SUPREME COURT OF INDIA

Ram Dass

Vs.

Davinder

C.A.No.3868 of 1999

(R.C.Lahoti and A.S.Lakshmanan JJ.)

24.03.2004

JUDGMENT

R.C.Lahoti, J.

1. A suit based on landlord-tenant relationship, filed by the appellant against the respondent, on the ground available under Section 13(2)(v) of the *Haryana Urban (Control of Rent) & Eviction Act, 1973* (hereinafter the 'Act', for short) was decreed by the Rent Controller, Rohtak and maintained in appeal by the Appellate Authority. In a revision preferred under Section 15(6) of the Act, the High Court has set aside the findings of the two authorities below and directed the application seeking eviction of the respondent to be dismissed. Feeling aggrieved, the landlord has filed this appeal by special leave.

2. Under Section 13(2)(v) of the Act, on an application filed by a landlord seeking to evict his tenant, the Controller may, after giving the tenant a reasonable opportunity of showing cause against the application, make an order directing the tenant to put the landlord in possession of the building if the Controller is satisfied that the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause.

3. The existence of landlord-tenant relationship between the parties is not in dispute. The suit accommodation is a shop situated in commercial locality. The respondent seems to be a petty shopkeeper. He sells sweets and vends tea from the suit shop. According to the appellant, the respondent had ceased to occupy the shop for a continuous period of four months without reasonable cause. The period during which the premises are alleged to have remained without occupation is since February 1990 till the date of filing of the application, i.e. 14.6.91.

4. A perusal of the decision of the Controller shows that overwhelming evidence was adduced by both the parties in support and denial of the averments made in the application seeking eviction. Some pieces of evidence adduced by the landlord need to be noticed briefly. Meter Reader of the locality was examined to show that there was no consumption of electricity during this period. Repeated notices, eight in number, were sent through registered

A/D post by the landlord to the tenant during this period which were all returned with the postal endorsement that in spite of repeated attempts made by the postman, stretched over a period of about one week in each case, no one was available at the given address to accept the service of registered letter and the premises were found closed. The postman deposed to these facts. Undisputedly the address as given on each of the letters was correct and related to the suit premises. The court process server was examined as deposing that on several occasions he had gone to the suit premises for effecting service of the court summons but he failed to effect service on account of none being available at the premises which were invariably found locked. The landlord had arranged for photographs of the suit premises being taken. The photographer was examined to prove the photographs, tendered in evidence, which showed the suit premises closed and locked while adjoining shops were open and the space just in front of the shop and immediately abutting it was being used for parking cycles which would not have been practical unless the suit premises were closed and not in use. There is other oral evidence including the statement of landlord himself to support the plea of the landlord.

5. The tenant did examine a few witnesses of the locality who deposed to the shop having continued to remain in use and occupation of the respondent-tenant. However, the stand taken by the respondent in his pleadings, examination-in-chief and cross- examination has been shifting one. To begin with, his stand was that the shop had never remained closed much less for a continuous period of more than four months. However, at one place his stand was that he had remained sick for sometime and therefore had gone irregular in opening the shop and during sickness opened the shop for a few hours in a day. No medical evidence was adduced to support such plea. At another place his stand was that his father was having a flour mill at a little distance from the suit premises and when there was none else available to look after the flour mill, he himself used to sit at the flour mill. So is the case with those shopkeepers of the locality who appeared as witnesses for the respondent. They gave varying statements as to the hours of the day when the shop was kept open by the respondent and as to the activity carried on by the respondent in the suit premises.

6. Be that as it may, having gone through the lengthy discussion of evidence, documentary and oral, as contained in the judgment of the trial Court, with the assistance of the learned senior counsel for the appellant, we are satisfied that no fault can be found with the manner in which the evidence has been dealt with and marshalled by the Controller. The appellate authority has made an independent evaluation of the evidence and confirmed the findings of the Controller. The High Court has, while exercising its revisional jurisdiction, entered into re-appreciation of evidence not open to the High Court; more so, keeping in view the manner in which the exercise has been undertaken by the High Court. To say the least, we find that there is to some extent misreading of the evidence by the High Court.

