

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.R. No. 165 of 2000.

Date of decision: 29.9.2006.

Amrit Lal Sehgal

... Petitioner.

VERSUS

Smt. Ramawati Sahu

...Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice

Whether approved for reporting?

For the petitioner: Mr. Bhupender Gupta, Sr. Advocate
with Mr. Neeraj Gupta, Advocate.

For the respondent: Mr. N.K.Thakur, Advocate

Surjit Singh, J. (Oral).

This revision petition by the tenant is directed against the order of Appellate Authority, whereby reversing the finding of the Rent Controller, it has been held that the tenant had ceased to occupy the premises and was therefore, liable to be evicted from the tenanted premises and consequently, order of ejectment on the ground of cessation to occupy the premises for a period of 12 months without reasonable cause has been ordered.

Relevant facts are that eviction of the revision petitioner/ tenant was sought from the demised premises by the respondent- landlady on two grounds, viz. non-payment of the rent

Whether reporters of Local Papers may be allowed to see the Judgment?

and the tenant having ceased to occupy the premises for a period of 12 months without reasonable cause. The Rent Controller after holding the trial held that the tenant was in arrears of rent and accordingly ordered his eviction on that ground. As regards the other ground, the Rent Controller returned the finding against the land-lady and consequently did not order the eviction of the tenant on that ground. Landlady filed appeal before the Appellate Authority. The Appellate Authority has returned the finding that the revision petitioner/ tenant had ceased to occupy the premises for 12 months without any reasonable cause and has consequently ordered the eviction of the revision petitioner- tenant on the second ground also.

I have heard the learned counsel for the revision petitioner- tenant. He has made the following submissions:-

- (i) The evidence on record does not prove that the tenant did not occupy the premises continuously for 12 months immediately preceding the date of the institution of the petition, i.e. 20.11.1990.
- (ii) The alleged cessation of occupation of the premises by the tenant cannot be said to be without reasonable cause.
- (iii) There is no evidence of animus deserendi on the part of the tenant.

Petition was filed on 20.11.1990. Therefore, the relevant period of 12 months during which the tenant is required to be proved to have ceased to occupy the tenanted premises is to be

reckoned from 20.11.1989. The landlady examined a witness from the office of Garrison Engineer, Kasauli, who testified that the tenant had been posted in the Garrison Engineer office at Kasauli in the year 1974 and that in 1979 when that office was disbanded the tenant was transferred to Jatog and that on 22nd May, 1989, he was further transferred to Mahow (M.P). The landlady herself testified that after the tenant had been transferred to Jatog, he did not occupy the premises, though some tourists deputed by the tenant occasionally stayed in the premises.

The tenant himself appeared as RW 1 and admitted that in 1989, he had been posted at Mahow and he shifted to that place alongwith his children and other family members. He stated that after that his brothers and sisters and he himself had been visiting the premises, in question. He stated that he visited the place in June, 1989 during vacation and also thereafter two-three times in the year 1989. From his statement, it is clear that he has shifted bag and baggage from the demised premises and is having his residence at the place of his posting. His saying that he visited the premises in June, 1989 and then twice or thrice in the year 1990 lends credence to the evidence adduced by the landlady that the tenant had ceased to occupy the premises since May, 1989, when he was transferred to Mahow.

There is also a statement proved by a witness from the electricity office showing the consumption of electricity through the meter installed in the demised premises. As per this statement only 60 units of electricity, 50 units as reflected in the bill for July, 1990

and 10 Units as reflected in the bill for September, 1990, were consumed during the relevant period. This statement also shows that tenant- revision petitioner does not reside in the premises and that only occasionally some people visit the place and stay there.

As already noticed, even the tenant himself says that his brothers, sisters etc. visit the premises and stay there for sometime, which means that the premises are being used only as a tourist resort by the relatives of tenant- revision petitioner. It is by now well settled that occasional visit to the tenanted premises by the tenant do not amount to the tenant continuing in occupation of the premises. Reference in this behalf may be made to **Sohan Lal Khanna** vs. **Amar Singh** 2000, (2) Latest HLJ 1008, **St. Michael's Cathedral Catholic Club** vs. **Smt. Harbans Kaur Nayani**, 1997 (1) Sim. L.C. 237 and **Gurbachan Singh** vs. **Ravinder Nath Bhalla and others** Latest HLJ 2006 (HP) 177. Therefore, no fault can be found with the finding by the Appellate Authority that the tenant had ceased to occupy the premises for a period of 12 months, before the institution of the petition.

Coming to the second submission made by the learned counsel for the revision petitioner, suffice it to say that the tenant had taken the premises on rent on his posting in Kasauli town. Thereafter he was transferred to Jatog and finally to Mahow in May, 1989 and ever-since he has not been posted at Kasauli. Learned counsel stated that it was on account of his transfer that the tenant had shifted to Mahow and this was a sufficient cause for his ceasing to occupy the premises. The tenant occupied the premises,

because of his posting at Kasauli. Now he stands transferred from Kasauli, and therefore, there should be no reason for him to continue to have his residence at Kasauli. Therefore, it cannot be said that his ceasing to occupy the premises is on account of some reasonable cause.

Placing reliance upon a judgement of this court in **G.C.Bhatia** vs. **R.L.Seth**, 1986 Shim. L.C. 168, learned counsel urged that the landlady had not established the animus deserendi on the part of the tenant. The element of animus deserendi is not required to be taken into account in isolation nor can this by itself be a ground for rejecting the plea of the landlady for the ejectment of the tenant on the ground of his having ceased to occupy the premises. This animus on the part of the tenant is required to be taken into account alongwith other circumstances and, i.e. what has been held in the judgement relied upon by the learned counsel.

This court in **Gurbachan Singh's** case (supra), where the facts were almost similar to the facts of the present case, has held that **G.C.Bhatia's** case (supra) had no application to the facts of the case.

For the foregoing reasons, I find no merit in the revision petition. The same is, therefore, dismissed.

September 29, 2006.
(Hem)

(Surjit Singh),
Judge.