

CR No.8057 of 2019 (O&M)

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

**CR No.8057 of 2019 (O&M)
Date of decision: 16.12.2019**

Devinder Gupta

... Petitioner

Versus

Savitri Devi

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Lokesh Sinhal, Advocate,
for the petitioner.

Mr. Sanjiv Gupta, Advocate,
for the caveator-respondent.

ARUN PALLI, J. (Oral)

The tenant is in revision against the order of eviction dated 20.7.2017, passed by the Rent Controller, Faridabad, as also the judgment dated 4.10.2019, vide which his ejectment from the demised premises has since been affirmed. Parties to the lis, hereinafter, shall be referred to as landlord and tenant.

In brief, the case set out by the landlord was that demised premises was a shop measuring 11'x35', which formed part of plot No. 2A/1A, BP, NIT, Faridabad. Husband of the landlord, namely Amar Nath Bhatia, who expired on 15.1.1991, had let out the shop in question about 35-40 years ago. However, the tenant was liable to be evicted, for he had failed to pay rent w.e.f.1.4.2014 to 31.3.2015 @ Rs. 520/- per month, i.e. total amounting to Rs. 6,240/- plus house tax @ 10%. The other two grounds

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upon which the eviction of the tenant was sought: the landlord required the demised premises for her personal necessity, and as the tenant had even ceased to occupy the premises, which was lying closed for the last 3 years.

In the written statement filed by the tenant, he admitted the relationship between the parties. However, it was submitted that he had paid rent for the period: 1.4.2014 to 31.3.2015, vide a cheque for Rs. 6240/- drawn on OBC, NIT, Faridabad, which was encashed by the landlord on 20.5.2014. Further, the landlord was an old lady of 80 years, and she owned several other commercial properties in Faridabad. For she was getting income of more than Rs.20 lakhs from her properties, the plea that she required the premises for her personal bonafide necessity was misconceived. Tenant was carrying out his business as usual under the name and style: 'M/S G.C. Electric Store' in the shop in question for the past 40 years and has regularly been filing his sales tax returns. Thus, the eviction petition was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, the Rent Controller concluded: the rent being claimed by the landlord had since been duly paid by the tenant. The ground as regards her personal bonafide need, was given up, pursuant to the statement made by her counsel on 15.7.2017. Whereas, it was found and concluded, for the tenant had since ceased to occupy the demised premises for a period of four months immediately preceding the institution of the eviction petition, he was liable to be ejected. As indicated above, for the appeal preferred by the tenant against the order of eviction failed and was dismissed on 4.10.2019, he is before this Court.

Mr. Lokesh Sinhal, learned counsel for the tenant, submits that

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both the authorities seriously erred, for it was overlooked that onus to prove that tenant had ceased to occupy the premises lay upon the landlord, which she failed to discharge, for lack of any cogent evidence. In essence, he submits that the only evidence led by the landlord and was relied upon by the authorities was the statement of Rajender Singh (PW1), UDC from Electricity Department, and document (Ex.P1), which showed consumption of electricity and readings as per the meter installed in the demised premises. Even otherwise, the document (Ex.P1), was also misread by the authorities, as a perusal thereof would show the consistent consumption of electricity during the period prior to filing of the eviction petition. Daya Kishan (PW5), Clerk from Sales Tax Office, admitted that M/s G.C. Electric Store has been filing all the quarterly and annual returns regularly. Further, tenant had examined Jagdish Mundra (RW2), a tenant in the adjacent shop, who deposed that tenant would open the shop in question daily at 10:00 A.M. and would close it down between 5:00 P.M. to 6:00 PM. Thus, he asserts that to succeed, the landlord was required to adduce conclusive evidence to show that tenant had ceased to occupy the demised premises, and ejection could not have been ordered merely owing to weakness, if any, in the case of the tenant.

I have heard learned counsel for the tenant as also the counsel for the caveator-landlord, and perused the paper-book.

