

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 8483 of 2018 (O&M)

Date of Decision: 13.01.2020

Mehra Shawls and Another

... Petitioner(s)

Versus

Vijay Kumar Rehlan and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Akshay Bhan, Senior Advocate
with Mr. Santosh Sharma, Advocate
for the petitioners.

Mr. A.P.Bhandari, Advocate
for the respondents.

Anil Kshetarpal, J.

The petitioners (tenants) have filed present revision petition challenging correctness of the judgments passed by the Rent Controller, Amritsar, ordering their ejectment from the rented premises, affirmed in appeal by the Appellate Authority, Amritsar.

The eviction of the petitioners has been ordered on two counts—
(i) bonafide requirement of the landlords and (ii) tenants have ceased to occupy the premises in question for a continuous period of more than four months prior to filing of eviction petition.

This Court has heard learned counsel for the parties at length and with their able assistance, gone through the judgments passed by the learned Courts below and the record requisitioned.

Learned senior counsel appearing for the appellants has submitted that the landlords have pleaded in their petition that they wish to open a fast food restaurant having a kitty hall and a separate room for

playing pool table by removing intervening walls of two other adjoining

premises owned by the landlords. He submitted that one of the adjoining premises in possession of Kirpal Scooters has been sold during the pendency of the eviction petition. He further submitted that premises No.3 has been let out multiple times during the pendency of the eviction petition and therefore, the finding of the learned Courts below that the requirement of the landlords to be bonafide, is erroneous.

He further submitted that the finding of the learned Courts below with regard to tenants having ceased to occupy the tenanted premises is also erroneous. He drew attention of this Court to report of the Local Commissioner, who visited the premises on 22.09.2001, and reported that the premises in question was lying locked and submitted that it does not fulfill the requirement of the Act which mandates that the landlords are required to establish that the premises was ceased to occupy for a continuous period of four months prior to filing of petition. He further, while referring to Ex.R/122, submitted that the electricity bills have been paid and even the record of the telephone department has been produced and proved that some telephone calls were being made from the land-line installed in the tenanted premises. He further, while referring to statement of account of the petitioner firm, submitted that some transactions have been made during the period in question.

On the other hand, learned counsel appearing for the landlords has submitted that two other premises are much in smaller size. He contended that the premises in possession of the tenants in the present case is of the size of ten times larger as compared to each of the other two premises. He submitted that the respondent/landlords were forced to make a

get possession. He further submitted that the landlords cannot be expected to keep remaining premises vacant for a period of 20 years hoping that one day, the order of eviction would be passed. He further submitted that it is admitted by the witness, who has appeared for the landlords, that premises No.3 is in the possession of the landlords.

He further submitted that the premises in question was lying locked for a period of approximately two years before filing of the eviction petition as would be clear from the statement of official from the electricity department who has deposed that as per the book recording meter reading, the premises of the consumer was found locked from July, 1999 to September, 1999 and then again on the visit in December 2000 and February 2001. He further drew attention of the Court to Ex.R/121- electricity bill-cum-receipt which is with respect to the period from 10.03.2000 to 07.09.2002 recording total consumption of 723 units of electricity. He further referred to bill-cum-receipt issued by electricity supply company for the period from 10.03.2001 to 07.11.2002 showing total consumption of 743 units of electricity. He further submitted that tenants have not produced any invoice of either the purchase or sale of the shawls, particularly when the tenants claim to be in the business of trading in the shawls.

On consideration of arguments of learned counsel for the appellants, this Court is of the view that there is no substance in the present revision petition. It has come on record that size of the premises occupied by the tenants is ten times of the size of shop in possession of Kirpal Scooters. From bare look of the sale deed Ex.R/158 at page 1839, it is apparent that the landlords were compelled to make distress sale in favour

of two sons of the tenant in possession, refusing to vacate the tenanted premises. With regard to premises No. 3, the same is lying vacant as would be clear from the statement of Amit Bansal, who has appeared on behalf of the tenants.

The petitioner No. 1 is a proprietary firm of Mrs. Nirmal Mehra, petitioner No.2. She has not chosen to appear and depose in evidence in the present case. She is the sitting tenant in possession of the premises. No reason has been disclosed why Mrs. Nirmal Mehra has not appeared in evidence.

In view of the aforesaid facts, it cannot be held that the purpose for which premises was sought to be got evicted stands frustrated. The landlords have claimed that they want to open a fast food restaurant consisting of a kitty hall and a separate room for allowing customers to play game on the pool table by amalgamating two other small portions. Even after the sale of a small portion, the need of the landlords does not come to an end. The restaurant can still be opened in the tenanted premises in occupation of the tenant as it is of much larger in size as compared to the premises which has been sold.

As regards second ground, it will be noticed that official from the electricity department has deposed that the premises was locked approximately for a period of two years. The official of the electricity department was making deposition on the basis of book recording meter reading maintained by the company for entering the reading of the consumption of electricity from the electricity meter installed in the tenanted premises. He has specifically stated that the tenanted premises was locked

from July, 1999 to September, 1999 and thereafter, reading was provided on 10.11.1999 and again premises was found locked at the time of visit in December, 2000 and February, 2001.

Still further, the bills/receipts Ex.R/122 & Ex.R/123 depict that the tenant was not paying the electricity bills regularly and bill for more than two years was got generated in the year 2002 and that also after the filing of the present eviction petition. In other words, electricity consumption bill was not paid by the tenant for a period of two years. During the pendency of the eviction petition, a Local Commissioner appointed by the Court visited the premises and submitted a report. The Local Commissioner has reported that the premises is lying locked continuously. The tenant has also failed to produce documents to prove sale and purchase of the shawls from the tenanted premises. The tenant claims that she is in the business of trading of the shawls. The production of account books also does not depict that much business was being conducted. Ex.R/106 shows that total sales are of Rs.12,850/- that also on commission basis and not counter sale.

Keeping in view the aforesaid facts, this Court does not find any good ground to interfere with the concurrent judgment passed by the learned Rent Controller and affirmed in appeal by the learned Appellate Authority.

Dismissed.

(Anil Kshetarpal)
Judge

January 13, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No