

SUPREME COURT OF INDIA

Ravi Chand Mangla

Vs.

Dimpal Solania

C.A.No.9598 of 2018

(L.Nageswara Rao and Mohan M.Shantanagoudar,JJ.,)

18.09.2018

JUDGMENT

L.Nageswara Rao,J.,

SLP(Civil) No.19594 of 2008

1. Leave granted.

2. The petition for eviction filed by the Appellant under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 was dismissed by the Rent Controller. The judgment of the Rent Controller was affirmed in appeal by the Appellate Authority, Faridabad and in revision by the High Court of Punjab and Haryana at Chandigarh. Aggrieved thereby this appeal is filed.

3. The Appellant is the landlord of the premises which signed/by Sip was let out on 04.01.1957 on payment of rent of 58.26 paise per month. The Appellant filed a petition for eviction under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 for ejection of the tenants on the following grounds:

(i) "That the respondents have defaulted to pay rent and is now in arrears of rent for 60 months beginning from Kwar Bati 1 Sambat 2040 to Sawan Singh Sudhi 15 Sambat 2015;

(ii) That respondent No.1 has sub-let the property in dispute to the respondents No.2 & 3;

(iii) That respondents have impaired the value and utility of the property in dispute;

(iv) That respondents are nuisance to the neighborhood;

(v) That the respondents have changed the user of the property in dispute;"

3. The Rent Controller framed the following issues for consideration:

1. "Whether the respondent No.1 is in arrears of rent if so its effect? OPP
2. Whether the respondent No.1 has sub-let the demised premises to the respondents No.2 & 3 without the consent of the petitioner? OPP
3. Whether the respondent has materially impaired the value and utility of the building in question? OPP
4. Whether the respondents are nuisance neighborhood if so its effect? OPP
5. Whether the respondents have changed the user of the demised premises without the consent of the petitioners? OPP
6. Whether the petition is bad for mis-joinder and non-joinder of necessary parties? OPR.
7. Relief."

4. The Rent Controller held issue No.1 in favour of the Respondents by observing that the arrears of rent for three years between 01.09.1985 to 31.12.1988 were deposited in the Court. The Rent Controller observed that sub-letting of the property in dispute by the Respondents was not proved. Reliance was placed on the evidence of PW-4, Har Saroop, who admitted in his cross examination that the first Respondent was continuing to do business in the name of M/s Solania Engineering Works. The Rent Controller was of the opinion that it cannot be said that Respondent No.1 was in exclusive possession of the property in dispute. Likewise issues No.3 and 4 pertaining to material alterations to the property and nuisance created by the Respondents in the activity of manufacturing of grills was rejected by the Rent Controller. While deciding issue No.5, the Rent Controller perused the rent agreement and was convinced that the Respondents were given the property not only for the purpose of installing the saw mill but also for carrying out any other type of business. The contention raised by the Appellant that the saw mill for which purpose the property was let out was closed by the Respondents 4/5 years prior to the filing of the eviction petition and the work of manufacturing of grills was going on which amounts to change of user, was rejected by the Rent Controller. On the basis of the aforesaid, the Rent Controller dismissed the eviction petition. The Appellant did not question the conclusion of the Rent Controller on issues No.1 and 4 in the appeal before the Appellate Authority. The Appellate Authority found no fault with the judgment of the Rent Controller on the other issues. On the issue of change of user, the Appellate Authority found that the Respondents had the liberty to run any other business activity apart from the saw mill as per the rent agreement. The High Court discussed the issues involved in the case carefully and held that there was neither sub-letting nor any impairment to the value and utility of the premises. The allegation of change of user was rejected by the High Court.

5. It was submitted before this Court that the Appellant is a reputed doctor who is aged 96 years and the premises in question is about 2000 sq. feet which is part of a larger plot of land which the Appellant intends to use for construction of a hospital for charitable purpose. Looking at the laudable object, we adjourned the matter several times to enable the parties to settle the matter. In spite of our persuasion, the Respondents- tenants were not willing to accept monetary compensation for evicting the premises and re-locating to another site. The Respondents contend that they will lose their livelihood if they are evicted from the premises. Having no other alternative, we kept the matter for decision on merits.

6. There are two submissions that are made on behalf of the Appellant. The first point relates to non-payment of outstanding rent. The counter affidavit filed on behalf of the Respondents was referred to submit that the arrears of rent from 01.04.1993 to 31.08.2009 was paid only on 24.09.2009 which would amount to non-payment of rent which is a ground for eviction. We are afraid that we cannot agree with the submission made on behalf of the Appellant. It is clear from the judgment of the Rent Controller that the arrears of rent were paid for three years prior to the filing of the eviction petition. It is also clear from the judgment of the First Appellate Court that the Appellant did not assail the findings of the Rent Controller on issue No.1 pertaining to default in payment of rent. We cannot permit the Appellant to make submissions for payment of default of arrears of rent at this stage.

7. The main point urged on behalf of the Appellant is that the premises which was let out for saw mill is now being utilized for the purpose of manufacturing of grills which amount to change of user. Submissions were made before us by both sides on the interpretation of terms of the rent agreement. On a perusal of the agreement, we are convinced that there is no restriction placed on the Respondents-tenant to run business only relating to the saw mill. The tenant was given the liberty to carry on any other business as well. In the absence of any negative covenant the user does not amount to user for the purpose other than for which the premises was leased. . A premises taken on rent for 'sugarcane crushing' was used for cloth business in which case the landlord's contention that there was change of user was rejected . We agree with the judgments of the Courts below which are in accordance with the law laid down by this Court.

8. In view of the aforesaid findings, we see no reason to interfere with the judgment of the High Court. The appeal is dismissed. No costs.