting up a restaurant, serving food, tea and cold drinks as well as business of sweets shop viz-a-viz tailoring work would certainly amount to change of user within the meaning of Section 13 of the Act. For this purpose, reliance has been placed upon judgment of Hon'ble the Supreme Court **Jagdish Lal vs. Parmanand 2000(1) RCR (Rent) 381**, referred to in para 20 of order of the appellate court.

Counsel for the petitioner, in reply, would contend that the petitioner is not manufacturing sweets in the shop. The respondent has not led any evidence that the petitioner is either manufacturing sweets or preparing food items in the shop in question, therefore, no prejudice has been caused to the respondent-landlord even if the shop is used for the business of the sweets shop and restaurant.

I have heard counsel for the parties, perused the paper book and records.

Before adverting to the submissions made by counsel for the parties, it is appropriate to extract relevant provisions of Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short “the Act”), germane to the controversy, reads thus:-

13(2)(ii)that the tenant has after the commencement of the 1949 Act
without the written consent of the landlord.-

(a) XXX XXX XXX

(b) used the building or rented land for a purpose other than that

for which it was leased.”

Perusal of the aforesaid extract leaves no manner of doubt that the tenant cannot use the building or rented land for a purpose other than that for which it was rented out except with the written consent of the landlord. If contention of counsel for the petitioner is accepted that as the tenant had been using the premises for sweets shop and restaurant long before filing of the petition for eviction in the year 2006 and the landlord knew about the said change long before is to be construed as implied/deemed consent or acquiescence, akin to written consent envisaged under the Act, it would amount to adding to the words of legislation which otherwise do not admit any explanation or interpretation. Counsel for the petitioner is fair enough to inform that despite his best efforts, he could not lay his hands on a precedent whereby plea of deemed consent or acquiescence has been accepted as a ground to escape eviction even if the tenant has been held guilty of using the premises for a purpose other than for which it was rented out. In this view of the matter, I find myself unable to accept contention of the petitioner that change of user is effected with consent of the landlord.

This brings the court to the second submission as to whether use of premises for running a sweets shop and restaurant viz-a-viz tailoring for which the shop was rented out would amount to change of user. Judgment of Hon'ble the Supreme Court relied upon by counsel for the respondent and referred to in the order passed by the Appellate Authority squarely answers this issue against the petitioner. The question of change of user is required to be examined from the point of view of prejudice to the landlord. Indisputably, in the instant case, the premises is being used for running a sweets shop and restaurant. No such plea has been raised by the petitioner that the sweets sold in the shop are not being manufactured there nor it is his plea that the food items served to customers for the business of restaurant are not being prepared in the tenancy premises. Using

the premises for preparing food items would certainly cause some damage to the premises in question. That being so, it is difficult to accept contention of the petitioner that since the premises was rented out for business purpose, change of user from one business to another would not create a ground for eviction of the petitioner/tenant. In the given scenario, the petitioner cannot derive any advantage to his contentions from the judgments where the change of user does not result in any prejudice to the landlord or change is ancillary to the business permitted to be carried out in the premises in question.

No other point has been raised.

For the foregoing reasons, the petition fails and is accordingly dismissed with costs. Resultantly, order passed by the Appellate Authority is affirmed.

(Rekha Mittal)
Judge

27.4.2018

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Whether speaking/reasoned: Yes

Whether reportable : Yes/No