(26) In view of what I have said above, this appeal succeeds, the judgment of the learned Single Judge is reversed, the order made by Mr. Rajni Kant, granting extension of time to respondent No. 2 for the deposit of the balance of the purchase price is quashed and the auction sale, dated 24th August, 1959, in favour of respondent No. 2 is set aside. The Rehabilitation Department can now take further proceedings regarding the auction sale held in favour of the appellants on 17th January, 1969, in accordance with law. In the circumstances of this case, I would make no order as to costs.

GOPAL SINGH, J.— **I agree.**

K. S. K.

REVISIONAL CIVIL

Before Harbans Singh, C.J.

BALWANT SINGH—*Petitioner.*

versus

GURDIAL SINGH ETC.—*Respondents.*

Civil Revision No. 383 of 1971.

October 27, 1971.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2)(v)—Demised premises continuously in occupation and use for and on behalf of the tenant during the absence of the tenant—Section 13(2)(v)—Whether applies.

Held, that clause (v) of sub-section (2) of Section 13 of the East Punjab Urban Rent Restriction Act, 1949 covers a case where the premises are locked and have not been actually used for the requisite period. It has no application to a case where the premises are continuously in use though not by the tenant itself but by some body on his behalf. However, where the tenant transfers his lessee rights or passes the possession and user of the premises in favour of somebody else, such a case is covered by clause (ii)(a) and not clause (v) of sub-section (2) of Section 13 of the Act. The basic idea underlying clause (v) is the idea of "actual user" of the premises. That being so, clause (v) covers a case where the premises are not in "actual use" either by the tenant or by some on his behalf

The mere absence of the tenant from the premises is not material for the purpose of this clause. Hence where a demised shop is continuously in occupation and user for and on behalf of the tenant and business is being carried on therein, clause (v) of section 13(2) of the Act will not apply.

(Paras 3 and 4)

Petition under Section 15(5) of East Punjab Urban Rent Restriction Act, 1949 for revision of the order of Shri Sukhdev Singh Sidhu, Appellate Authority (District Judge) Jullundur, dated 19th November, 1970 reversing that of Shri D. S. Chhina, Sub Judge 2nd Class, Nawanshahr-cum-Rent Controller, Nawanshahr, dated 25th August, 1969, dismissing the ejectment application and leaving the parties to bear their own costs.

M. L. Sethi, Senior Advocate with S. B. Lal, Advocate, *for the Petitioner.*

H. L. Mital, Advocate, *for Respondent No. 1.*

JUDGMENT

HARBANS SINGH, C.J.—(1) The facts admitted and proved are that the shop in dispute was taken on rent on 22nd February, 1964 from the landlord, Balwant Singh, by Gurdial Singh. As stated by his son Tirath Singh respondent, Gurdial Singh carried on the business of a goldsmith in this shop. Later he added the business of automobile repairs. His two sons, including Tirath Singh respondent, worked with Gurdial Singh at this shop. About a year before the application for ejectment filed by the landlord, Gurdial Singh went to England. The business and at the shop, however, continued to be carried on as before by his sons including Tirath Singh. Gurdial Singh and his sons were joint in residence and mess. The income from the business carried on at the shop is being spent on the maintenance of the family including the wife of Gurdial Singh. Gurdial Singh sends about Rs. 200 per month from England which are also utilised for the benefit of the family. When Gurdial Singh was in India, the business that was being carried on by him along with his sons was also for the benefit of the family.

(2) The application for ejectment was brought on 25th of April, 1969 by the landlord for the ejectment of Gurdial Singh, impleading his son Tirath Singh as respondent No. 2, on the following grounds:—

(a) that Gurdial Singh had not paid the arrears of rent: (This is no longer in point as the arrears were paid on the first date of hearing);

(b) that Gurdial Singh had not been in occupation of the shop in dispute for a continuous period of nearly a year without any reasonable cause and had gone to a foreign country; and

(c) that the lessee rights have been sublet by respondent 1 to respondent 2 without the permission of the landlord.

The Rent Controller granted the decree for ejectment holding that Gurdial Singh had ceased to occupy the premises for a period exceeding four months and consequently he was liable to ejectment under (v) of sub-section (2) of section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act). On appeal, the learned Appellate Authority held that this clause (v) was not applicable to the circumstances of the case and consequently accepted the appeal and dismissed the ejectment application. The landlord has now filed this revision.

(3) The learned counsel for the landlord vehemently urged that inasmuch as Gurdial Singh no longer carried on business here, he cannot be said to be in occupation. In the first place he urged that the shop was taken on rent by Gurdial Singh in his own name and that even if it be held that he had taken this shop for carrying on the business for the benefit of his entire family or that his sons worked with him, that would not make the sons as the tenants. This is not even challenged by the learned counsel for the tenant. It was never suggested that the sons had become the tenants. All that was urged and accepted by the Appellate Authority was that it was not correct that the shop had not been occupied for a period of more than four months, because the shop has continued to remain occupied and the business is being carried on there, as before, for and on behalf of Gurdial Singh. Clause (v) of sub-section (2) of section 13 of the Act runs as follows:—

"12(2) A lanlord 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 application, is satisfied:—

* * * * * * *

(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."

