
the decisions of this Court in *Mervyn Continho and others v. The Collector of Customs, Bombay* and in *S. C. Jaisinghani vs. Union of India*.”

(6) Thus examined from any angle, the claim of the petitioners is meritless and deserves to be declined. We, therefore, dismiss these petitions but with no order as to costs.

S. C. K.

Before J. V. Gupta, J.

DARSHAN KUMAR,—Petitioner

versus

RANBIR GUPTA AND ANOTHER.—Respondents.

Civil Revision No. 1215 of 1988 and

C.M. No. 152-CII of 1989

February 3, 1989.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13—Application for eviction of tenant—Eviction sought on the ground of ceasing to occupy the premises for a period of more than four months—Particulars of that period not disclosed in the application—Effect of non disclosure—Tenant of unsound mind—Effect of—stated.

Held, that even if it be assumed that the shop remained closed for some period, it could not be successfully argued that the tenant ceased to occupy the same without any sufficient cause. Of course, the case set up by the wife was that she was occupying the shop, in dispute, with her husband till he disappeared on August 6, 1980, in a state of unsoundness of his mind and that she was still carrying on business, after he had left, in the demised premises, but that will not make any difference because in the facts and circumstances of this case, it is amply proved that the tenant was not of sound mind. That being so it, becomes relevant that the landlords should have mentioned the particular period for which the tenant ceased to occupy the premises so that it could be shown that the tenant had failed to occupy the same for a sufficient cause for a particular period. (Para 8).

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Revision petition under Section 15(5) of the Punjab Act III of 1949 as amended by the Act 29 of 1956 against the judgment of the court of Shri R. M. Gupta, Appellate Authority Ropar, dated 3rd May, 1988 reversing that of Shri M. S. Sahmee, Rent Controller, Ropar, dated 28th February, 1983 allowing the appeal with costs and ordering that the tenant is granted 3 months time to vacate the premises.

C. M. No. 152/CII of 1989.

Application under order 22, Rules 3 and 11 read with section 151 CPC, praying that applicant No. 1, who is the wife of Darshan Kumar and applicants Nos. 2 and 3, who are the daughters of Darshan Kumar are in continuation occupation of the shop in dispute since the day Darshan Kumar left the house on 6th September, 1980 and they are regularly running the shop in dispute, by selling some articles for the school children and Karyana goods and thus earning their livelihood as Darshan Kumar did not leave any other property for the maintenance of the applicants.

H. L. Sarin, Sr. Advocate with Jaishree Thakur, Advocate, for the Petitioners.

G. C. Garg, Senior Advocate, with K. L. Malhotra, Advocate and C. B. Goel, Advocate, for the Respondents.

JUDGMENT

J. V. Gupta, J.—

(1) This tenant's revision petition against whom ejection application was dismissed by the Rent Controller, but eviction order was passed in appeal by the Appellate Authority.

(2) During the pendency of this revision petition, Civil Miscellaneous Application No. 152-CII of 1989 was moved on behalf of the legal representatives of the tenant Darshan Kumar alleging that he had not been heard of by the applicants who would naturally have heard of him if he had been alive and that it shall be presumed as provided in section 108 of the Evidence Act, that he has died. Notice of the application was given to the counsel for the landlord. No reply has been filed to the said application. nor the same is being contested. Consequently, the same is allowed.

(3) The landlord Ranbir Gupta and Shrimati Satya Gupta sought the ejection of their tenant Darshan Kumar by filing an ejection application dated September 8, 1980, *inter alia* on the

ground that the tenant had ceased to occupy the demised premises for a continuous period of more than four months without reasonable cause. It was alleged that the said tenant was in arrears of rent since April 1, 1972. During the pendency of the ejectment application, the wife of the tenant Smt. Raj Rani moved an application that since her husband Darshan Kumar was of an unsound mind and was being looked after by her who worked with him in the shop, in dispute, his whereabouts were not known. He had not regained soundness of mind; otherwise, he would have returned home. Therefore, she may be allowed to contest the ejectment application. That application was resisted by the landlords. The learned Rent Controller framed the necessary issue; whether the respondent is of unsound mind? If so, its effect? After recording the evidence, the learned Rent Controller,—*vide* order dated October 30, 1982, came to the conclusion,—

“In the present case, the respondent though shown attending to his business in his shop, assisted by his wife, was in a disturbed mental condition and the fact that he left the house, never to return, further goes to show his disturbed mental condition. It is, thus, evident that Darshan Kumar was suffering from mental infirmity in consequence of which he was incapable of protecting his own interests and moreover his whereabouts are not known. His rights have, therefore, to be protected under Order 32 rule 15 C.P.C. and he has to be sued through a guardian or next friend. It is, thus, proved on record that Darshan Kumar respondent was suffering from mental infirmity. This issue is accordingly decided in favour of the respondent.”

Consequently, the wife of the tenant contested the ejectment application and filed the written statement. She pleaded that the tenant had been occupying the shop in dispute, with his wife till August 6, 1980, when he disappeared in a state of unsoundness of his mind and has not ceased to occupy the shop, in question, without sufficient cause for a period of four months before filing the ejectment application. She tendered the arrears of rent on the first date of hearing, but the same were not accepted by the landlords on the ground that they were not tendered by a competent person. The learned Rent Controller found that the tender was valid and that there was no cogent and satisfactory evidence produced by the landlords to prove that the tenant had ceased to occupy the shop, in dispute, for a continuous period of more than four months without any reasonable

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cause. Consequently, the ejectment application was dismissed,—*vide* order dated February 28, 1983. In appeal, the Appellate Authority reversed the findings of the Rent Controller on both the said issues. It was found that the tender made by Smt. Raj Rani, the wife of the tenant, was invalid and that the tenant had ceased to occupy the premises for a continuous period of more than four months without any reasonable cause. Consequently, the eviction order was passed on May 3, 1988.