Ex facie, in terms of Section 13(2)(v) of The Haryana Urban (Control of Rent & Eviction) Act, 1973, one of the grounds upon which eviction of the tenant can be ordered, is: ***“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***

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reasonable cause.” The eviction petition was filed on 6.5.2015, and the specific case set out by the landlord was that shop in question was lying closed for the last three years, and thus, the tenant had ceased to occupy the demised premises. Significantly, in response, the case of the tenant was of an absolute denial. For, he maintained that shop in question never remained closed and he was actively conducting his business under the name and style, ‘M/s G.C. Electric Store’ for the past 40 years. Needless to assert that it just cannot be disputed that if the eviction is being sought on the ground: ceased to occupy, ordinarily what lies in the domain of the landlord and his access to the required and necessary evidence is limited. Thus, once he succeeds to build a prima facie case, and raises a fair presumption, the onus squarely shifts upon the tenant. For the tenant is privy to all the operations, activities and the material that shows his active possession and occupation of the premises, he is rather under obligation to adduce every conceivable evidence to disprove the claim of the landlord. What is the position in the matter at hands? Landlord examined Rajender Singh (PW1) UDC from Electricity Department, who proved the document (Ex.P1), which reveals the consumption of electricity and readings as per the meter installed in the demised premises. Readings from June, 2014, till filing of the petition, i.e. in May, 2015, has been basic minimum. As per the testimony of Rajender Singh (PW1), basic minimum bill for two months even without consumption was Rs.1,016/-. A copy of the bill for 27.2.2015, appended with the eviction petition, would reveal that bill for December, 2015, was Rs.1,019/-. Significantly, the reading for **June, 2014, was 0.00** and even till filing of the petition in May 2015, meter readings showed abysmal consumption of electricity, i.e. 100 units. Thus, on analysis of the necessary details

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contained in the said document, the authorities concluded that electricity bills generated by the department showed the basic minimum usage. That apart, landlord-Savitri Devi (PW3), appeared as her own witness and testified in her deposition that tenant had ceased to occupy the premises, which had been lying closed for the last more than 3 years. She also examined Hoshiar Singh (PW4), proprietor of M/s Royal Furniture, shop No. D-12, NIT, Faridabad, situated at a distance of 250 square yards from the demised premises, who deposed that shop in question was lying closed for the last 3-4 years. He denied the suggestion that tenant was carrying out regular business operations in the demised premises. For, he was an independent witness, his testimony could safely be relied upon. Further, Daya Kishan (PW5), Clerk from Sales Tax Office, deposed that nil return was filed by M/s G.C. Electric Store for the financial year commencing from 1.4.2013 to 31.3.2014. Though, learned counsel for the tenant sought to explain that in the return for the financial year, i.e. 1.4.2014 to 31.3.2015, the turnover of the concern was shown Rs. 14,169/-but, a further analysis of the statement of the said witness would reveal that quarterly statement/return for 1.4.2014 to 30.6.2014 was also nil, and so was the quarterly statement/return from 1.7.2014 to 30.9.2014. No doubt, in the third and fourth quarterly statements, the returns were shown as Rs. 8039 and Rs. 6130, respectively, total being Rs. 14169/-, but that would be inconsequential, once the other factors on record lead to an irresistible conclusion that tenant had ceased to operate and occupy the premises. Thus, the authorities as also this Court is of the firm view that landlord had discharged the initial onus. Therefore, the tenant was required to adduce the necessary evidence to rebut that there was no cessation of business

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operations in the demised premises during four months immediately preceding the institution of the eviction petition.

