REVISIONAL CIVIL

Before S. B. Capoor, J.

RAMESHWAR DASS AND ANOTHER, —*Petitioners.*

versus

RISHI PARKASH AND OTHER,—*Respondents.*

Civil Revision No. 696 of 1961.

1964

Sept., 7th.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13 (2) (b)—Tenant using a small portion of premises for a purpose other than that for which let out—Whether liable to eviction.

Held, that if the dominant purpose to which the premises are put remains the same for which the premises had been let out to him, the tenant is not liable to eviction under sub-clause (b) of clause (ii) of sub-section (2) of section 13 of the East Punjab Urban Rent Restriction Act, 1949.

Petition under Section 15(5) of the East Punjab Urban Rent Restriction Act for revision of the order of the Appellate Authority under the Punjab Act No. III of 1949 (District Judge), Ambala, dated the 14th March, 1961 affirming that of Shri Sarup Chand Goel, Sub-*Judge, 1st Class, Ambala (Rent Controller), dated the 15th November, 1960, dismissing the application of the petitioner and leaving the parties to bear their own costs.*

N. S. CHHACHHI, ADVOCATE, for the Petitioners.

J. S. CHAWLA, ADVOCATE, for the Respondents.

JUDGMENT

Capoor, J. CAPOOR, J.—This is a revision petition by the landlady Shrimati Dropadi Devi, against the order of the Appellate Authority under the East Punjab Urban Rent Restriction Act, 1949 (Act No. 3 of 1949). (The District Judge, Ambala) whereby he dismissed her appeal from the order of the Rent Controller, Ambala Cantt., rejecting her application for ejectment of the respondents Rishi Parkash and Panna Lal, from the residential house bearing Nos. 5241/1 and 5241/2 situated in Sadar Bazar, Ambala Cantt.

Two grounds were urged in her application for eviction. The first was non-payment of rent which was, however, not available to the landlady as the arrears of rent together with costs and interest were paid by the tenants on the first day of hearing. The second ground was that mentioned in sub-clause (ii)(b) of sub-section (2) of section 13 of the Act, viz., that the tenants had after the commencement of the Act without the written consent of the landlord used the building for a purpose other than that for which it was leased. The facts as found by the Tribunals below are that the premises were let out for the purposes of residence, that without the written permission of the landlady the tenants had installed a nickel polishing machine in the *deohri* of the house and were also using one room in the house for the polishing of scientific apparatus while another room was being used as an office. However, it was further found that there were six rooms on the ground floor of the premises and two on the upper floor and that with the exception of the portion of the house already mentioned the other rooms which consisted of the major portion were still being used for residential

purposes. On these facts the Tribunals below held that so long as the main use of the house was for residential purpose the plea of the landlady for the change of the purpose was untenable. That is how the eviction application failed.

In revision Mr. N. S. Chhachhi has quite rightly not attempted to challenge the concurrent findings of fact of the Tribunals below. He maintained, however, that accepting these facts as correct, the conclusion of law arrived at by the Tribunals below is not warranted by the provisions of the Act. He contended that even if a portion of the premises was used for a non-residential purpose without the written consent of the landlord, the tenant became liable to eviction and he cited certain unreported cases of this Court in support of the position taken up by him. I find, however, that they do not bear directly or even indirectly on the point before me. The first case was *Balwant Singh* v. *Brij Mohan* (Civil Revision No. 645 of 1961 decided by Dulat J. on the 16th March, 1962). The building in that case had been let out for the purpose of installing therein handlooms and the eviction of the tenant was sought on the ground that there had been change of user inasmuch as the tenant had substituted handlooms by powerlooms run with electricity. The learned Judge held that weaving by handlooms was a very different kind of activity than weaving by powerlooms and that accordingly the Tribunals below were justified in their conclusion that the tenant has begun to use the building for a purpose other than that for which it was leased. The question as to whether the change of user was in respect to a small part of the building only or a major part thereof, was not under consideration in that case. The second case *Uttam Singh* v. *Gurbax Singh* (Civil Revision No. 191 of 1963 decided by D. K. Mahajan J. on the 6th March, 1964) is a very brief judgment and all that is mentioned in it was that eviction of the tenant had been ordered by the Rent Controller as well as by the appellate authority on the short ground that the premises in dispute which were residential premises had been converted into a non-residential purpose, that is, a school was being run in the premises. That conclusion was held to be correct by the learned Judge. This decision is, therefore, of no relevance at all for the

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interpretation of sub-clause (b) of clause (ii) of sub-section (2) of section 13 of the Act.

The decisions cited on behalf of the respondents are also not of much assistance. The only case of our High Court on which reliance was placed was *Manohar Lal Chopra* v. *Balraj Arora* (1). This was a case under section 9 of the Delhi and Ajmer Merwara Rent Control Act, 1947. The premises were in New Delhi and had been leased out by the Government on certain conditions to the landlord. The eviction of the tenant, who was the petitioner in the High Court, had been sought on the ground that he had used the premises in a manner contrary to the conditions of the lease. Though the premises were business premises, the tenant was residing therein. The learned Judge found that even according to the description of the premises given by the landlord in the notice before the suit, the premises contained a kitchen and a bathroom which showed that a small portion of the premises can be used by the tenant for the purpose of actually residing there and it was held that the tenant had merely carried out the dominant purpose for which the premises were let by Government to the lessees. The other cases cited on behalf of the respondents are from other High Courts and the decisions depended on the provisions of the particular statute and the peculiar facts of each case.

Sub-clause (a) of clause (ii) of sub-section (2) of section 13 lays down that a tenant becomes liable to eviction if without the written consent of the landlord he transfers his right under the lease or sublets the entire building or rented land or any portion thereof. If, therefore, it was intended that the change of user of any portion, however small it may be, would also render the tenant liable to eviction, the words "or any portion thereof" should also have been used in sub-clause (b). The comparison of these two sub-clauses of clause (ii), therefore, leads to the inference that if the dominant purpose still remains the same for which the premises had been let out, the tenant would be protected from eviction.

(1) (1953) 55 P.L.R. 295.

I would, therefore, affirm the decision of the Tribunals below and dismiss the revision petition with costs. Counsel's fee Rs. 32.

B.R.T.

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