(4) The learned counsel for the petitioner submitted that the landlords did not mention any specific period for which the tenant ceased to occupy the premises without any reasonable cause. In the absence of any specific period, argued the learned counsel, the Rent Controller rightly found that there was no cogent evidence to prove the said fact and dismissed the ejectment application, but the view taken by the Appellate Authority in this respect was wholly wrong, illegal and arbitrary. In order to contend that the landlord should mention the period for which the tenant has ceased to occupy the demised premises, the learned counsel relied upon *Karam Chand Joshi v. Kartar Singh*, (1) and *Puran Singh v. Ram Murti*, (2). It was also submitted that physical possession as such was not necessary to occupy the demised premises, if the tenant was otherwise in occupation thereof. Reference in this behalf was made to *Buta Ram v. Balwant Singh*, (3).

(5) On the other hand, the learned counsel for the landlord — respondent submitted that the case set up by the tenant was that he was in occupation of the premises throughout and had never ceased to occupy the same. Even the electricity bills produced by him did not relate to him, but related to one Bikar Singh who had nothing to do with the premises. The tenant or his wife never produced the account books which were being maintained to run the business. Therefore, taking into consideration all the facts and circumstances of the case, the Appellate Authority rightly found that the tenant had ceased to occupy the premises for a period of four months without any sufficient cause. Even if no specific period was mentioned in the ejectment application, it did not cause any prejudice to the tenant and it was never stated in the written statement that the said period be provided by way of amendment. In

(1) 1977 Rent Law Reporter 779.

(2) 1981(2) Rent Law Reporter 448.

(3) 1987 Haryana Rent Reporter 617.

support of the contention, the learned counsel relied upon *Braham Parkash v. Shital Parshad*, (4). He also relied upon *Bhagat Ram v. Ramji Dass*, (5) and *Jaswant Kaur v. Sarla Devi*, (6) to contend that the initial burden was on the landlord to prove that the tenant had ceased to occupy the premises, but ultimately, it was for the tenant to prove that he had not ceased to occupy the same without any sufficient cause.

(6) I have heard the learned counsel for the parties and have also gone through the relevant evidence on the record .

(7) The only allegation made in the ejectment application in paragraph 3(b) was that the respondent has ceased to occupy the premises in question for a continuous period of more than four months without reasonable cause. It was denied in the written statement filed by Smt. Raj Rani, the wife of the tenant, as follows:

“This para is wrong. The respondent has been occupying the shop in dispute with his wife till 6th August, 1980 when he disappeared in a state of unsoundness of his mind and has not ceased to occupy the shop in question without sufficient cause for a period of four months before filing of this application. The applicants are callous persons knowing full well that Darshan Kumar left the house on 6th August, 1980 in a state of unsoundness of mind have filed this application on false grounds. Even now Smt. Raj Rani next friend and wife of Darshan Kumar is running the shop as before and shop opens daily. This ground is baseless and false.”

The landlord Ranbir Gupta, appeared in the witness-box as A.W. 1. According to him, the shop was closed up to December, 1980 and it remained so earlier also six or seven months before the institution of the case though he further stated that the wife of Darshan Kumar and his daughter are working at the shop now for the last $1\frac{1}{2}/1\frac{1}{4}$ years. The shop falls on his way to his house and is also close to his residence. This statement was made on January 31, 1983 . To the same effect is the statement of Nek Chand, A.W. 2, whose shop is situated nearby. According to him, the shop remained closed for about one year and now for the last two years, Darshan Kumar's

(4) 1982(1) RLR 131.

(5) 1982(2) RLR 428.

(6) 1987(2) RLR 246.

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wife and daughter are working in the shop. Thus, the main controversy between the parties in the present case is as to whether the tenant Darshan Kumar ceased to occupy the premises for a continuous period of four months without any sufficient cause.

(8) It is in evidence and is no more contested that Darshan Kumar was of unsound mind; Though the stand taken by the wife of the tenant was that her husband had left the house on August 6, 1980, for which even the report was lodged with the police, yet the fact remains that he was of an unsound mind much prior thereto. That being so, even if it be assumed that the shop remained closed for some period, it could not be successfully argued that the tenant ceased to occupy the same without any sufficient cause. Of course, the case set up by the wife was that she was occupying the shop, in dispute, with her husband till he disappeared on August 6, 1980, in a state of unsoundness of his mind and that she was still carrying on business, after he had left, in the demised premises, but that will not make any difference because in the facts and circumstances of this case, it is amply proved that the tenant was not of sound mind. That being so, it becomes relevant that the landlords should have mentioned the particular period for which the tenant ceased to occupy the premises so that it could be shown that the tenant had failed to occupy the same for a sufficient cause for a particular period. In these circumstances, the view taken by the Rent Controller was perfectly valid and the same has been up set in appeal illegally and on surmises and conjectures.

(9) Consequently, this revision petition succeeds and is allowed. The order of the Appellate Authority is set aside and that of the Rent Controller is restored with no order as to costs.

S.C.K.

Before G. R. Majithia, J.

KULDIP RAI,—*Petitioner.*

versus

SHARAN SINGH AND OTHERS,—*Respondents.*

Civil Revision No. 893 of 1984.

February 15, 1989.

Code of Civil Procedure (V of 1908)— O. 5, Rl. 20—Substituted service—Order for such service—Basis for passing such order.