

Hon'ble Supreme Court in **Rakesh Wadhawan Vs. Jagdamba Industrial Corporation, (2002) 5 SCC 440** and **Vinod Kumar Vs. Prem Lata, 2003 (2) R.L.R. 449** to contend that the petitioner is entitled to an another opportunity to tender arrears of rent so found due by the learned Appellate Authority.

10. Learned counsel for the respondent on the other hand has relied upon a judgment of this court in **Hukma Devi Vs. Bhagwan Dass, 2003(1) R.L.R. 528**, wherein it has been held that the ratio of said judgment is applicable only in the eventuality of bona fide dispute regarding either rate of rent or the period but where the tenant has denied the relationship of landlord and tenant between the parties, the benefit of providing another opportunity to the tenant to tender the rent is not available.

11. Admittedly, the petitioner has denied the relationship of landlord and tenant. In view of the judgment of this court in Hukma Devi (supra), the petitioner not entitled to an opportunity to tender arrears of rent in such an eventuality. Keeping in view the said judgment, I do not find any merit in the present revision, which is dismissed.

Petition dismissed.

PUNJAB AND HARYANA HIGH COURT

Before Mr. Justice H.S.Bedi

Civil Revision No. 140 of 1986

Decided on 19.11.2003

Gian Chand and others

Petitioners

Versus

Pyare Lal and others

Respondents

For the Petitioners: Mr. Arun Jain, Advocate.

For the Respondents: Mr. J.R. Mittal, Senior Advocate with Mr. Kashmir Singh, Advocate.

East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13(2)(ii)(b), 13(2)(v) -- Change of user -- Ceased to occupy -- In earlier proceedings for ejectment on the ground of ceased to occupy, the findings comes that premises in question was being used as a shop -- Ground that demised premises had for last eighteen months, prior to the filing of the second application, were being used as a godown, which amounted to a change of user -- is merely an attempt to create a new ground and nothing less -- Eviction petition dismissed.

In the light of the positive finding in the earlier proceedings that the shop was not being opened throughout the day, but had been used for Kabari business which required the owner to go outside the shop to collect kabari articles, would indicate that premises in question was being used as a shop. In paragraph 15 of the order of the Appellate Authority in the present set of proceedings, it has been observed as under:

"It is proved by evidence that no business is being conducted in the shop in dispute and it is the case of the appellants-tenants themselves that they have kept therein some articles like iron scraps and old rafters

etc. The only conclusion can be that the shop in dispute is being used as godown. The findings of the learned Rent Controller are not tainted with prejudice or irregularity. There is no justification to interfere with the findings of fact."

It is, thus, clear that the ground of change of user in the eighteen months before the filing of the second application for ejectment was a merely an attempt to create a new ground and nothing less.

(Para 11)

JUDGMENT

H.S. Bedi, J.-- The present petition has been filed by the tenants, whose ejectment has been ordered by the Rent Controller, Jalandhar vide his order 26.4.1983 and the appeal too has been dismissed vide order dated 3.12.1985.

2. The facts of the case are as under:--

Pyare Lal, the respondent-landlord, purchased the premises in dispute (a shop) from Smt. Rewa Wati vide registered sale deed dated 19.3.1976. Bhagwan Dass was in occupation as tenant under Rewa Wati on a monthly rent of Rs. 10/-. After Bhagwan Dass's death, his sons, daughters and widow inherited the tenancy. Pyare Lal filed an application for ejectment of the tenants, i.e., the successors of Bhagwan Dass deceased on 18.11.1977 pleading that no business was being carried on in the shop in dispute and that it had remained closed for quite some time. The Rent Controller vide his order dated 21.8.1979, Exh.R-5, dismissed the application holding that kabari business was being carried on in the demised premises. The appeal filed by the landlord was also dismissed by the Appellate Authority vide order dated 16.2.1981. A second application for ejectment, (out of which the present proceedings arise), was filed by the landlord on 12.5.1981 pleading a change of user on the plea that the premises in dispute, which had been rented out to be used as a shop, had for last eighteen months, prior to the filing of the second application, were being used as a godown, which amounted to a change of user, and as such the tenants are liable to be ejected.

3. The tenants in their written statement pleaded that the shop was being used for the kabari business and that there had been no change of user.

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

1. Whether the respondents are using the shop as a godown as alleged? If so, to what effect? O.P.A.
2. Whether the application is barred under Order 2 Rule 2 C.P.C. ? O.P.R.
3. Whether the petitioner is barred by his acts and conduct to file the petition? O.P.R.
4. Whether the respondents are liable to be evicted? O.P.A.
5. Whether the application is malafide? O.P.R.
6. Relief.

5. The Rent Controller vide his order dated 26.4.1983 allowed the application holding that there was no evidence to show that Kabari business was being carried on in the shop and it was in fact being used as a godown.

