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Nirmal Singh Vs. Mohd. Bashir

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Court : Punjab and Haryana

Decided On : Jul-20-2004

Reported in : (2004)138PLR532

Judge : M.M. Kumar, J.

Acts : East Punjab Urban Rent Restriction Act, 1949 - Sections 13(2)

Appeal No. : Civil Revision No. 2009 of 2004

Appellant : Nirmal Singh

Respondent : Mohd. Bashir

Advocate for Pet/Ap. : S.K. Arora, Adv.

Disposition : Petition dismissed

Judgement :

M.M. Kumar, J.

1.This is tenant's petition filed under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (for brevity, 'the Act') challenging order dated 24.1.2004 passed by the Appellate Authority, Sangrur. The ejectment of the tenant-petitioner has been ordered on the ground that he has ceased to occupy the demised shop four months preceding the date of filing of the ejectment petition.

2. Brief facts of the case necessary for deciding the controversy raised in the instant petition are that the tenant-petitioner was inducted in the demised shop as a tenant at the rate of Rs. 300/- p.m. on 1.5.1995. According to the averments made in the ejectment petition he had paid the rent at the rate of 200/- p.m. for three months and thereafter he defaulted in making the payment of rent which is a ground of ejectment under Section 13(2)(0 of the Act. It has been further alleged that he in fact has closed the shop which resulted into furnishing of another ground of ejectment as contemplated by Section 13(2)(v) of the Act. The allegation is that the tenant-petitioner had ceased to occupy the demised shop for four months without any reasonable cause preceding the date of filing of the. ejectment petition. The Rent Controller dismissed the application filed by the landlord-respondent. However, the findings recorded by the Rent Controller were reversed by the Appellate Authority by accepting the appeal of the landlord-respondent. On the issue of rate of rent the Appellate Authority, Sangrur has placed reliance on the assessment register of the Municipal Committee and the oral statements of the landlord-respondent as well as other witnesses. The findings of the Appellate Authority on the aforementioned issues read as under: -

' In the present case, it is proved that the rent recorded in the Municipal recordis the actual rent agreed to between the parties. Baldev Singh appeared as RW1. He is a tenant under the appellant at a monthly rent of Rs. 110/-. Ex.Pl mentions this fact that this rate of rent is Rs. 110/- which is the actual rent settled between the parties. This fact further shows that Ex.Pl has been correctly prepared by the Municipal authorities. It was admitted by Baldev Singh RW-1 that the Municipal employees visit the premises and collect the names of tenants and the rent paid by him. Nirmal Singh RW-3 [the tenant-petitioner] also admitted this fact that the Municipal employees came to the shop and enquire about the tenants. In view of this evidence, the contention of the appellant that the rate of rent is Rs. 300/- per month cannot be dis-believed.'

3. On the basis of the aforementioned findings, the tenant-petitioner was granted 30 days time from the date of the order to make the payment of rent. The tenant-petitioner has failed to pay the arrears of rent at the rate determined by the Appellate Authority i.e. Rs. 300/- p.m. It was further directed by the Appellate

Authority that in case the tenant- petitioner fails to pay the rent, then he would be liable to be ejected from the demised premises on the ground of non payment of rent. It is also pertinent to mention that after passing of order dated 24.1.2004 by the Appellate Authority an application for extension of time was filed which has also been dismissed by the Appellate Authority on 6.4.2004 by observing as under:

'The orders were passed on 24.1.2004 directing that if the applicant deposits the arrears of rent with interest and costs within 30 days from the date of order, he would not be ejected from the premises in dispute on the ground of non-payment of rent. His counsel was present in the Court on the said date. The applicant applied for the certified copy of the order on 30.1.2004 and the same was prepared on 31.1.2004 and was received on 4.2.2004. The applicant has signed the present application and the power of attorney in English which shows that he is a literate person and can read and write English. Therefore, he can very well go through the order or ask anybody else on his behalf to go through it. There could be no difficulty for him in going through the order and in coming to know of the fact that he could deposit the arrears of rent within 30 days of the date of order. His contention that his counsel at Chandigarh told him about this fact appears to be totally wrong. He did not mention the name of the counsel who told him or the date on which he was told about the order. He has neither filed his own affidavit nor that of the said counsel to prove that it was told to him for the first time on that date. He has not mentioned on which date he produced the copy of the order before the counsel. All these facts appears to have been concealed by the applicant due to which he has made himself dis-entitled to the relief made in this application.'

