

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.8354 of 2017 (O&M)

Date of Decision: 11.01.2018

Hem Raj

... Petitioner

Versus

Manveen Kaur

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vinod S.Bhardwaj, Advocate,
for the petitioner.

Mr. Sangram S.Saron, Advocate and
Ms. Shubreet Kaur, Advocate,
for the respondent.

RAJIV NARAIN RAINA, J.

1. I had heard Mr. Vinod S.Bhardwaj, learned counsel for the petitioner-tenant and Mr. Sangram S.Saron and Ms. Shubreet Kaur, learned counsel for the respondent landlady on caveat on November 29, 2017 at considerable length and had reserved orders which are being pronounced today.

2. This is tenant's petition against the order passed in Rent Appeal No.94 of 2014 decided on October 24, 2017 whereby the orders of the Rent Controller, Chandigarh has been set aside and the petitioner evicted on ground of ceasing to occupy the demised premises bearing address SCF No.15, Manimajra UT Chandigarh which is commonly known as the Transport market. When tenant ceases to occupy rented premises for a period of more than four months it furnishes ground to the landlord to seek

the eviction of the tenant.

3. The tenant was put in occupation of the first floor of the demised premises in 1998 by the respondent landlord to carry on Consultancy business. Over a period of time the user changed to liquor business and of property dealing in the premises, though this fact is not of any great importance to the conclusion to be reached in a case under Section 13 (2) (v) of the East Punjab Urban Rent Restriction Act, 1949 (“1949 Act”) where tenant has ceased to occupy the premises without reasonable cause.

4. The further broad facts of the case are that the electric connection of the first floor was given on August 28, 1998 by the respondent. The last payment on the meter bill was made on October 18, 2001. Witness from the administration testified that the electricity connection was disconnected in 2002 and the water connection in 2005. The position remained the same till the filing of the rent petition in March 2007. The tenancy was for a period of three years from May 01, 1998 to April 30, 2001 but continued till the landlady filed a civil suit for ejectment of the tenant, for recovery of rent and for damages in 2003 as a result of Chandigarh Administration notification dated November 07, 2002 exempting buildings from the operation of the Rent Act whose rent was more than ₹1500/- per month. The notification was quashed by Court reverting the landlords to pursue cases of eviction under the rent law.

5. Upon trial, the Rent Controller dismissed the rent petition holding that no evidence has come on record to show that the premises were actually locked and in reaching this conclusion relied on statements of respondent witness No.1 Subhash RW-2 Hemant and tenant appearing

himself as RW-3 that he is in occupation of the demised premises. The learned Rent Controller distinguished the judgment of this Court in Dr. Suraj Chander Oberoi v. Darshan Singh Sodhi, 2003 (1) RCR (Rent) 722. The ruling holds that when it is proved that there is no consumption of electricity for a year and oral evidence is also available that shop remained locked, then an inference can be drawn against the tenant that he has ceased to occupy the premises.

6. The Rent Controller held that pleadings do not show from which year and month the premises is locked. In the petition it was pleaded by the landlady that tenant had ceased to occupy the premises since last four months whereas the statutory requirement for eviction is tenant ceasing to occupy premises for four months without reasonable cause.

7. It was argued on behalf of the tenant that the act of physical locking of premises is literal interpretation which has no basis in Section 13 (2) (v) of the 1949 Act. The tenant urged that since the premises were locked with his keys therefore, he had not ceased to occupy the premises. In my considered view, this contention is not the correct interpretation of Section 13 (2) (v) of the 1949 Act. The Rent Controller interpreted locking in an unrealistic literal sense which interpretation has no basis in the 1949 Act.

8. This wrong and literal interpretation of the Rent Controller has been corrected by the Appellate Authority, Chandigarh in the impugned order of eviction dated October 24, 2017 holding that occupation does not mean mere possession. The possession may be symbolic but the word occupation used in the Act will be occupation in view of the purpose for

which the premises is rented out. It is observed in order in rent appeal that if the evidence of the tenant is taken into consideration he has not been able to prove that he is using the premises for the purpose he has taken the same on rent. The user in the beginning of the tenancy was Consultancy business but it has deviated to liquor trade and property dealing from the first floor of the building which albeit is without amenities i.e. electricity or water since a pretty long time. According to the tenant he had submitted an application for restoration of electricity supply in 2003, then again in 2005 and then in 2012. He admitted that Electricity Department had cut electric supply to the demised premises since 2002. Neither did the tenant bring copies of the application he says he submitted to the department for production in Court praying for restoration of the power connection. The position regarding water connection is no better. The water connection was discontinued in December 2005 and arrears of ₹19,790/- were outstanding in December 2005. It is established beyond doubt that the first floor premises is without electricity since 2002 and without water supply since 2005. The present eviction petition was filed in 2007.