On issue No.2, the Court held that the second application was not hit by Order 2 Rule 2 of the Code of Civil Procedure as the two applications had been filed on disparate grounds. An appeal was thereafter preferred by the tenants and the findings of the Rent Controller were affirmed. It was observed by the Appellate Authority that as Radhe Sham, one of the sons of Bhagwan Dass, who had statedly been carrying on the Kabari business in the premises, had not been produced in evidence, an inference against the tenants was liable to be drawn. It was also observed that as there was no weighing scales in the demised premises, it was difficult to accept that the business of kabari could be continued without their availability. The Appellate Authority also noted that cement slates and iron goods had been placed in the shop in question which clearly showed that the shop was being used as a godown for storage of raddi.

6. It is against the concurrent findings of the Rent Controller and the Appellate Authority that the present Civil Revision Petition has been filed.

7. Mr. Arun Jain, the learned counsel appearing for the petitioners has raised two arguments in the course of the hearing; first that the present application for ejectment had been filed within three months after the Appellate Authority had dismissed the application of the landlord in the earlier set of proceedings and was, therefore, misconceived; and secondly that the application for ejectment was virtually identical with the grounds taken in the first one and as such the orders of the Rent Controller and the Appellate Authority were liable to be reversed.

8. Mr. J. R. Mittal, the learned Senior counsel appearing for the respondent-landlord has, however, controverted the pleas raised by Mr. Arun Jain and has pointed out that the concurrent findings of fact merited no interference, the more so as Radhe Sham, who as per the case of the tenants, had been carrying on the Kabari business in the demised premises, had not been produced in evidence to substantiate the plea of the tenants. It has also been submitted that the argument that the second application for ejectment had been filed within three months of the dismissal of the first one was erroneous in the light of the fact that the specific case of the landlord in the second application was that the change of user had taken place about eighteen months earlier to the filing of the second application.

9. I have considered the arguments advanced by the learned counsel for the parties and have gone through the record.

10. To my mind, some of the findings recorded by the Appellate Authority in the order, Exh.R-5, are extremely relevant and require consideration. Radhe Sham afore-mentioned, who did not appear in the present set of proceedings, had appeared as PW-4 in the earlier proceedings and had stated that the shop in question was opened for two hours in the morning and two hours in the evening and that he was carrying on business in the demised premises. He also stated that when he was not present in the shop as he had to go out collecting Kabari articles, his brother attended to the business at the shop. The Appellate Authority accordingly observed that the evidence clearly showed that the plea of the landlord that the shop in question had never been opened after the death of Bhagwan Dass was erroneous as the shop was being opened regularly, but during limited hours in view of the very nature of the business. It was accordingly concluded as under:--

“In fact it has been held above that respondents have not closed the shop continuously as claimed by the petitioner. Under the circumstances the respondents are not proved to have committed any act which could impair the value and utility of the demised premises. Both these issues are therefore, decided against the petitioners.”

11. To my mind, the aforesaid conclusion of the Appellate Authority in the judgment, Exh.R-5, virtually determines the fate of the present petition as well. In the present set of proceedings, both the Rent Controller as well as the Appellate Authority had been deeply influenced by the fact that Radhe Sham had not appeared as a witness in the second application. Even if that be so, in the light of the positive finding in the earlier proceedings that the shop was not being opened throughout the day, but had been used for Kabari business which required the owner to go outside the shop to collect kabari articles, would indicate that premises in question was being used as a shop. In paragraph 15 of the order of the Appellate Authority in the present set of proceedings, it has been observed as under:

“It is proved by evidence that no business is being conducted in the shop in dispute and it is the case of the appellants-tenants themselves that they have kept therein some articles like iron scraps and old rafters etc. The only conclusion can be that the shop in dispute is being used as godown. The findings of the learned Rent Controller are not tainted with prejudice or irregularity. There is no justification to interfere with the findings of fact.”

It is, thus, clear that the ground of change of user in the eighteen months before the filing of the second application for ejectment was a merely an attempt to create a new ground and nothing less.

12. To my mind, the inference drawn herein are not borne out by the findings recorded in the earlier set of proceedings. The present petition is accordingly allowed and the orders of the Rent Controller as well as the Appellate Authority are set-aside. The ejectment application of the landlord is dismissed.

Petition dismissed.

PUNJAB AND HARYANA HIGH COURT

Before Mr. Justice G.S. Singhvi

Civil Writ Petition No. 2731 of 1985

Decided on 17.03.2004

Shankar and others

Petitioners

Versus

Joint Director, Panchayats, Punjab and others

Respondents

For the Petitioners: Shri M.S. Kang, Advocate.

For the Respondents: Shri S.K. Bawa, Advocate.

A. Punjab Village Common Lands (Regulation) Act, 1961 (As applicable to Punjab) (18 of 1961), Section 7, 11 – Shamlat Deh – Locus standi to file petition – Any villager can approach the Collector and