

Dalbir Singh Vs. Chanchal Singh

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Court : Himachal Pradesh

Decided On : Nov-23-1989

Reported in : AIR1991HP10

Judge : Bhawani Singh, J.

Acts : Himachal Pradesh Urban Rent Control Act, 1971 - Section 14(2)

Appeal No. : Civil Revision No. 34 of 1984

Appellant : Dalbir Singh

Respondent : Chanchal Singh

Advocate for Def. : S.S. Kanwar, Adv.

Advocate for Pet/Ap. : A.K. Goel, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Bhawani Singh, J.

1. Petitioner, Dalbir Singh, is a tenant in premises owned by the landlord, Chanchal Singh. He has been evicted in pursuance of the order of the Rent Controller, Nalagarh, dated 31-12-1983. The creation of the tenancy falls back to

25-4-1974 (Ex.PA) and the present application was filed on 22-3-1982.

2. The basis of seeking eviction is that the tenant, without the consent of the landlord, uses the building for the purpose other than that for which it was leased and that the acts, being committed by the tenant, were likely to impair materially the value or utility of the shop. The tenant has contested this complaint of the landlord. He alleges that the premises were let for business purposes and the same were being used for the same purpose and the value or utility of the property in question was not being impaired in any way.

3. On the pleadings of the parties, the following issues were framed by the Rent Controller:

'1. Whether the respondent has used the premises in dispute for the purposes other than for which it was let out OPP.

2. Whether the respondent is liable for ejectment on the ground mentioned in para-18A(ii) of the petition? OPP.

3. Relief. '

4. The Rent Controller held that the tenant had converted the shop into a godown and by storing articles therein, he, by such acts, was materially to impair the value and utility of the premises. The result was that the Rent Controller passed the order of eviction from these premises and directed the tenant to put the petitioner in possession of the premises on or before 31-2-1984. The tenant assailed the judgment before the Appellate Authority (Rent Act) in appeal No. 2-S/14 of 1984 and it was decided on 6-3-1984 against the tenant. Still not satisfied with these judgments, the tenant brings the matter here by way of this revision petition.

5. Shri S. S. Kanwar, who appears for the landlord, argued seriously in favour of landlord and for maintaining the findings and the judgments of the authorities below in this case. He contends that although the jurisdiction of this Court is wider than available under Section 115 of the Code of Civil Procedure, however in the absence of palpable error of law and miscarriage of justice the concurrent findings of facts already arrived at cannot be tinkered at the revisional stage. Reference to

cases like 1987 (3) RLR 665 Gurditta Mall v. Gita Devi; (1988) 2 SCC 172 : (AIR 1988 SC 852), Hiralal Kapur v. Prabhu Choudhury, (1987) 3 SCC 538: (AIR: 1987 SC 1782); Helper Girdharbhai v. Saiyed Mohmad Mirasaheb Kadri, (1987) 2 SCC 219 : (AIR 1987 SC 1150); Sushila Devi v. Avinash Chandra Jain, AIR 1968 Delhi 209, Sant Ram v. Mekhu Lal and Co. and decision of this Court in Civil Revision No. 79 of 1989, Som Nath Sharma v. Prem Lata, decided on August 16, 1989, has been made.

6. On the other hand, Shri A. K. Goel submits that the jurisdiction of this Court is wide enough to examine the conclusions drawn by these authorities, more particularly in this case, because the findings arrived at are not only legally impermissible in view of the evidence on the record but have caused immense miscarriage of justice to his client. Justice, therefore, requires that this Court examines the evidence on the record quite exhaustively and cautiously to avoid happening of injustice to his client.

7. Looking to the parameters of the jurisdiction of this Court as well as the interest of justice. I proceed to examine the matter in depth by reference to the evidence on record and the submissions of the learned counsel for the parties.

8. Shri A. K. Goel submits that the shop has been rented out for business purposes. Rent Note (Ex.PA) does not specifically provide the nature of the business to be carried on in the shop and keeping of articles, including books and stationery, is for the business. The report of the Local Commissioner (Ex.P. 4/A) mentions about stacking of certain cement bags and the closure of the shop and display of the notice, pointing out the shifting of the shop, does not in any way, affect the purpose and the nature of the use and keeping of the cement was temporary. Reference to the second inspection is also made by which time the cement bags were no longer there and the premises were filled with stationery articles.

9. Shri S. S. Kanwar submits that the closure of the shop, inscription of the note thereon pointing out the shifting of the shop to some other place and the absence of the owner from these premises clearly point out that it no longer remains a shop and the user thereof has been changed to godown by the tenant, thus, affecting

the utility and the value of the shop in question.

10. Shri A. K. Goel refers to certain decisions like 1989 (2) RCR 272 (Subhash Chander v. Baldev Singh and Anr.), 1989 (1) RCR 685 (Harchand Singh and Anr. v. Smt. Savitri Devi and Ors.), 1981 (2) RLR 792 (Shri Amin Chand (deceased) represented through Ors. v. Gian Chand and Anr.), 1989 (I) RCR 606 (Sardari Dal v. Smt. Sarita and Anr.), 1989 (1) RCR 618 (Gora Lal Puri v. Jugal Kishore), 1989(1) RCR 611 (Sewa Ram v. Dewan Singh), 1989 (1) RCR 185 (Jiwan Parkash Aggarwal v. Kav Timber Traders and Ors.), 1989 (1) RCR 197 (Rameshwar Dass v. Hakim Ram Sarup Garg) and 1986 (2) RLR 172 (Parkash Chander v. Bhim Sain through his legal heirs). All these cases have been decided by the High Court of Punjab and the leading judgment that has been followed is of the apex Court reported in AIR 1988 SC 1034 (Mohan Lal v. Jai Bhagwan) where this principle has been enunciated. By this user, the nature of the building remains in tact. It still remains non-residential building. Further, manner of deviations or small changes do not amount to change of user by the tenant within the contemplation of the legal provisions (See: 1989 (2) SCFBRC 17 : AIR 1989 SC 1841 (Gurdial Batra v. Raj Kumar Jain)).

11. It is pertinent to notice that in all these decisions the shop remained shop and the deviations are slight in nature and extent, meaning thereby, the shop has not been converted into a godown, as has happened in the present case. Even if the nature of the premises remains non-residential, as contended by Shri A. K. Goel, that does not mean that the act of the tenant does not brook the complaint of the landlord as permissible under the Act. Perusal of the evidence on record clearly establishes that the tenant has, in fact, closed the shop in question and shifted his business to some other premises at a distant place, owned by him, and the premises in dispute remain almost locked and are being used only as a godown. This fact is quite clear from the two reports of the Local Commissioners appointed at two stages by the authorities below as well as from the statements of the witnesses of the landlord, in addition to his own statement. The contention of Shri A. K. Goel that the tenant is carrying on business from the disputed premises during particular period, cannot be accepted since the same is impossible and the reports of the Local Commissioners establish it beyond any shadow of doubt that

any business, as contended, is being carried on. The case, AIR 1980 Punjab and Haryana 229 (Des Raj v. Sham Lal), on which reliance has been placed by Shri S. S. Kanwar, touches the issue involved in this case quite clearly and I seek assistance therefrom to arrive at the same conclusion.

12. In view of the examination of the matter as aforesaid, I am of the opinion that the shop is being used as a store by the tenant and the concurrent findings of facts on this aspect by both the authorities below are quite in tune with the evidence on record and the statutory provisions involved in this case and call for no interference at this stage.

13. Accordingly, there is no merit in this revision petition and the same is dismissed leaving the parties to bear their own costs. The tenant is given one month's time to put the landlord in possession of the premises in question.

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