

Before Viney Mittal, J

RAM CHAND SHARMA—Tenant/Petitioner

versus

THAKUR DASS—Landlord/Respondent

C.R. No. 2952 OF 1990

30th March, 2005

Haryana Urban Control of (Rent and Eviction) Act, 1973—S. 13—Landlord seeking ejectment of tenant from the shop on the ground that the premises remained unoccupied for a period of more than four months—Disconnection of electricity meter admitted by the tenant—Whether shop remained unoccupied for a period of 4 months—Onus to prove on the landlord—Landlord failing to discharge the onus of proving the fact by producing evidence except only his first cousin—Tenant a petty shopkeeper—Non-production of any account books or non-filing of income/sales tax return by the tenant is of no consequence—Petition allowed while setting aside the orders of authorities below.

Held, that a landlord seeking ejectment of a tenant on any of the grounds available under the Rent Act has to prove the aforesaid grounds. As a matter of fact the onus of proving the aforesaid ground is always on the landlord. In case the landlord fails to prove by leading cogent evidence, the ground of ejectment claimed by them, then his claim must fail.

(Para 10)

Further held, that the landlord has not been able to discharge the onus of proving the fact that the shop in question had remained unoccupied for a period of four months prior to the filing of the ejectment petition. The landlord did not file any application for appointment of a Local Commissioner while filing the ejectment petition. The non-production of any account books by tenant is also of no consequence. The tenant on his own showing is a petty shopkeeper. It has not been shown that he was filing any income tax or sales tax return. In such a situation, the authorities below were not justified in drawing any adverse inference against the tenant. Such a finding was available against the tenant only if it had been shown by the

landlord that the business being run by the tenant was of such a magnitude which did require filing of some returns or maintenance of some account books.

(Para 11)

Ms. Alka Sarin, Advocate, for the petitioner.

Arun Jain, Advocate, for the respondent.

ORDER

VINEY MITTAL, J,

(1) The tenant is the petitioner before this Court. He has impugned the orders of ejectment from the shop in question passed by the learned Rent Controller and upheld by the learned Appellate Authority.

(2) Landlord, Thakur Dass, sought the ejectment of tenant, Ram Chand Sharma, from the premises in question. The ejectment was sought on the ground of non-payment of arrears of rent and also that the shop in question had been kept closed continuously for a period of more than one year.

(3) The claim of the landlord was denied by the tenant. The arrears of rent were paid by him before the learned Rent Controller. However, it was denied that the shop in question had been kept closed by the tenant. The tenant maintained that the landlord had applied to disconnect the electric connection from the shop in question to the Sub-Divisional Officer, Haryana State Electricity Board on the ground that electric meter was not working properly. Since the meter was in the name of Om Parkash, real brother of the landlord, therefore, on an application given by Om Parkash the electric meter was got disconnected. Although repeated requests had been made by the tenant to the landlord to get the meter replaced but the meter was not replaced. It was specifically pleaded by the tenant that he is running his business in the shop in dispute continuously. Earlier up to August 14, 1986, he was running his business in the shop in the name of Bombay Automobiles but later on the name of the shop was changed to Sharma Automobiles.

(4) Learned Rent Controller on the basis of the fact that there was no electricity connection in the shop in question and also because of the fact that no account books had been produced by the tenant came to the conclusion that the shop in question had remained unoccupied for a period of more than four months. On that account, the ejection of the tenant was ordered. On an appeal filed by the tenant, the findings recorded by the learned Rent Controller were upheld by the learned Appellate Authority also.

(5) The tenant has now approached this Court through the present revision petition.

(6) I have heard Ms. Alka Sarin, learned counsel appearing for the tenant-petitioner and Shri Arun Jain, Learned counsel appearing for the landlord-respondent and with their assistance have also gone through the record of the case.