Obviously, this is a clause which is to cover a case where the premises are locked and have not been actually used for a period of over four months, and does not cover a case where the premises are continuously in use though the tenant himself does not stay there. At worst such a case might be treated as one, if the landlord is able to establish the relevant facts where the tenant has transferred his lessee rights in favour of somebody else or that he has transferred the possession and user of the premises in favour of somebody else. That would be covered by clause (ii) (a) of sub-section (2) of section 13 of the Act, rather than by this clause (v). The fact that the basic idea under clause (v) is the "actual user" of the premises is clear from the two cases cited by the learned counsel for the landlord under this clause. *Smt. Shakuntla Bawa* v. *Ram Parshad and others* (1), was a case, decided by Chief Justice Falshaw, where the widow of the original tenant had become a tenant after the death of her husband, but she went to live at Delhi with her children and visited the demised premises situated at Hissar only occasionally. It was urged that the premises were still in the occupation of the tenant within the meaning of clause (v) because her furniture and other belongings were kept in the house though it remained locked for most of the period Chief Justice Falshaw repelled this contention and in paragraph 8 of the report observed as follows:—

"In my opinion it is proved, as was held by the learned Appellate Authority, that for all practical purposes the tenant in this case had ceased to reside in the house in dispute and had gone to reside at Delhi, only visiting Hissar very occasionally for short periods and even then not using the house in the sense of sleeping there. I am of the opinion that the mere presence of furniture and willingness to pay rent does not constitute occupation within the meaning of section 13(2)(v). This view was also expressed by Harnam

(1) 1963 P.L.R. 103.
(2) (1956) 58 P.L.R. 236.

> Singh, J., in *Baij Nath* v. *Badhawa Singh* (2). The learned Judge held that although occupation includes possession as its primary element it also includes something more and the owner of a vacant house who as long as leaves it vacant is not in occupation. The fact that 'occupation' means occupation in the sense of actual user appears to be clear from the words of section 13(2)(v), since it specifically exempts houses situated in a hill station which normally remain unoccupied by owners or tenants from October to April although their furniture remains there."

This decision of Chief Justice Falshaw was followed by Mahajan, J. *Kimti Lal* v. *Seth Nanak Chand* (3). The facts are not given in the report, but I sent for the original record and it is clearly mentioned in the judgment of the Appellate Authority as follows:—

> "Thus the statements of Satya Pal (AW 1), Prem Lal (AW 4) and Kanwal Singh (AW 5), coupled with the application dated 6th April, 1966, of Kimti Lal respondent himself ..... clearly proves that the premises in dispute remained locked from September, 1965 to 5th April, 1966, during which period no electricity at all was consumed. The fact that no electricity was consumed during all these months clearly shows that Kimti Lal had not done any business not opened the shop during this period."

The learned counsel for the landlord frankly conceded that besides these two cases there is no other decided case dealing with non-occupation of demised premises providing a ground for ejectment under clause (v) of sub-section (2) of section 13 of the Act. In the second case also the contention of Mr. Sarin, counsel for the tenant, that tenant's furniture and goods were lying in the shop and, therefore, he must be taken to be in occupation of the shop was rejected and the observations of the Chief Justice in the first case were relied upon. These two cases make it absolutely clear that clause (v) would cover a case where the premises are not in *actual use* either by the tenant or by someone on his behalf.

(4) The mere absence of the tenant from the premises is not material for the purpose of clause (v). It was put to the counsel for

(2) (1956) 58 P.L.R. 236.

(3) 1967 C.L.J. (Pb. & Hyna.) 437.

the landlord as to whether a tenant would be in occupation of the premises within the meaning of clause (vi) if he himself sits at his house and his business at the demised shop is carried on by his employees, or if the tenant starts another business in some other city, say Delhi or Bangalore, and his business there takes him to that place and he has to stay there for more than four months while his business at his first shop is being carried on, on his behalf by his paid employees. The learned counsel had to concede that in both these cases the tenant would still be treated to be in occupation. It would obviously make no difference if instead of the employees, the business is carried on by his sons, and instead of being away to Delhi or Bangalore, his business or other avocation takes him to a foreign country. As I have already indicated above, there is ample evidence on the record, which has been accepted by the learned Appellate Authority, that when the tenant was here he was also carrying on the business of automobile repairs and his sons were assisting him in that business, and that the business was for the benefit of his entire family. Now that he is no longer present in this country and is working and earning in another country, he sends some money from that country for the benefit of the family and the business which is being carried on by his sons as before, for and on behalf of the family, or it can be said for and on behalf of their father, and the income from the business is being utilised in the same manner as it was being utilised by the father, that is, for the benefit of the entire family. The landlord has already failed to establish a case of subletting and for obvious reasons, because it has been stated clearly by Tirath Singh that he is not paying any rent to his father and that his business is the same as it was before. Having failed on that ground, it is clear that the case cannot possibly fall under clause (v), as the demised shop is continuously in occupation and user for and on behalf of the tenant, and it is nobody's case that it has remained locked or the business has been suspended for a single day.

(5) For the reasons given above, therefore, I feel that the application of the landlord was rightly dismissed by the Appellate Authority. There is no force in this revision and the same is dismissed with costs.

B.S.G.