7. We may give just two illustrations. While criticizing the testimony of postman the High Court goes on to observe that the postman claims to have visited the suit premises even on Sundays when the post office remains closed and the postman is not on duty. We have carefully read the statement of the postman. He has nowhere claimed having been on duty and visited the shop on Sundays. The endorsements made on the registered letters returned

unserved have been carefully examined by us with the assistance of the learned counsel for the parties and keeping the calendar of the year 1991 before us. We find none of the endorsements made by the postman relates to a date which was a Sunday or holiday. Similarly, the High Court holds that one of the summons was actually delivered by the process server to the respondent-tenant although the process server has deposed that the respondent was not available at the premises. How these two self contradictory things could have taken place - asks the learned Judge posing question to himself. If only the deposition of the process server would have been carefully read it would have been revealed that what the process server was deposing was that the respondent was not available at the suit premises to accept the service of summons which premises were locked but he was available at a little distance away from the suit shop and at the flour mill premises of the respondent's father and there the service was effected. Thus the High Court has proceeded to reverse, on erroneous assumptions, the findings of facts concurrently arrived at by the two authorities below and such exercise by the High Court as also the conclusions drawn therefrom, we find difficult to countenance inasmuch as they are vitiated. We are clearly of the opinion that the High Court has exceeded its jurisdiction in reversing the well considered findings of fact arrived at by the two courts below.

8. The terms "possession" and "occupy" are in common parlance used interchangeably. However, in law, possession over a property may amount to holding it as an owner but to occupy is to keep possession of by being present in. The Rent Control Legislations are outcome of paucity of accommodations. Most of the Rent Control Legislations, in force in difference states, expect the tenant to occupy the tenancy premises. If he himself ceases to occupy and parts with possession in favour of someone else, it provides a ground for eviction. Similarly, some legislations provide it as a ground of eviction if the tenant has just ceased to occupy the tenancy premises though he may have continued to retain possession thereof. The scheme of the Haryana Act is also to insist on the tenant remaining in occupation of the premises. Consistently with what has been mutually agreed upon the tenant is expected to make useful use of the property and subject the tenancy premises to any permissible and useful activity by actually being there. To the landlord's plea of the tenant having ceased to occupy the premises it is no answer that the tenant has a right to possess the tenancy premises and he has continued in juridical possession thereof. The Act protects the tenants from eviction and enacts specifically the grounds on the availability whereof the tenant may be directed to be evicted. It is for the landlord to make out a ground for eviction. The burden of proof lies on him. However, the onus remains shifting. Once the landlord has been able to show that the tenancy premises were not being used for the purpose for which they were let out and the tenant has discontinued such activities in the tenancy premises as would have required the tenant's actually being in the premises, the ground for eviction is made out. The availability of a reasonable cause for ceasing to occupy the premises would obviously be within the knowledge and, at times, within the exclusive knowledge of tenant. Once the premises have been shown by evidence to be not in occupation of the tenant, the pleading of the landlord that such non- user is without reasonable cause has the effect of putting the tenant on notice to plead and prove the availability of reasonable cause for ceasing to occupy the tenancy premises.

9. In the present case, the landlord has, through his pleadings and by adducing evidence, made out a case of the tenant's ceasing to occupy the tenancy premises and the onus, therefore, had shifted on the tenant either to rebut the case made out by the landlord or to allege and prove any reasonable cause for ceasing to occupy the premises. In our opinion, in the case at hand the landlord has fully discharged his obligation of making out the case of his entitlement to evict the tenant under Section 13 (2)(v) of the Act. The tenant has failed in discharging his onus. The Controller and the Appellate Authority rightly arrived at the finding of the fact which they did.

10. There was no case for interference at the hands of the High Court.

11. The appeal is allowed. The impugned judgment of the High Court is set aside and that of the Controller, as affirmed by the Appellate Authority, is restored. The respondent-tenant is directed to put the landlord-appellant in possession of the suit premises on or before 30th April 2004.