

Krishan Dev Vs. Gurdial Singh

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Court : Punjab and Haryana

Decided On : May-09-2003

Reported in : (2003)135PLR655

Judge : K.C. Gupta, J.

Acts : [East Punjab Urban Rent Restriction Act, 1949](#) - Sections 13(2) and 15(5)

Appeal No. : Civil Revision No. 674 of 1986

Appellant : Krishan Dev

Respondent : Gurdial Singh

Advocate for Def. : D.R. Mahajan, Adv.

Advocate for Pet/Ap. : S.C. Pathela, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K.C. Gupta, J.

1. This revision petition is directed by the petitioner-landlord against the order dated 19.8.1985 pass by the appellate Authority, Ludhiana, whereby it dismissed the appeal and confirmed the order of the Rent Controller dated 29.3.1982, vide

which the application of the petitioner-landlord for ejectment of the respondent from the demised premises was dismissed.

2. Briefly stated, the facts are that the petitioner filed an application for ejectment of Krishan Dev-respondent from one room and one verandah situated on the first floor and one latrine on the second floor, forming part of property No. B-VIII-743, Lakkar Bazar, Ludhiana, under Section 13 of the [East Punjab Urban Rent Restriction Act, 1949](#) on the allegations that he was the owner-cum-landlord of the premises in dispute and the respondent was a tenant in it at a monthly rent of Rs. 125/- and he was liable to be evicted from the said premises as he had not paid rent from 1.2.1974 @ Rs. 125/- per month alongwith house tax @ 15% per annum till the filing of the application that he had impaired the value and utility of the demised premises by his act by constructing one barasati on the roof of the demised premises without his consent and that he had changed the user of the premises in dispute because the same were let out to him for residential purpose but he had started using it for commercial purpose by installing a shoe factory in it.

3. The respondent contested the application. However, he admitted that he was a tenant in the demised premises but asserted that he was a tenant at a monthly rent of Rs. 40/- and not Rs. 125/- per month. He next stated that he was not liable to pay house tax and had tendered the required rent. He further stated that he had not impaired the value and utility of the demised premises by constructing any barasati. He next stated that he had taken the demised premises for residential and commercial purposes and was using as such from the very beginning.

4. With the above pleadings, the following issues were struck;-

1. Whether the respondent has not taken the premises in dispute on rent in his individual capacity, if so, its effect? OPR.

2. Whether the rate of rent with respect to the premises in dispute was settled at Rs. 125/- p.m.? OPR.

3. Whether the respondent is liable to ejectment on grounds mentioned in para No. 4? OPA.

4. Whether the present ejectment application is mala fide? OPR.

5. Relief.

5. Both the parties adduced their evidence. Issue No. 1 was not pressed at the time of hearing of arguments. Under issue No. 2, it was held that the respondent was a tenant in the demised premises at a monthly rent of Rs. 40/- and not at Rs. 125/- per month. Under issue No. 3, it was held that the respondent had not constructed any barsati and as such had not impaired the value and utility of the demised premises. It was also held that the respondent had not changed the user of the demised premises inasmuch as he had taken the demised premises for residential and commercial purposes and he was using as such. Under issue No. 4, it was held that the application for ejectment was filed with mala fide intention in order to enhance the rent. Accordingly, ejectment application was dismissed with costs.

6. Aggrieved by the said order of the Rent Controller, the landlord filed an appeal which was dismissed by the appellate authority, vide its order dated 19.8.1985.

7. Still dis-satisfied, the petitioner-landlord has filed the present revision petition.

8. I have heard Mr. S.C. Pathela, Advocate for the petitioner Mr. D.R. Mahajan, Advocate for the respondent and carefully gone through the record of the case.

9. The counsel for the petitioner at the very outset fairly conceded that the petitioner did not press the grounds of ejectment on account of non payment of rent and also that the respondent had materially impaired the value and utility of the demised premises. He has only pressed the ground that the respondent had changed the user of the demised premises. Accordingly to him, demised premises were given to the respondent only for residential purpose, whereas he had used the same for commercial purpose by starting a shoe factory in it.

10. In reply, the respondents had stated that he had taken the demised premises on rent in the year 1967 at a monthly rent of Rs. 40/- including house tax etc. He anther stated that the demised premises were let out to him for residential and commercial purposes and were being used by him for the said purposes from the

very beginning.

11. AW.1-Tilak Raj, witness of the petitioner-landlord admitted in his cross-examination that the entire building including the demised premises was being used for commercial purposes for the last 15-16 years. His statement was recorded on 21.4.1981. Thus, according to him, the building in question was being used for commercial purpose since 1965 or 1966, while, admittedly, the premises in dispute were let out to the respondent in 1967. Thus, the building of which the demised premises are a part was being used for commercial purpose prior to its giving on rent to the respondent. He had no personal knowledge that the respondent is residing at Pakhowal road but he had only heard about it. His mere hearsay evidence regarding the fact that the respondent is residing at Pakhowal road cannot be believed. His statement that the respondent had taken the demised premises on rent for residential purpose alone is not believable because the demised premises were being used for commercial purpose prior to the same were let out to the respondent and thus, there is no question that he had converted it into commercial purpose. The petitioner could not tell when the respondent had started carrying on business in the demised premises. He admitted that he had not given any notice in writing when the respondent had started using the demised premises for commercial purposes. He denied the suggestion that from the very beginning, the demised premises were given on rent to the respondent for residential as well as commercial purposes. If the demised premises had been given to the respondent for residential purpose only and the respondent had started using it for commercial purpose then the petitioner must have objected to it and would have given a notice to the respondent asking him to refrain from using it for commercial purpose and he would have also been able to tell as to when the respondent had started using the demised premises for commercial purpose. The very fact that he could not tell suggests that the same were being used from the very beginning for residential as well as commercial purposes.

RW1-Gurdial Singh, in his statement, stated that he had taken the demised premises about 14-15 years ago prior to 2.5.1982 for residential as well as commercial purposes. He further deposed that he had got a ration card of the said premises saying that he resided in it. He admitted that he had a kothi at Pakhowal

road but stated that it was joint with his father and other family members and his brother alongwith his family resided in the same.

RW3-Kamaljit Kaur stated that there is a ration card in the name of the respondent which is regarding the demised premises and he had been regularly withdrawing the ration.

12. One cannot ignore this fact that in Ludhiana in the old area, the people have set up small scale industries in almost every residential house. Both the Courts below have concurrently held that there is no change of user. This Court cannot interfere under the revisional jurisdiction in the concurrent finding of fact.

13. It has been observed by Hon'ble Supreme Court in *Atma S. Berar v. Mukhtiar Singh*, (2003-1)133 P.L.R. 741 that the revisional jurisdictional of the High Court under Section 15(5) of [East Punjab Urban Rent Restriction Act, 1949](#) is to enable it to satisfy itself as to legality or propriety of an order made by Controller.

14. After going through both the judgments, I find that there is no illegality or impropriety in the findings of both the Courts below to the effect that the respondent had not changed the user of the demised premises. I concur with the findings given by the appellate authority. Therefore, I hold that there is no change of user.

15. In view of the discussion made above, this revision petition fails and the same is dismissed with costs.