

In the High Court of Punjab and Haryana at Chandigarh

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Civil Revision No. 6402 of 2005

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Date of decision:13.12.2005

Tarsem Singh

....Petitioner

VS.

Karnail Singh and others

...Respondents

.....

Present:- Mr. Om pal Sharma, Advocate for the petitioner.

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S.S. SARON, J.

This revision petition has been filed against the order dated 29.8.2005 passed by the Appellate Authority (Ad-hoc), Fast Track Court-II, Hoshiarpur whereby the appeal of the tenant-petitioner against the order dated 20.5.2002 passed by the Rent Controller, Hoshiarpur has been dismissed.

The landlords-respondents filed an ejectment petition against the tenant/petitioner on the ground that the latter was in arrears of rent and that he had ceased to occupy the 'chobara' in question for a continuous period of last more than four months. In fact he had not opened that 'chobara' after 20.1.1999. The tenant-petitioner contested the petition for eviction and stated that demised premises was continuously used by him. It was denied that 'chobara' was not opened since 20.1.1999. The plea of the landlords/respondents as regards arrears of rent was held to be not

established and was decided in favour of the tenant-petitioner. However, the ejectment has been ordered by the learned Rent Controller vide his order dated 20.5.2002 on the ground that the tenant-petitioner had ceased to occupy the premises in dispute for a period of more than four months. The said finding of the Rent Controller has been affirmed by the Appellate Authority.

Learned counsel for the petitioner submits that the conclusions reached at by the Rent Controller and the Appellate Authority below that the tenant/petitioner had ceased to occupy the demised premises is based solely on the evidence of Balbir Singh (AW-1) who in fact has no concern with the building in question and that he is a procured witness who has stated all wrong facts. Besides it is contended that the landlords-respondents has not pleaded that the tenant has ceased to occupy the shop without sufficient cause.

I have given my thoughtful consideration to the contentions of the learned counsel appearing for the petitioner. It is appropriate to note that the testimony of Balbir Singh (AW-1) has been accepted by the Rent Controller as well as the Appellate Authority below. The learned Rent Controller in his impugned order has observed that the landlord has examined Balbir Singh (AW-1), who is an independent and the best witness to make a statement with regard to the rate of rent of a similar 'chobara' which had been taken on rent by Balbir Singh (AW-1). It was further observed that the testimony of the said witness Balbir Singh (AW-1) stood corroborated by Karnail Singh (AW-2). It was observed that the landlords/respondents were only required to prove that the tenant/petitioner

had ceased to occupy the demised premises continuously for a period of four months. Thereafter it was for the tenant-petitioner to prove that he did not occupy the demised premises for a reasonable cause. Such facts and circumstances are in the knowledge of the tenant-petitioner and not in the knowledge of the landlords-respondents. The landlords in the case in hand have proved the fact that the tenant had ceased to occupy the demised premises continuously for a period of four months. It was also observed that there was no documentary evidence in order to prove that the tenant has been working in the demised premises three days in a week as had been claimed by him in his evidence. In fact the evidence led by the tenant-petitioner in this regard was held to be beyond pleadings. The findings and conclusions that the 'chobara' in dispute had not been occupied by the tenant-petitioner has been affirmed by the Appellate Authority. It was observed by the Appellate Authority that there was not even an iota of evidence on the file to show that any printed material for registration of vehicles and for preparation of driving licences were lying in the 'chobara' in question. In this regard no independent witness had stepped into the witness box to depose that the 'chobara' in question was being used by the tenant-petitioner for at least three days a week for the purposes of filling-up forms for registration of vehicles and preparation of driving licences at Mahilpur. No other tenant of the other shops of the buildings has stepped in the witness box to depose regarding this fact in favour of the tenant-petitioner. The evidence of the landlord and Balbir Singh (AW-1) who had remained a tenant in the building was held to be sufficiently reliable and cogent as it had gone un rebutted. Balbir Singh (AW-1) had categorically

stated that the disputed 'chobara' was lying locked and the tenant-petitioner was not using the same for the past more than one year. He, however, stated that he did not know the exact date since when it was lying locked. It was observed by the Appellate Authority that the fact that Balbir Singh (AW-1) had already left the shop which he had taken on rent from the landlord Karnail Singh shows that he was not at all an interested witness at the time of making his deposition. Rather, it shows that he was well aware of the fact regarding the 'chobara' in dispute.

Section 13(2)(v) of the East Punjab Urban Rent Restriction Act, 1949 envisages that a landlord who seeks to evict his tenant is to apply to the Controller for a direction in that behalf and if the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied 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, the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application.

