

Gian Devi Vs. Narender Kumar Ahuja

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Court : Punjab and Haryana

Decided On : Apr-27-2007

Reported in : (2007)147PLR224

Judge : S.N. Aggarwal, J.

Appellant : Gian Devi

Respondent : Narender Kumar Ahuja

Disposition : Petition allowed

Judgement :

S.N. Aggarwal, J.

1. Gian Devi petitioner had filed an ejectment petition on 25.3.1989 against the respondent-tenant on the ground of non payment of arrears of rent and the shop having remained closed from April 1988, without any reasonable cause or excuse. It was pleaded that the respondent has started another shop under the name of Ahuja Tailor School Dresses on the railway road, Bhiwani.

2. The petition was contested. Preliminary objections were also pleaded. It was also contested on merits. The arrears of rent were tendered on the first date of hearing which were accepted by the petitioner. The closure of the shop was denied.

3. Issues were framed.

4. The parties led the evidence.

5. The learned Rent Controller reached the conclusion that the ground for ejectment for non payment of arrears of rent has become infructuous. However, it was held by the learned Rent Controller that the shop was lying closed with effect from April, 1988 without any reasonable cause or excuse. Hence, ejectment petition was accepted by the learned Rent Controller vide order dated 27.7.1991 and the respondent-tenant was ordered to be ejected.

6. The respondent-tenant filed an appeal. The learned Appellate Authority reversed the finding of fact recorded by the learned Rent Controller and accepted the appeal vide judgment dated 5.2.1992.

7. Hence the present petition.

8. The submission of learned Counsel for the petitioner was that not only the oral evidence has been produced by the petitioner by examining a neighbourer to prove that the shop was lying closed for a period of more than four months with effect from 1.4.1988 but even the official of the Electricity Board who has appeared as PW-2 has proved that the shop remained closed from April, 1988 to November, 1989. It was submitted that the learned Appellate Authority has misread the evidence and reversed the finding of fact recorded by the learned Rent Controller illegally. Hence, the acceptance of Civil Revision was prayed.

9. On the other hand, the submission of learned Counsel for the respondent was that the learned Appellate Authority has rightly come to the conclusion that the evidence of the official of the Electricity Board is of no consequence and therefore, the petition deserves dismissal.

10. Considered

11. Hari Chand Sharma. Upper Division Clerk of Sub Urban Sub Division No. 1, Bhiwani appeared as PW-2. He proved that electric meter No. C/1052 was installed in the shop in the dispute in the name of Narender Kumar i.e. the

respondent-tenant. He brought the meter reading statement of this meter from February, 1988 to May, 1990 and deposed that column No. 2 of this statement, Exhibit P-3, the words P/L are written. The meaning of these words was 'premises locked'. He further deposed that this statement has been prepared on the basis of official record. He also deposed that on 31.10.1998, order of permanent disconnection were passed because the bill was not paid. Copy of demand notice was proved as Exhibit P-4.

12. The evidence of this witness was assailed by the learned Counsel for the respondent on the plea that although the statement, Exhibit P-3 was prepared by this witness but the ledger from which entries were prepared was not prepared by this witness. It was further submitted that even he was not the Meter Reader. Therefore, he could not say about the actual status of the building at the time of meter reading and whether the entries made in the ledger were genuine and correct or not.

13. These submissions have been considered.

14. Admittedly, the ledger in the office of Electricity Department is official record. The Meter Reader visits the area concerned and prepares the record. The ledger entries are made on the basis of report made by the Meter Reader. Exhibit P-3 is the statement prepared from the ledger which was correct as per record. Even if Hari Chand Sharma, PW-2 had not recorded the meter reading statement himself but he has clearly proved that statement Exhibit P-3 was prepared from the ledger itself which was based on the report of Meter Reader. The settled law is that all the official acts are presumed to have been performed in the ordinary course of business and are presumed to be correct unless proved to the contrary. These entries made in the ledger which are proved in the form of statement Exhibit P-3 clearly prove that the shop in dispute was found locked from February, 1988 to March, 1989 when the ejectment petition was filed.

15. The learned Counsel for the respondent drew the attention of this Court towards the following electricity bills:

Exhibit	Date	Amount
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R-5 2.12.1988 Rs. 264.95P

R-6 6.10.1989 Rs. 525.15P

R-7 5.2.1990 Rs. 593.35P

R-8 5.6.1990 Rs. 653.95P

R-9 6.12.1990 Rs. 876 + Rs. 42.

R-10 4.2.1991 Rs. 966-Rs.47

16. Out of these bills, only electricity bill Exhibit R-5 deals with the disputed period. The petitioner had filed ejectment petition in March, 1989 and had alleged closure of the shop with effect from 1.4.1988. The amount shown in the bill dated 2.12.1988 compares with the amount of the bill shown in statement Exhibit P-3. Rather, Exhibit R 5 authenticates statement Exhibit P-3.

17. The other bills proved on the file do not relate to the disputed period and therefore, are of no legal value for deciding the controversy involved in this ejectment petition.

18. The submission of the learned Counsel for the respondent was that in the bill, Annexure R-5, it is nowhere mentioned if the premises were found locked.

19. This submission has no force. The words to the effect that premises were found locked were not recorded in the bills. These bills were sent by the Electricity Board to the respondent for making the payment of electricity bills. Whatever was observed by the Meter Reader at the time of meter inspection was incorporated in the ledger. Therefore, non-mention of the comments in the bill that the premises were locked is of no consequence.

20. Moreover, Hari Chand Sharma has reported that the payments were not made by the respondent for a long period and that is why permanent disconnection order was passed. The respondent has failed to prove if he had been making the payment of electricity bills in time nor the receipts issued by the Electricity Department after the respondent had deposited the electricity bills have been

proved on the file. This conduct of the respondent, therefore, corresponds with the statement of Hari Chand Sharma. PW2.

21. It is neither alleged nor proved if the Meter Reader or Hari Chand Sharma, PW2 or any officer of the Electricity Department was inimical to the respondent or if the entries made in the ledger were manipulated.

22. Therefore, this document Exhibit P-3 which was prepared on the basis of ledger clearly proves that the premises remained locked from February, 1988 till March, 1989 when the ejectment petition was filed against the respondent. The respondent has not led any evidence to prove the cause or excuse for the shop remaining closed for this period. This circumstance alone is sufficient to prove the case of the petitioner.

23. Accordingly, this petition is accepted. The impugned order dated 5.2.1992 is set aside and the order of the learned Rent Controller is restored. The ejectment petition is accepted and the ejectment order is passed against the respondent. However, the respondent is granted two months time to vacate the premises.

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