(7) Ms. Alka Sarin, learned counsel appearing for the tenant has vehemently argued that the findings recorded by the learned authorities below were wholly without any basis since the landlord had failed to prove that the shop in question had remained unoccupied for a period of four months prior to the filing of the petition. It has also been argued that the landlord while filing the ejection petition has not given any specific time or period from which the shop had remained closed. It has also been argued by the learned counsel that the reliance placed by the authorities below on disconnection of the electricity meter was totally without any justification inasmuch as the tenant had given sufficient explanation with regard to the aforesaid disconnection. The electricity meter had been got disconnected by the landlord and his brother Om Parkash, since the electricity meter installed in the premises was defective. It has also been argued by the learned counsel that since the tenant was a petty shopkeeper and was neither an income tax assessee nor had a turn over which required him to furnish sales tax return, it could not be held that not producing the account books by him could lead to an adverse inference.

(8) On the other hand, Shri Arun Jain, learned counsel appearing for the landlord has supported the orders passed by the authorities below. It has been vehemently contended by Shri Jain that once it is proved on the record that there was no electricity connection

in the shop in question then the obvious inference was that the shop in question had remained unoccupied. Shri Jain has also argued that the onus of proving the fact that any business was carried out in the shop in question was upon the tenant and that since he had failed to discharge the aforesaid onus, then the ejection had rightly been ordered by the authorities below. In support of his contention, Shri Arun Jain has relied upon **Shivshanker Lal versus Kishan Chand (1)** and **Dayal Chand versus Smt. Chandi (2)**.

(9) I have given my thoughtful and anxious consideration to the rival contentions of learned counsel for the parties. In my considered view the order of ejection passed by the authorities below cannot be legally sustained.

(10) It is well settled that a landlord seeking ejection of a tenant on any of the grounds available under the Rent Act has to prove the aforesaid grounds. As a matter of fact the onus of proving the aforesaid grounds is always on the landlord. In case the landlord fails to prove, by leading cogent evidence, the ground of ejection claimed by him, then his claim must fail.

(11) In the present case the ejection of the tenant has been claimed by the landlord on the ground that the premises in question has remained unoccupied for a period of four months. In these circumstances, it was for the landlord to prove the aforesaid fact by leading cogent evidence. The landlord remained satisfied by appearing as his own witness and by producing Rakesh Kumar as PW2. Besides the aforesaid fact he also relied upon the disconnection of the electricity meter. The factum of the disconnection of the electricity meter was admitted by the tenant. He explained the aforesaid disconnection. PW2 Rakesh Kumar claims that he is carrying on his business near the shop in question. Although he had deposed that the shop in question remained closed but in his cross-examination he has admitted that he was the first cousin of the landlord. He has also admitted that he was carrying a business in the name of Varun Automobile as a partner with the landlord. No other evidence has been produced

(1) 2003 (1) R.C.R. 584

(2) 2004(1) R.C.R. 141

by the landlord. In contrast the tenant has appeared as his own witness and has also produced RW2 Narender Kumar. Narender Kumar has deposed that he was carrying on his business in a shop in front of the demised premises and the business in the shop in question was being run regularly by the tenant. The tenant has also produced the photographs which are exhibited as Ex. RW5 to RW8. The aforesaid photographs show that the business was being carried in the shop in question. Even if the aforesaid photographs are ruled out of consideration, still it is clear that the landlord has not been able to discharge the onus of proving the fact that the shop in question had remained unoccupied for a period of four months prior to the filing of the ejectment petition. The landlord did not file any application for appointment of a Local Commissioner while filing the ejectment petition. The non-production of any account books by tenant is also of no consequence. The tenant on his own showing is a petty shopkeeper. It has not been shown that he was filing any income tax or sales tax return. In such a situation, the authorities below were not justified in drawing any adverse inference against the tenant. Such a finding was available against the tenant, only if it had been shown by the landlord that the business being run by the tenant was of such a magnitude, which did require filing of some returns or maintenance of some account books.

(12) I have also gone through the authorities relied upon by the learned counsel for the respondent. However, in view of the facts and circumstances of the present case, the aforesaid authorities have absolutely no application. Thus, I find that the findings recorded by the authorities below are absolutely without any basis and as such the same are liable to be set aside.

(13) In view of the aforesaid discussion, I allow the present revision petition and after setting aside the orders of the authorities below, the ejectment petition filed by the landlord is dismissed. No costs.

R.N.R.