9. Notably, in rent appeal it is observed that if the tenant was conducting his business of liquor or property dealing, either way, he must also have some proof of other activities connected to the business i.e. maintenance of account books, bank statements, sale orders, invoices etc. to show his occupation of the premises for the material period prior to filing of the eviction petition. But no such evidence was brought on record by him. The effect of which; See, judgment in Jaswant Kaur v. Sarla Devi, 1987 (2) RCR (Rent) 660. There is another insuperable difficulty in the way of the

tenant, which is that in the Union Territory, Chandigarh the building, in which falls the demised premises, is classified as a Shop-cum-Flat while there are also Shop-cum-Offices. Shop is for business while flat is for residence. If the first floor is for residence then it could not be used for business and that is also a violation of the law by change of user which can be a ground for resumption of property. It was not necessary for the respondent to spell out any specific date and her claim since proof for four months is enough to invite the ground of eviction by act of ceasing to occupy the premises. Without electricity and water it is highly improbable that the tenant was doing any business or occupying the demised premises for the purposes it was taken on rent. Even if the rent deed reveals that the premises was rented for consultancy business while it was a residential flat on the first floor and accepting that it was so done by mutual consent, even then the same cannot be permitted as it would violate Section 11 of the 1949 Act and on this score as well the tenant is liable to be evicted. For this proposition the Appellate Authority relied on the decision of the Supreme Court in Nand Kishore v. Yashpal Singh, (2009) 16 SCC 634. Section 11 of the Act creates a embargo that no person shall convert a residential building into a non-residential building except with the permission in writing of the Controller. It is not even the case of the tenant that the premises were used for residential purposes. For these reasons the Appellate Authority rightly held that the learned Rent Controller had not appreciated the evidence in the proper prospective and wrongly held that the tenant is in occupation of the demised premises. This finding has been reversed for good and sufficient reasons and I has no reason to disagree. The necessary inference from the

entire preponderance of evidence is only that the tenant ceased to occupy the premises in question for more than the statutory period and the case falls in the maxim : *res ipsa loquitur*, the application of which shifts the burden of proof on the defendant.

10. Moreover, there is another reason which persuades me to conclude in the dismissal of this petition is that remedy under Section 10 was not taken recourse to by the tenant for restoration of amenities nor was a suit filed against the administration seeking mandatory injunction against the authorities to restore water and electricity supply to the demised part of the building. Merely making unsubstantiated complaints to the authorities in 2003, 2005 and 2012 is not sufficient to dispel the darkness of the first floor.

11. Mr. Bhardwaj cites Kuldip Chand v. Kishori Lal, 2009 (2) RCR (Rent) 91 to urge that mere closure of the shop itself will not be proof of cessation of business. Vacation of tenant can be sought if cessation was without reasonable cause. This Court held in that case that it is permissible for the tenant to even contend the business was seasonal in character and there were other supervening reasons such as illness that necessitated the closure of the premises. Nothing to support such a plea was taken by the tenant and, therefore, the case is distinguishable on facts.

12. Next in line, Mr. Bhardwaj cites Sh. Rattan Chand Sharma v. Nikka Ram, 2015 (4) PLR 8 to contend that if tenant did not require electricity connection, he would have only sought for the surrender of the electricity connection and would not have merely allowed it to be disconnected for non-payment of electricity charges and by non-user the

finding of the Court in the case was that tenant had an oven in the premises for running his bakery business and he did not require any electricity. I do not know how this case helps Mr. Bhardwaj when the Court holds that “the electricity is not seen any longer as a luxury or comfort but it is even seen to be absolute necessity for residential or non-residential purpose. We are not considering the case of a hutment in the village. On the other hand, we are considering the building which is a business premise and a property as falling within the Jalandhar cantonment area. It is inconceivable that any occupied building which is actually put to use could have been put to use without any electricity connection. The appellate court must have called the respondent's bluff but chose to buy an unconvincing story to allow the appeal with shoddy reasoning”.