4. On the other issue that the tenant-petitioner has failed to occupy the premises for a continuous period of more than four months without a reasonable cause, the Appellate Authority has placed reliance on the statement made by Bashir Ahmed AW-l and Mohd. Jamil AW-2. AW-2 Mohd. Jamil is working in the vicinity close to the demised shop. Even there is no consumption of electricity shown or proved. The version of the tenant-petitioner that he has taken electricity from the shop of Baldev Singh has not been accepted as Baldev Singh has not deposed to that effect when he appeared as RW- 2. The tenant-petitioner has failed to prove by

producing any invoices showing business transactions during the alleged period. The aforementioned view of the Appellate Authority is discernible from paragraphs 20 and 21 of the judgment which reads as under:-

'20. There is direct evidence as deposed by Bashir Ahmed AW1 and Mohd. Jamil AW2 to the effect that the demised premises have been kept closed. According toBashir Ahmed, it is lying closed, since after paying the rent for four months. Mohd. Jamil AW2 deposed that he had been working near the shop in dispute for the last 4 to 5 years and had been seeing the demised shop lying closed. It is admitted that there is no electricity in these premises though the electricity has been provided to the nearby shops. In these days, it appears to be difficult in summers to work without electricity. It is argued by the learned counsel for the appellant that the respondent did not need electricity even in summers because he did not work there and has kept the shop closed. The contention of the respondent is that he has taken direct electricity from the shop of Baldev Singh RW-2. Baldev Singh has not however deposed to this effect. There is no permission from the PSEB authorities to give electricity to the respondent from the electric meter of Baldev Singh. This fact proves that though electricity is needed by the respondent but he has none. It is proved that the consumption of electricity in the premises in dispute is nil.

21. The respondent has not produced any record to show the sale/purchase transactions in the shop. According to him, he was away to Ludhiana to purchase spare parts on the day on which the shop was inspected. According to him, he cannot produce the bills in this respect. Had he gone there to purchase some material for this shop, it was not difficult for him to produce the bills in this respect. He further admitted that he is an income tax assessee. According to him, he cannot produce any record for the purchase of any material for the year 1996 to 1998. He once deposed that he can produce the bills for purchase but he did not produce any. When these are the facts, the law is very clear.'

5. Mr. S.K. Arora, learned counsel for the tenant-petitioner has argued that the landlord-respondent in his statement made on 7.11.2000 has stated that he has been seeing the shop closed for the last 2-3 months. The learned counsel has

further submitted that there is no sufficient evidence to prove the ground of failure 'ceased to occupy' as contemplated by Section 13(2)(v) of the Act. On the question of non payment of rent, the learned counsel has submitted that the counsel for the tenant-petitioner before the Appellate Authority did not inform the tenant-petitioner for making payment of rent which has resulted into delay and the rent could not be paid within 30 days of the date of order of ejectment passed by the Appellate Authority. Thereafter, his application for extending the period for making the payment of rent has also been dismissed by the learned Appellate Authority on 6.4.2004. The learned counsel has maintained that the tenant-petitioner is entitled to extension of time in making the payment of arrears of rent.

6. After hearing learned counsel for the tenant-petitioner, I am of the considered view that this petition is liable to be dismissed. It is pertinent to make a reference to Sections 13(2)(i) and (v) of the Act which read as under:-

13. Eviction of tenants.-

(1) xx xx xx xx

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied -

(1) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord of in the absence of any such agreement, by the last day of the month next following that for which the rent is payable:

Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid.

(ii) to (iv) xx xx xx xx

(v) 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:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.'

7. A perusal of the above mentioned provision shows that a tenant is liable to be ejected if he fails to make payment of arrears of rent within a period of 15 days after the expiry of time fixed by the parties by an agreement or in case there is no agreement, then by the last day of the month next following that for which the rent is payable. A tenant can also avoid his ejectment if he makes the payment of arrears of rent, interest at the rate of six per cent per annum and costs on the first date of hearing of the ejectment petition after due service. In such like case, the payment of arrears is required to be made in accordance with the assessment order passed by the Rent Controller. Section 13(2)(i) of the Act came up for consideration before the Supreme Court in the case of Rakesh Wadhawan v. Jagdamba Industrial Corpn,1 (2002-2)131 P.L.R. 370 (S.C.). After a detailed consideration of law, their Lordships have laid down the following propositions:

1. In Section 13(2)(i) proviso, the words 'assessed by the Controller' qualify not merely the words 'the cost of application' but the entire preceding part of the sentence i.e. 'the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application'.

2. The proviso to Section 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949 casts an obligation on the Controller to make an assessment of (i) arrears of rent, (ii) the interest on such arrears, and (iii) the cost of application and then quantify by way of an interim or provisional order the amount which the tenant must pay or tender on the 'first date of hearing' after the passing of such orders of

'assessment' by the Controller so as to satisfy the requirement of the proviso.

3. Of necessity, 'the date of first hearing of the application' would mean the date falling after the date of such order by the Controller.

4. On the failure of the tenant to comply, nothing remains to be done and an order for eviction shall follow. If the tenant makes compliance, the inquiry shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the landlord and the tenant before the Controller.

5. If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If, on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing the tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount, failing which alone he shall be liable to be evicted. Compliance shall save him from eviction.