It may be recapitulated that the claim of the tenant has been that he was an established entrepreneur and operating for the past 40 years under the name and style: 'M/s G.C. Electric Store'. He conceded in his cross-examination that he was trading in electric hardware and used to purchase the goods from M/s Hind Electrical, Delhi and from Faridabad. The demised premises is situated at Faridabad (Haryana), which is an industrial and commercial hub. However, he failed to adduce any evidence that could show if even a single business transaction was carried out in the past three years, leave alone, in four months preceding the filing of the eviction petition. Without the required stocks, it was inconceivable to run the business, and nothing was brought on record to show if the tenant had purchased any merchandise from any of his suppliers in the past. It defies logic if the shop was being used to carry out regular business, the tenant still failed to produce the account books, ledger, bill books and daily sales and purchase registers. Further, he could, at least, produce his account statements, bank accounts and tax returns to substantiate his claim. In fact, the records showed that while he appeared as his own witness (RW1), he was asked to produce the books of invoice and purchase books for the last two years. His cross-examination was specifically deferred for this purpose, but while he was recalled for further cross-examination on 11.4.2017, he produced records from 6.7.2015 to 31.3.2017 (Ex.R1 to Ex.R23), which, needless to assert, was inconsequential, being subsequent to the institution of eviction petition. Albeit, it was sought to be urged that as per order dated 6.4.2017, the tenant was required to produce invoice and purchase books for the last

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two years only, and he accordingly produced the records from July 2015 to March 2017, but the explanation lacks conviction and cannot be countenanced. If the tenant was, indeed, possessed of the necessary records, he could always produce those. No application was moved either at any stage to permit him to adduce any such evidence. Not even before this Court. Further, the bills (Ex. R3 to Ex.R23), produced by the tenant, were not only issued after May, 2015, but would also show that neither did they contain the name of the purchaser, nor the necessary details and were, thus, not worthy of any credence. Rather, in the given situation, it appears that these were fabricated subsequently. Undoubtedly, the tenant had examined Jagdish (RW2), owner of M/s Haryana Hardware Mills, who deposed that shop in question never remained closed. However, in his cross-examination, he conceded that he too was a tenant under the same landlord in the adjacent shop and was thus an interested witness. Further, all what the tenant intended to bring on record by way of additional evidence before the Appellate Authority was some electricity bills and report dated 28.8.2015, which was a summary of the treatment undergone by him. However, upon due consideration, the said application was rejected by the Appellate Authority, for it did not meet the requirements of the provisions of Order 41 Rule 27 of the Code of Civil Procedure, and was just an attempt to fill up the lacunae.

The matter in issue has yet another dimension, as conceded, two sons of the tenant were settled in Australia. He, in his cross-examination, conceded his visits to foreign countries, but feigned ignorance as to how many times during the last 2-3 years, he had visited Australia and the duration of his stay on each occasion. Thus, the presumption that

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permeates the records is that he stayed abroad with his sons for long durations, particularly owing to complete cessation of business activities in the demised premises which was lying closed. I am also reminded, at this juncture, to refer to the averments set out in paragraph 8 of the application moved by the tenant for additional evidence before the Appellate Authority, which shall have a decisive bearing:-

“That due to the aforesaid reasons, the appellant herein sustained a severe damage in the vision which is in continuation till today as the root cause, i.e. the diabetes is a permanent feature attached with the body. Because of this disability, the appellant/respondent therein never walks out after the sunset as in the dark there is a almost complete vision loss. The appellant/respondent is all alone in Faridabad as he has no brother and father was very old and ill. The appellant used to take care of his father also till he July, 2018 when he passed away.”

An analysis of the above position, further corroborates that tenant, who happened to be a senior citizen and was suffering from multiple ailments, was disenchanted and/or unable to cope up with his business, and as a result, he would often visit his children abroad and would stay put for long durations. Thus, in the given situation, the only and the inevitable conclusion that could be reached: **the tenant had, indeed, ceased to occupy the premises.** Therefore, no ground is made out to interfere with the concurrent findings recorded by both the authorities. The revision petition, being devoid of merits, is accordingly dismissed.

(ARUN PALLI)
JUDGE

December 16, 2019

AK Sharma

Reportable: YES