

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 7876 of 2017

Date of decision:19/12/2022

Shri Zaharia Mal Charitable Veterinary Hospital Trust and others

.....Petitioners

Vs.

Ramesh Mittal and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Varun Sharma, Advocate for the petitioners/landlords.

Nidhi Gupta, J.

This revision petition has been filed by the petitioners/landlords for setting aside the order dated 27.1.2017 passed by the Appellate Authority, Jalandhar affirming order dated 12.4.2016 passed by the Rent Controller, Jalandhar whereby eviction petition filed by the petitioners was dismissed.

Brief facts of the case are that the petitioners/ landlords filed an eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act,1949 for the eviction of the respondents/landlords from the portion of the property in question. Eviction of the respondents was sought

on the grounds of (a) arrears of rent and (b) ground of cessation of occupation of demised premises for more than four months immediately prior to the filing of the petition without any sufficient cause and reason.

It is submitted by the learned counsel for the petitioners that petitioners had also earlier filed an ejectment petition against the respondents on account of change of user wherein the father of the respondents/tenants had admitted in his cross examination that the premises in dispute were being used for the purpose of business of soap and chemicals. It is submitted that however, in the present ejectment petition as per statement of respondent no.1 the premises in question are being used for storing the goods of Lovely Sweets and other articles. It is accordingly submitted that learned Authorities below were in error in not appreciating that there has been change of user of the demised premises which would support the petitioners' contention that the respondents had ceased to occupy the demised premises.

It is further submitted that mere possession of the shop does not amount to occupation of the same and the respondents only in order to evade the ground of cessation of occupation of demised premises has very cleverly stated that demised premises were used for godown. It is further submitted that Rent Controller has failed to notice that disconnection of electricity is one of the factors to determine cessation of occupation of property and that the Appellate Authority has relied upon deposition of the Meter Reader whereas he has not taken into account the Inspection Report dated 5.11.2015 prepared by the SDO which proves that there was no electricity being supplied to the demised premises as there was no electric wire going to the demised premises nor any meter was installed.

No other point is raised by the learned counsel for the petitioners.

I have heard learned counsel for the petitioners.

A perusal of the ejectment order dated 12.4.2016 passed by the learned Rent Controller shows that in paras 14 and 15 it has categorically been found as below:-

“14. The petitioner No.5, Sh. Sham Lal Gupta, AW1 in his examination in chief has deposed that the respondents have ceased to occupy the demised premises for more than four months immediately prior to filing the present petition without any sufficient cause or reason. The demised premises is lying locked for the last more than six years. The electric connection installed in the demised premises has also been disconnected. In his cross examination, he has deposed that this shop was taken by Baldev Raj Mittal on rent in the year 1975-76. He cannot tell the date, month or year of starting of tenancy. He does not know, whether any rent agreement was executed between the parties. He cannot tell the area of the building, in which this shop is situated. There are 5-6 shops in the building. There are 5/6 residential quarters. The building is single story building. All the shops are rented out to different tenants. He has admitted that the petitioners had filed an ejectment petition on 27th November 1995 against Lovely Sweet House and Baldev Raj, which was dismissed on 12th October 2004. The petitioners filed appeal, which was dismissed on 16th January 2006. Another ejectment petition was filed on 24th March 2004 against Lovely Sweet House and Baldev Raj, in which the rent @ Rs. 300/- per month was tendered up to 31st July 2004. Said petition was dismissed on 6th November 2009 and the appeal was also dismissed on 14th February 2011. On 15th June 2006, again ejectment petition was filed, in which rent up to 31st December 2006 was tendered and the same was received by them. Said petition was dismissed on 18th January 2007. Certified copy of the petition is Exhibit R1, copy of order is Exhibit R2, certified copy of statement of counsel for the respondent for tendering the rent is Exhibit R3 and certified copy of statement of counsel for petitioners is exhibit R4. This witness has also deposed that there are two electricity connections in the building in the name of petitioners. He has not brought any bill or receipt with regard to the said connection. There is no electricity connection in the entire building in the name of any

tenants. Sherri Abay Kumar, Naresh Kumar, Jagdeep Singh, Pardeep Kumar, Vinod Kumar and Harvinder Singh are the tenants in the other shops, against whom no ejectment petition is pending.

15. AW2 Jarnail Singh Meter Reader Punjab State Ppower Supply Corporation Commercial Sub Division No.5 barring Jalandhar Cantt has deposed that he has not brought the summon record of electric connection in the name of Naresh Kumar Mittal S/o Baldev Raj c/o M/s Lovely Soap and Chemical installed in the property outside Mohalla No.13 near local bus stand Jalandhar Cantt. He has only brought the record submitted by the S.D.O. Jalandhar Cantt which was made by him after inspection of the property in question and the same is exhibit AW-2/1. In his cross examination, he has deposed that he has no personal knowledge with regard to the property in question and he never visited the same. The material witness to prove exhibit PW 2/1 is the SDO who prepared this report for. This document is not proved as required under provisions of law. There are two connections in the building. But there is no evidence as to from which connection the supply of electricity was/is being in the demised shop. Even otherwise, mere non- supply of electricity does not mean that 'ceased to occupy' ground is proved. (emphasis supplied)

Learned counsel for the petitioners has not been able to controvert the above said findings of the learned Rent Controller.

Further, admittedly, not a single question/suggestion was put to respondent No.1/RW-1 in his entire cross examination as to whether the respondents had ceased to occupy the demised premises. In this regard I am in concurrence with the observations of the learned Rent Controller that *“...initial burden of establishing the 'cease to occupy' ground of ejectment is always upon the landlord by producing cogent material evidence. The landlord has to prove by leading positive evidence that the tenant had ceased to occupy the demised premises for a period of at least four months immediately prior to the filing of the ejectment application and 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. In the present*

petition, the petitioners have failed to prove by leading positive evidence that the respondents have ceased to occupy the demised shop...” These findings have been affirmed by the learned Appellate authority. Even now, nothing has been submitted on behalf of the petitioner in support of his contention.

Moreover, it is not open for this Court to interfere with such concurrent findings of fact. Reliance in this regard is placed upon judgment of Hon’ble Supreme Court in **Sunil Kumar and another v Anil Kumar, Law Finder Doc Id # 187547.**

Accordingly, finding no merit in this revision petition the same is hereby dismissed.

19.12.2022	(Nidhi Gupta)
Joshi	Judge
Whether speaking/reasoned	Yes
Whether reportable	Yes/No