6. While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings.'

8. The view taken in Rakesh Wadhawan's case (supra) was reconsidered and reiterated by a three Judge Bench of the Supreme Court in the case of Vinod Kumar v. Prem Lata,2 (2003)11 S.C.C. 397. The necessity to reconsider the view taken in Rakesh Wadhawan's case (supra) has arisen on account of the fact that earlier two decisions of the Supreme Court in the cases of Rajinder Kumar Joshi v. Veena Rani,3 (1990)4 S.C.C. 526 and Rubber House v. Excelsior Needle Industries (P) Ltd.,4 (1989-1)95 P.L.R. 584 (S.C.) were not considered. The three Judge Bench of the Supreme Court in Vinod Kumar's case (supra) over-ruled the judgments in the cases of Rajinder Kumar Joshi's case (supra) and Rubber

House's case (supra). It is pertinent to mention that the over-ruled judgments had arisen under Section 13(2)(i) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 which is pari materia with the corresponding provision of the Punjab Act. Following the view in Rakesh Wadhawan 's case (supra), their Lordships in Vinod Kumar's case (supra) has observed as under:-

'After examining afresh the merits of the three decisions under consideration and also making a comparative study of the provisions contained in the Punjab Act and the Haryana Act insofar as the ground for eviction on account of default in payment or tendering the arrears of rent by the tenant is concerned, it is held that Rubber House case and Rajinder Kumar Joshi case do not place a correct interpretation upon the provisions. The decision in Rakesh Wadhawan case correctly lays down the law and is reaffirmed. The interpretation placed by this Court in Rakesh Wadhawan case of Section 13(2)0) and the proviso in the Punjab Act applies for interpreting Section 13(2)(i) and the proviso as contained in the Haryana Act.'

9. When the facts of the instant case are examined in the light of the principles laid down in the aforementioned judgments, no doubt is left that the ejectment has been rightly ordered on the ground of non payment of rent. The assessment register Exs.Pl and P2 of the Municipal Council produced by Karam Chand AW-3, a clerk in the Municipal Council is corroborated by the statements made by RW-1 Baldev Singh and RW-2 Gursharan Singh. The entry made in Ex.P1 shows that entry of rate of rent of Rs. 300/- p.m. which is the actual rate of rent as per the statements made by various witnesses and the shopkeepers of the locality. On the aforementioned basis, the learned Appellate Authority concluded that the rate of rent was Rs. 300/- p.m. and as the tenant-petitioner had tendered the rent at the rate of Rs. 110/- p.m., he was liable to tender the rent along with interest and costs. For the aforementioned purpose, he was given 30 days time from the date of order i.e. 24.1.2004 but he failed to comply with the order within the stipulated period of 30 days which expired on 23.2.2004. He filed an application for extension of time on 15.3.2004 which was also dismissed on 6.4.2004 because no reasonable and sufficient explanation was tendered by him in making payment of arrears of rent. Therefore, the view taken by the Appellate Authority does not merit

interference.

10. The other ground that the tenant-petitioner ceased to occupy the premises is equally meritorious. A perusal of Section 13(2)(v) of the Act shows that the Rent Controller is under an obligation to record findings on two issues, namely, (a) whether the tenant has ceased to occupy the building for continuous period of four months: and (b) whether this has been done without there being any sufficient cause. The rationale underlying Section 13(2)(v) of the Act is that if a tenanted premises is not required by a tenant, then it should become available to another person who may be in need thereof. A larger public interest as well as interest of the landlord has been kept in view. The aforementioned view has been taken by the Supreme Court in Shiv Lal v. Sat Parkash,5 A.I.R. 1993 S.C. 375. It has further been held that the landlord is required to satisfy the Rent Controller about the non-user of the building for a continuous period of four months.

11. In the present case, the Courts below have found that the tenant-petitioner has kept the demised shop closed for a number of years. Reliance has been placed on the fact that there is no consumption of electricity and argument that the tenant petitioner takes electricity from the shop of Baldev Singh RW-2 has not been accepted because when Baldev Singh appeared as RW-2, he did not make any statement to that effect. The landlord-respondent has discharged the burden by producing adequate evidenceshowing that the demised shop has been kept closed by the tenant-petitioner for years together. However, no evidence has been produced by the tenant-petitioner showing sufficient and reasonable cause as the onus to prove this fact was on him. Following the view taken by the Supreme Court in Shiv Lal's case (supra), I am of the view that the ground contemplated by Section 13(2)(v) of the Act that the tenant-petitioner has ceased to occupy the premises for a continuous period of four months without a sufficient cause has also been proved. The findings recorded by the Appellate Authority on this issue deserves to be accepted. Even otherwise, no interference is called for as the power of revision under Section 15(5) of the Act is not wide enough to disturb the findings of facts to re-appraise the evidence on record. This Court can interfere if there is any impropriety and illegality in the order of the Rent Controller or the Appellate Authority. For the aforementioned proposition, reliance could be placed

on the judgments of the Supreme Court in Shiv Lal's case (supra) as well as Lekh Raj v. Muni Lal,6 (2001)2 S.C.C. 762.

12. I am further of the view that the order dismissing the application seeking extension of time does not suffer from any legal infirmity as the tenant-petitioner firstly was unable to pay the arrears of rent within 30 days which period expired on 23.2.2004. He moved the application only on 15.3.2004 without disclosing any reasonable and sufficient explanation for the delay. Therefore, no exception can be taken to the aforementioned order dated 6.4.2004.

13. For the reasons recorded above, this petition fails and the same is dismissed.

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