13. On the other hand, Mr. Sangram S. Saron, learned counsel has relied on the five judgments i.e. Mohar Singh v. Harinder Singh and another, 1990 (2) RCR (Rent) 512; Karam Nath v. Gurbux Singh Juneja (dead) through his LRs, (2008) 1 RCR (Rent) 319; Gurbax Singh v. Subedar Sarwan Singh, 1994 (2) RCR (Rent) 351; Ram Kishan v. Santra Devi and others, 1986 SCC OnLine P&H 62 & M/s Babu Ram Gopal and others v. Mathra Dass, (1990) 2 SCC 279 seeking the dismissal of the petition.

14. In *Karam Nath* case the Court held that the initial burden of establishing cessation of occupation is always on the landlord by producing cogent evidence. Once it is so established by the landlord then it is for the tenant to prove that he ceased to occupy the demised premises due to some reasonable cause. The earlier dicta on the point is in *Gurbax Singh* case (Supra) holding that onus to prove sufficient cause is always on the tenant.

Court will not go into the question as to whether tenant had the intention to bring the tenancy to an end. However, non-consumption of electricity alone is no proof that tenant had ceased to occupy the premises. This means that the entire attending circumstances would have to be taken into consideration from the point of view of the cumulative effect of the entire evidence produced by the parties and where the probabilities lie in their reading and on appreciation of facts.

15. Mr. Saron points out to the dicta in *Ram Kishan v. Santra Devi and others* decided by a Division Bench on reference to larger Bench reported in PLR (1986) 89 P&H 417: 1986 SCC OnLine P&H 62 where the question has been answered whether the Indian Evidence Act is applicable to proceedings before the authorities under the Haryana Urban (Control of Rent and Eviction) Act, 1973. The important question is answered in the affirmative, holding that the provisions of the Evidence Act are indeed applicable to the proceedings before the authorities under the Act. The principle would apply to the Punjab Rent Act as well.

16. In *M/s Babu Ram Gopal* (Supra) the Supreme Court considered the provisions of Section 13 (2) (v) of the 1949 Act. The Supreme Court held as follows:-

“3. The grounds on which a tenant can be asked to quit are mentioned under Section 13 (2) of the Act, and under clause (v) thereof the Controller may pass an order for the tenant's eviction if he is satisfied,

"13(2)(v) That where the building is situated in a place other than a hill-station, the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause,"

Mrs. Urmila Kapoor appearing in support of the appeal contended that the appellant has all along been in possession of the shop which was never vacated and merely for the reason that the shop remained closed for a temporary period he cannot be said to have ceased to occupy the same. The argument is that the appellant's occupation of the shop was never interrupted as it was in his effective control, although closed and secured under the appellant's lock which nobody ever disturbed. We do not find ourselves in a position to accept the interpretation of the section as attempted on behalf of the appellant. The reason of including the clause (v) in Section 13(2) is to ensure that buildings, which are scarce in number specially in the towns, necessitating rent control legislation, do not remain unused at the instance of tenants who do not actually need them. A tenant who is in possession of a building in the legal sense only cannot be said to be in occupation thereof for the purpose of Section 13(2)(v); otherwise a question of his eviction as envisaged in that section would not arise. The section, by making provisions for his ejectment, assumes that he is in possession, but, still includes cessation of occupation as one of the grounds. The clause, therefore, has to be interpreted in this background and it must take colour from the context. We, therefore, hold that if a tenant stops the business which he is carrying on in a shop and closes the premises continuously for a period of four months without a reasonable cause he will be liable for eviction.”

17. The Supreme Court considered the meaning of the expression “has ceased to occupy” and accepted the view that it is in present perfect tense which contemplates a period even connecting in some way with the present time and thus concluding that non-occupation of the premises by a tenant would continue till the date of filing of the application for his eviction on the ground covered by Section 13 (2) (v) of the 1949 Act.

18. No other point was pressed.

19. For the foregoing reasons, I am not prepared to admit the case for any further consideration when not convinced by the contention of Mr. Bhardwaj that there has not been any failure on the part of the tenant to occupy the rented premises for the statutory period and accordingly, I find no merit in this petition or any error in the judgment of the Appellate Authority. The petition is dismissed.

20. The petitioner will hand over the vacant possession of the demised premises to the respondent within a month from the date of availability of this order. In case of default, the respondent may seek police help to recover possession.

(RAJIV NARAIN RAINA)
JUDGE

11.01.2018
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Whether speaking/reasoned Yes

Whether reportable No