Learned counsel appearing for the tenant-petitioner made strenuous efforts to dislodge the deposition made by Balbir Singh (AW-1) by contending that the petitioner was inducted as a tenant in the demised premises by one Basant Singh who was the owner of the premises in dispute in the year 1983 and since then the petitioner has been in possession of the demised premises. Balbir Singh (AW-1), it is contended, was inducted as a tenant by Basant Singh in 1996. Thereafter, Basant Singh died on

17.9.1997 and the property in question was inherited by the respondents. There are eight tenants in the building and Balbir Singh (AW-1) was a tenant only in part of the building and he vacated the same in 1998. Besides, it is contended that Balbir Singh (AW-1) was running business of tailoring in the name and style of 'Rex Tailors' at Phagwara Road, Mahilpur whereas the 'chobara' in question was in another locality. It is further contended that Balbir Singh has stated that there was electricity connection in the 'chobara' in question and all persons in possession of the premises were having separate electric connections. However, there was no electricity connection in the demised premises. Therefore, the deposition of Balbir Singh (AW-1) is wholly untrustworthy.

In my view, the stand of the learned counsel for the petitioner is not tenable. Both the authorities below have relied upon the deposition of Balbir Singh (AW-1). The fact that the demised premises is situated at the Mahilpur Jaijon Road and Balbir Singh (AW-1) is running his business of Tailoring in the name and style of 'Rex Tailors' at Phagwara Road, Mahilpur is not of much consequence. In fact it shows that Balbir Singh (AW-1), even if he is not residing at the demised premises, in any case, is a resident of Mahilpur. Mahilpur is not a big town where a person would not know as regards the position of the premises where he was once a tenant. Therefore, the deposition of Balbir Singh (AW-1) that the 'chobara' in question is lying locked is to be accepted. There is no reason given that he is a false witness or a procured witness. In fact even in the cross-examination it is not suggested that he is a procured witness. That fact that Balbir Singh (AW-1) has stated that there was electricity connection in the premises in his

possession and all persons in possession of the rooms in the building were having separate electricity connection is also quite natural as persons who are in occupation of rented accommodation, do have separate electric connections so as to avoid any dispute. Learned counsel for the petitioner pointed out that in the present case it has come on the record that demised premises was not having any electricity connection. From this in fact a clear inference is to be drawn that the tenant-petitioner was not residing at the demised premises and it is accepted by him that there was no electricity connection in the demised premises. As such, he had ceased to occupy the same. Had the petitioner been residing in the demised premises, he would be having electricity connection. The fact that the petitioner was not having an electricity connection goes to show that he had ceased to occupy the premises. The fact that Balbir Singh (AW-1) stated that all persons in possession of the rooms were having separate electricity connections is not of much significance and is a general statement which means that all persons residing in the building do have their own separate electricity connections. It does not in any manner mean that tenant-petitioner also had an electricity connection by which the conclusions otherwise reached at by the Rent Controller would stand vitiated. In fact, in para 8 of the grounds of revision it is accepted that the premises in dispute was not having electricity connection. However, it is mentioned that Balbir Singh (AW-1) has stated in his evidence that the premises was having electricity connection. This, as already observed, was a mere general statement by Balbir Singh (AW-1) that all tenants in occupation of the premises were having their own independent electricity connections.

The contention that there has been no pleading by the landlords-respondents that the tenant-petitioner has ceased to occupy the premises without reasonable cause has also been considered by the Appellate Authority. Reliance was placed on a judgment of this Court in Sohinder Singh vs. Barinder Singh 1988 (1) RCR 675 (P&H) wherein it was observed that where the landlord has specifically pleaded that the tenant had ceased to occupy the building then the landlord is not required to plead and prove that the tenant has ceased to occupy it without reasonable cause. The position, therefore, is that the landlord is only required to prove that the tenant has ceased to occupy the demised premises continuously for a period of four months and it is for the tenant to prove that he did not occupy the demised premises for a reasonable cause because the reasonable cause for not occupying the premises is to be proved by the tenant. The landlord has pleaded that the tenant has ceased to occupy the premises in dispute. It is on the basis of said pleadings that issue No.2 was framed to the effect whether the respondent (tenant) had ceased to occupy the premises in dispute. The onus of this issue was also placed on the tenant. Once an averment has been made with regard to the tenant ceasing to occupy the premises, then it is for the tenant to show that he is not occupying the same for a reasonable cause. Therefore the stand taken by the tenant-petitioner is clearly not tenable. The tenant-petitioner can not approbate and reprobate. He cannot on the one hand take the stand that he has not ceased to occupy the building in question and then at the same time take the stand that even if it is assumed that he has ceased to occupy the building then the landlord has not pleaded that the tenant has ceased to occupy the building without

reasonable cause.

For the foregoing reasons, there is no merit in this petition and the same is accordingly dismissed.

13.12.2005

(S.S. Saron)
Judge

tsg/hsp