

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

CR No.2342 of 2016 (O&M)

Date of decision: 06.01.2022

Varinder Kumar

..Petitioner

Versus

Smt. Pushpa and anr.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aditya Dassaur, Advocate for the petitioner.

Mr. AP Kaushal, Advocate for the respondents.

ANIL KSHETARPAL, J.

Through this petition filed by the tenant, the correctness of the concurrent findings of fact arrived at by the Rent Controller as well as the Appellate Authority are assailed. The petitioner has been ordered to be evicted on the ground that he has ceased to occupy the tenanted premises for a considerable period of time.

During the pendency of the present petition, the petitioner has filed an application under Order 41 Rule 27 of Code of Civil Procedure, 1908, for permission to lead additional evidence in order to produce the invoices from 01.04.2002 to 26.11.2012 and insurance policies from February, 2006 to February, 2015.

It has come in evidence that the electricity connection of the tenanted premises has been disconnected from the year 2004 whereas the petition under Section 13 of the East Punjab Urban Rent Restriction Act,

1949 was filed on 06.08.2008. Apart therefrom, there is a report by the postman in the year 2010 that the shop is lying closed for quite some time. There is neither any sign board nor any other mark on the shop. It is the case of the petitioner (tenant) that he is using the premises as a godown and therefore, he does not require an electricity connection.

Heard the learned counsel representing the parties and with their able assistance perused the paper book along with the requisitioned record.

Both the learned counsels apart from oral arguments have also filed their written arguments.

Learned counsel representing the petitioner contends that the Courts below have wrongly relied upon the statement of PW2 Makhan Singh, Postman, as he had no true knowledge of the fact that the shop is lying closed for a long time. He further submits that disconnection of electricity from the shop is not in dispute, however, that itself is neither sufficient to infer that the tenant has ceased to occupy the tenanted premises nor a ground to order eviction. He further submits that the Courts below have wrongly ignored the deposition of Sh. Sunil Kumar and Sh. Kuljit Singh who have stated that the petitioner (tenant) continues to occupy the premises. Learned counsel further relies upon the additional evidence to contend that the invoices as well as the insurance policies establish that the premises are being continuously used.

the Courts below have recorded the findings of fact on proper appreciation of evidence and the High Court while exercising revisional jurisdiction should not interfere.

At the cost of repetition, it is not in dispute that the electricity connection of the shop was disconnected in the year 2004. The shop is located in an industrial city Ludhiana. In these days, it is nearly unimaginable to run the business without supply of electricity. It is also not in dispute that the premises are a shop and not a godown. Further, the evidence of the landlords as well as the Postman corroborate the assertion of the landlords that the tenant has ceased to occupy the premises for a sufficiently long period of time. In the aforesaid background, now let us examine the argument of the learned counsel representing the tenant. First, he relies upon the statement of Sh. Makhan Singh, Postman, who has stated that he visited the shop only once on 22.12.2010 and the shop was found closed. It may be noted here that once a Postman goes to deliver the letter and finds that the premises are closed, he is normally expected to inquire from the neighbors. In these circumstances, the deposition of Sh. Makhan Singh corroborates the assertion of the landlords. Furthermore, learned counsel has tried to highlight that the registered letter has been sent on 21.12.2010 i.e. after the filing of the petition. Although no doubt, the petition was filed in the year 2008 and the letter was sent in the year 2010, however, the landlords are entitled to collect

evidence. They, in order to prove their case, sent a notice on the address of the said premises. Hence, this Court does not find it inappropriate.

Furthermore, both the Courts below have correctly held that the evidence of Sh. Sunil Kumar and Sh. Kuljit Singh cannot be relied upon in view of overwhelming evidence to prove that the tenant had ceased to occupy the premises. The eviction petitions are required to be decided on preponderance of probabilities and both the Courts, on appreciation of evidence, have found that the case set up by the landlords is more acceptable.

The last argument of the learned counsel representing the petitioner is with regard to the application for additional evidence. The petitioner has filed the revision petition. The petitioner did not make any efforts to produce the documents, which were in his knowledge and control at an earlier stage. The petitioner wants to produce invoices issued by him from the year 2004 to 2012. He also wants to produce insurance policies issued by the National Insurance Co. whereby the tenanted premises have been insured from accident. These documents were in the knowledge and control of the petitioner from the very beginning. While hearing the revision petition, the application for additional evidence cannot be allowed in a routine manner. Moreover, these invoices and insurance policies do not, per se, prove that the premises continue to be occupied. Although, the invoices refer to the address of the tenanted premises, however, it is the case of the petitioner (tenant) that

he is using the premises as a godown. Therefore, the additional evidence sought to be produced is not sufficient to reverse the concurrent findings of fact. In view of the aforesaid discussion, the result is inevitable. Hence, the revision petition is dismissed.

All the pending miscellaneous application(s), if any, are also disposed of.

06.01.2022

ashok

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE