

inder Pal Vs. Sat Narain

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Court : Punjab and Haryana

Decided On : Aug-25-2004

Reported in : (2004)138PLR832

Judge : N.K. Sud, J.

Acts : Haryana Urban (Control of Rent and Eviction) Act, 1973 - Sections 13(2) and 15(6)

Appeal No. : Civil Revision No. 2480 of 1986

Appellant : inder Pal

Respondent : Sat Narain

Advocate for Def. : Suvir Sehgal, Adv.

Advocate for Pet/Ap. : O.P. Goyal, Sr. Adv. and; Ram Tilak, Adv.

Disposition : Petition dismissed

Judgement :

N.K. Sud, J.

1. This civil revision is directed against the order of the Appellate Authority, Rohtak dated 6.8.1986 dismissing the appeal of the petitioner-tenant against the order of the Rent Controller, Bahadurgarh dated 11.12.1985.

2. Sat Narain, respondent is the owner of Shop No. 2/70 situated at Mal Godam Road, Bahadurgarh. He filed an application under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 seeking eviction of the petitioner - tenant on the following grounds:-

(i) That the tenant was in arrears of rent @ Rs. 320/- per month from 1.11.1981 to 30.4.1982.

(ii) That the tenant without the written consent of the landlord had made structural alterations in the premises which had materially impaired the utility and value of the shop. He had constructed a wall in the verandah in front of the shop and had also put up a shutter so as to include the portion of the verandah in the shop.

3. Respondent tenant appeared and tendered the rent at the rate of Rs. 160/- per month for the period claimed by the petitioner-tenant together with costs and interest as assessed by the Rent Controller. This amount was accepted by the landlord under protest.

4. The tenant, however, contested the petition by pleading that the shop in question was let out to him in 1965 at a monthly rent of Rs. 50/- but in the year 1978 the petitioner-landlord had approached him for increasing the rent. He had agreed to this proposal on the condition that the verandah in front of the shop be covered and made a part of the shop. The landlord is stated to have agreed to this suggestion and made the necessary alterations after which rent was increased to Rs. 110/- per month which continued upto March 1981. However, the rent was further increased to Rs. 160/- per month at the instance of the landlord in April 1981 and there was not increase thereafter.

5. In the replication, the landlord denied that the shop in question had been let out in the year 1965 at a monthly rent at Rs. 50/-. It was pleaded that the respondent-tenant had taken the shop in question on rent in the year 1973. It was denied that in 1978 he had been approached by the tenant to increase the rent and had agreed to cover the verandah and fix the shutter. It was further claimed that the shop had been let out at a monthly rent of Rs. 160/- which was increased to Rs. 320/- per month in September/October 1981.

6. On the pleadings of the parties, following issues were framed:-

'(1) Whether the respondent is liable to ejectment, as alleged? OPP

(2) Whether the petitioner is estopped by his own act and conduct? OPR

(3) Relief.

7. After appraisal of the evidence adduced by the parties, the Rent Controller decided issue No. I in favour of the landlord. It was held that the claim of the tenant that he had taken the shop on rent in the year 1965 at a monthly rent of Rs. 50/- had not been proved in any manner. It was further held that the version that the rent was increased to Rs. 110/- per month in 1978 after the landlord had got the verandah covered and shutter fixed also remained unsubstantiated. The Rent Controller, however, accepted the claim of the landlord that the rent of the demised premises had been increased to Rs. 320/- with effect from October, 1981 in view of Exhibit AW-5/4 (photo copy of receipt allegedly issued by the landlord) showing an amount of Rs. 320/- as rent for the month of October 1981. He therefore, held that rent for the period 1.11.1981 to 30.4.1982 was payable @ Rs. 320/- per month. Since the tenant had tendered the rent at the rate of Rs. 160/- per month for the said period, the Rent Controller held that the tender, being insufficient was not valid and thus tenant was liable to be evicted on the ground of nonpayment of rent.

8. So far as the ground about the making of structural alterations without the consent of the landlord is concerned the Rent Controller observed that on the basis of the evidence on record, it stood proved that the said changes had been brought about in the year 1981 and that the rent was increased from Rs. 160/- to Rs. 320/- in October 1981. From this the Rent Controller concluded that 'it seems that the petitioner himself had got covered the verandah and got fixed the shutter and it was thereafter that the rent was enhanced.' It was, therefore, held that the changes had been brought about by the landlord himself and thus the tenant was not liable to be evicted on this ground.

9. Petitioner preferred an appeal before the Appellate Authority, who vide the impugned order, has reversed the findings of the Rent Controller in respect of issue No. 1 holding that the rent for the period in question viz. 1.11.1981 to 30.4.1982 was payable @ Rs. 160/- per month and that the landlord had not been able to prove that the rent was increased to Rs. 320/- with effect from October 1981. The Appellate Authority observed that as per Exhibits AW-5/2 and AW-5/3, rent for the months of July and August, 1981 had been paid @ Rs. 160/- per month and since there is no material on record to show any change in the terms of the tenancy, he accepted the claim of the rent for the month of October, 1981 which was infact, in respect of two months i.e. September and October 1981. Thus the Appellate Authority held that the tender of rent at the rate of Rs. 160/- per month for the disputed period made by the tenant was valid and he could not be evicted on the ground of non-payment of rent. However, the Appellate Authority upheld the eviction order by accepting the claim of the landlord that the petitioner-tenant had carried out material structural alterations in the demised premises without his written consent. The Appellate Authority further observed that from the testimony of Mool Chand AW-1, Ram Lal AW-2 and Sat Narain AW-3, it stood proved that the new construction had been made sometime in the year 1981 which gave rise to the dispute and ultimately filing of the eviction petition by the landlord on 12.5.1982. The Appellate Authority also observed that the verandah has its own utility as it provides air and light to the rooms adjoining to it and, therefore, inclusion of verandah into the shop constituted structural alterations impairing the value and utility of the premises.

10. Mr. O.P. Goyal, learned Counsel for the petitioner supported the findings of the Rent Controller on this issue. According to him, the Appellate Authority has failed to appreciate that the alterations in question had been carried out by the landlord himself and that is why he had deliberately omitted to mention the date, month or the year of the alterations either in the petition or even in his statement as to when the additional construction had been made.

11. Mr. Suvir Sehgal, learned counsel for the respondent-landlord, on the other hand supported the order of the Appellate Authority. He pointed out that this issue has duly been dealt with and it has been held that non-mentioning of date,

approximate month and the year of time construction by the landlord had not adversely affected the case of the tenant as it is an admitted fact that the verandah had been covered and added to the shop during the subsistence of the tenancy. He also placed reliance on the judgment of the Supreme Court in Vipin Kumar v. Roshan Lal Anand and Ors., (1993-2)104 P.L.R. 349 (S.C.) wherein it was held that the construction of a wall in the verandah of the demised premises and putting up a door therein was an alteration which materially impaired the value or utility of the building. He also placed reliance on the judgments of this Court in Narinder Nath (now dead through LRs Ram Suri and widow and Ors. v. Lt. Col Jasvant Singh, (1993-2)104 P.L.R. 401 and Kasturi Lal v. Muni Lal, (1994-1)106 P.L.R. 302, wherein following the judgment of the Apex Court in Vipin Kumar's case (supra), it has been held that conversion of verandah into a room comes within the purview of material alteration making the tenant liable to eviction.

12. I have heard the counsel for the parties, gone through the orders of the Authorities below and have also perused the record.

13. It is not in dispute that during the subsistence of the tenancy verandah in front of the shop has been included in the shop by constructing a wall and fixing a shutter in front thereof. Such conversion does tantamount to material alteration as held in the case of Vipin Kumar, (supra) Narinder Nath, (supra) and Kasturi Lal (supra). Even the Counsel for the petitioner has not raised any argument to contest this proposition. However, according to Use tenant, these alterations had been carried out by the landlord, whereas the landlord claims that the said alterations had been made by the tenant without his written consent.

14. From the facts already narrated above, it is clear that the tenant's claim that the alterations had been made in the year 1978 by the landlord himself where after rent was increased from Rs. 50/- to Rs. 110/- per month remained unsubstantiated and in fact has been disbelieved. On the other hand, both the Rent Controller as well as the Appellate Authority have, on the basis of material on record, recorded a concurrent finding of fact that the said alterations had been made in the year 1981. Since the Rent Controller had accepted the claim of the landlord that the rent had been increased from Rs. 160/- to Rs. 320/- with effect from October, 1981, he had

assumed that these alterations must have been made by the landlord in lieu of which the rent was increased. The finding of the Rent Controller about the increase in rent from Rs. 160/- to Rs. 320/- with effect from October, 1981 has been reversed by the Appellate Authority and has become final. Thus, the claim of the tenant that he has been paying rent @ Rs. 160/- per month with effect from April 1981 without any increase stands accepted. Once the increase in rent is not accepted, the very basis for the Rent Controller to hold that new construction had been raised by the landlord in consideration for increase of rent disappears. Even otherwise the mere fact that the rent has been increased after the disputed alterations does not deprive a landlord of his right to eject the tenant on the ground of impairing the value and utility of the property. Reference for this purpose can be made to the judgment of this Court in H.S. Sandhu (a minor) by Mrs. Amarjit Kaur Sandhu (deceased) represented by legal Representatives v. Satya Parkash and Ors., 1989(2) R.C.R. 197. However, in this case, it has been concurrently found by both the authorities that these alterations had been made towards the end of the year 1981 and even as per the tenant himself there has not been any increase in rent thereafter.

15. It is not in dispute that the landlord owns the adjoining shop as well which also has a verandah in front which is not covered. The Appellate Authority has correctly observed that it looked ridiculous that the landlord would have covered only a part of the verandah of his property and not the entire verandah of both the shops. The property undisputedly was in possession of the tenant when the disputed alterations had taken place and this could have only been done by the tenant. No landlord would provide any additional facility to the tenant without any consideration.

16. From the above it is clear that the Appellate Authority, after appraising material on record has taken a possible view and has recorded a finding of fact which is neither illogical nor irrational. Such a finding cannot be disturbed by this Court in exercise of its power under section 100 of the Code of Civil Procedure. For this purpose, reference may be made to the observations of the Apex Court in Rajgopal (Dead) by LRs v. Kishan Gopal and Anr., A.I.R.. 2003 S.C.W. 4986, which read as under:-

'In the case on hand, the first appellate Court, after taking into consideration and discussing the oral and documentary evidence threadbare recorded a finding that the plaintiffs failed to prove that there was an agreement between the natural and the adoptive fathers to the effect that adopted son shall be treated to be the son of both of them and entitled to inherit their properties and consequently, the adoption of Goverdhan Dass was in ordinary form. Mr. V.A. Mohta, learned senior counsel appearing on behalf of the respondents strenuously contended that the finding recorded by the first appellate court was unwarranted. The finding on this point recorded by the first appellate Court which was final Court of fact was a pure finding of fact and could not have been interfered with by the High Court in exercise of powers conferred upon it under section 100 of the Code of Civil Procedure, 1906 more so when no question of law much less substantial one was involved.'

17. In view of the foregoing discussion, I find no merit in this petition, which is accordingly dismissed.

No Costs

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