

Before D. V. Sehgal, J.

DEVINDER NATH AND OTHERS,—*Petitioners*

*versus*

DEVINDER NATH DHANDA AND OTHERS,—*Respondents.*

Civil Revision No. 2683 of 1979

September 1, 1987.

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Shop rented for purpose of business—Single, unmarried tenant plying trade and also using premises for personal residence—Change in character of building—Whether brought about—Ground for eviction—Availability of—Test of dominant purpose of letting—Applied—Such change of user—Whether amounts to change in character of building.*

*Held*, that where a tenant does not have any family and carries on his small business in the petty premises and also stays in the rear portion, cooks and eats, he does not pervert the purpose of the lease. The user of the shop is not so varied as to change the character of the building. The mere fact that the petty shopkeeper stays in the shop does not convert its user into a residential premises. The dominant purpose for which the shop is being used is that of carrying on the business of *baan*. Hence it has to be held that such a tenant is not liable for eviction on the ground of changing the character of the building any such user. (Para 4)

*Des Raj vs. P. N. Kaul* 1978(1) Rent Law Reporter 271.

(Distinguished)

*Petition Under Section 15(5) of Act III of 1949 and Section 115 C.P.C. for the revision of the order of the Court of Shri T. S. Cheema, Appellate Authority, Rupnagar (Under the East Punjab Urban Rent Restriction Act), dated 25th September, 1979 reversing that of Shri Hira Lal Garg, Rent Controller (A), Rupnagar dated 27th May, 1978 succeeding the appeal and setting aside the order of the Rent Controller and also succeeding the eviction application with costs and directing the respondent-tenant to deliver the possession of the demised premises to the applicants, landlords. The respondent-tenant during the pendency of this appeal died on 29th January, 1979. On the application of the LRs they were brought on record to contest the appeal and ordering that the LRs of the deceased-tenant shall hand over the vacant possession of the demised premises to the applicants within a period of two months.*

Satish Bhanot, Advocate, for the *Petitioners.*

H. L. Sarin, Sr. Advocate with Miss Ritu Bahri, Advocate, for the *Respondents.*

## JUDGMENT

D. V. Sehgal, J.—

(1) This revision petition is directed against the judgment dated 25th September, 1979 passed by the learned Appellate Authority, Rupnagar, under Section 15(3) of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act', whereby it set aside the order of the Rent Controller and allowing the application of the landlord-respondents directed the ejection of the tenant-petitioner from the shop in dispute.

(2) The ejection application under section 13 of the Act was filed by the respondents alleging that the shop in dispute consisting of two rooms and a verandah situated within the limits of Municipal Committee, Morinda, and more fully described in the heading of the petition had been let out to the petitioner at a monthly rent of Rs. 2,—*vide* rent note dated 4th December, 1964. The ejection of the petitioner was sought on the grounds *inter-alia* that he had neither paid nor tendered rent from 31st April, 1975 onwards and that while the shop in dispute was given to him for the purpose of business he had converted it into a residential premises without the consent of the respondents. It was further alleged that he had constructed a kitchen in the premises and was residing there. The application was opposed by the petitioner who filed his written statement. He tendered the rent due along with interest and costs on the first date of hearing which was accepted by the respondents without any objection. Thus, the only surviving ground left was whether the petitioner had converted the shop in dispute into a residential premises. The learned Rent Controller received evidence of the parties on this point and ultimately held,—*vide* his order dated 27th May, 1978 that the shop in dispute was still being used for the purpose for which it was let out to the petitioner. He was carrying on the business of preparing *baan* and he was continuing the said business in the shop in dispute. The mere fact that he has been sleeping in the said premises or even preparing his meals there would not change the character of the building or its use from a non-residential building to a residential building. As a result, he dismissed the ejection application.

(3) On an appeal filed by the respondents, however, the learned Appellate Authority reversed the finding of the Rent Controller and held that since the petitioner besides carrying on the business in

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the shop is also residing there, he has converted the user of the shop to a residential one and therefore he was liable to ejection. This is how the petitioner has filed the present revision petition in this Court.

(4) I have heard the learned counsel for the parties and have also gone through the pleadings as also the evidence adduced by the parties on the record of the learned Rent Controller. I am of the considered view that the judgment of the learned Appellate Authority cannot be sustained and has to be set aside. It is an admitted fact that the tenant does not have any family. He has neither wife nor any child. He is a lonely soul. He is carrying on the business of *baan* in the shop in dispute. No doubt, he spreads his cot and sleeps in the shop. He has also his ration card on which the address of the shop is given. He cooks his meals, eats, washes and sleeps in the shop. But all the same, the dominant purpose for which the shop is being used is that of carrying on the business of *baan* by him. It has been held in *Sant Ram v. Rajinder Lal and others*, (1) that if a tenant who takes out a petty premises for carrying on a small trade, also stays in the rear portion, cooks and eats, he does not pervert the purpose of the lease. The user of the shop is not so varied as to change the character of the building. The mere fact that the petty shopkeeper stays in the shop at night does not convert its user into a residential premises. *Sant Ram's case* applies on all fours to the case in hand.

(5) The learned counsel for the respondents, however, sought to rely on a judgment of this Court in *Des Raj v. P. N. Kaul* (2). There are various distinguishing features which can be brought to the fore to show that its ratio is not applicable to the facts in hand. However, what must be noticed is that the judgment in *Des Raj's case* precedes in line to the judgment of the final Court in *Sant Ram's case* wherein the position of law having a bearing on the point has been so succinctly discussed.

(6) Consequently, I allow this revision petition, set aside the judgment of the learned Appellate Authority and restore the order of the Rent Controller whereby the application of the respondents for ejection of the petitioner was dismissed. The parties are, however, left to bear their own costs.

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R.N.R.

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(1) A.I.R. 1978 S.C. 1601.

(2) 1978(1) R.L.R. 271.