

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CR-7207-2018 (O&M)****Rupali Mahajan****...Petitioner****Versus****M/s Vipin Kumar Ramesh Kumar and another****...Respondents****Reserved on: 18.08.2026****Pronounced on: 20.08.2026****Pronounced fully/operative part: Fully****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Argued by: Mr. Dheeraj Mahajan, Advocate for the petitioner.

Mr. Dinesh Mahajan, Advocate for the respondents.

DEEPAK GUPTA, J.

The petitioner-landlord has invoked the revisional jurisdiction of this Court under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter, 'the Act'), assailing the judgment dated 23.07.2018 passed by the learned Appellate Authority, Gurdaspur, whereby the appeal preferred by the tenant was allowed and the order of ejectment passed by the learned Rent Controller was set aside.

2. The relationship of landlord and tenant in respect of the demised shop is not in dispute. Though the ejectment petition was founded upon various grounds, the only ground, which survives for consideration and as urged before this court in the present revision is that contained in Section 13(2) (v) of the Act, namely, that the tenant had ceased to occupy the demised premises for a continuous period of four months without reasonable cause.

3. The landlord pleaded that the shop in dispute had been lying closed for more than four years, in fact since April, 2008, and continued to remain closed till the filing of the ejectment petition. It was further pleaded



that the tenant had shifted his entire Karyana business to the shop in possession of his brother Dinesh Kumar.

4. The tenant controverted the allegation and asserted that the Karyana business was being carried on from the demised shop with the assistance of his sons.

5. The learned Rent Controller, on appreciation of the evidence, accepted the landlord's case and ordered eviction of the tenant on the ground of cessation of occupation.

6. The learned Appellate Authority reversed the said finding. It held that the landlord had not produced electricity records, examined any Meter Reader or neighbour, obtained a Local Commissioner's report or produced photographs to establish that the shop was lying closed. It was also noticed that the landlord had admitted in cross-examination that he had not visited the shop for about five to six years.

7. Assailing the order of the Appellate Authority, learned counsel for the petitioner has argued that the learned Appellate Authority fell into error in treating the non-production of electricity records and other material by the landlord as fatal, while overlooking the admissions made by the tenant himself. It is submitted that the tenant, having specifically asserted that he was carrying on Karyana business from the demised shop, failed to produce electricity bills for several years, account books, invoices or any other contemporaneous material to indicate that any business was actually being conducted from the premises.

8.1 Learned counsel for the respondent-tenant, on the other hand, has supported the impugned judgment and submitted that the initial burden to establish cessation of occupation was upon the landlord and that the same could not be discharged merely by relying upon the tenant's failure to produce



electricity bills or account books.

8.2 Learned counsel for the tenant has further contended that the present petitioner purchased the demised shop only after the order of ejectment had been passed by the learned Rent Controller and was thereafter impleaded as respondent No.2 in the appeal. It is further submitted that no issue regarding cessation of occupation was framed initially and the same was framed by the learned Rent Controller only at the fag end of the proceedings. Learned counsel has also pointed out that the advocate representing the tenant in the proceedings before the Court below purchased the demised premises in the name of his wife, who is the present petitioner before this Court. According to learned counsel, these circumstances were material and, therefore, the learned Appellate Authority rightly interfered with the order of ejectment and dismissed the eviction petition.

9. I have considered the submissions and perused the record.

10. Section 13(2)(v) of the Act provides a ground of eviction, where the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause. The expression 'ceased to occupy' has been considered by the Hon'ble Supreme Court in ***Ram Dass v. Davinder, (2004) 3 SCC 684***. It was explained that possession and occupation are not synonymous. A tenant may continue to retain juridical possession, but the statutory requirement is actual occupation and useful use of the tenancy premises. The Court further held that while the initial burden lies upon the landlord, the onus remains shifting. Once the landlord establishes that the premises are not being used for the purpose, for which they were let and the tenant has discontinued activities, which would require his presence there, the onus shifts to the tenant to rebut the case or establish a reasonable cause for non-occupation.

11. The same principle has been reiterated and applied by this Court in



Devinder Gupta v. Savitri Devi, CR-8057-2019, decided on 16.12.2019. The Court observed that in a case of cessation of occupation, much of the relevant evidence ordinarily lies within the knowledge and access of the tenant. Therefore, once the landlord succeeds in making out a prima facie case and raises a fair presumption of cessation of occupation, the onus shifts to the tenant to rebut that presumption by producing appropriate material.

12. The question, therefore, is not whether the landlord himself produced every possible piece of evidence to establish that the shop remained closed. The question is whether, on the evidence as a whole, the landlord established a prima facie case of cessation of occupation and, if so, whether the tenant succeeded in rebutting it.

13. In the present case, the landlord specifically pleaded prolonged closure of the shop since April, 2008 and further pleaded that the tenant had shifted his entire business elsewhere. The tenant did not take a stand that the premises were being used intermittently or that there was any reasonable cause for non-use. On the contrary, his specific defence was that he was carrying on *Karyana* business from the demised shop with the assistance of his sons.

14. This positive assertion made by the tenant is of great significance. Once the tenant himself claimed that business was actually being conducted from the demised shop, it was open to him, and indeed incumbent upon him once the initial burden had shifted, to place before the Court some credible material indicating such activity.

15. The tenant's own cross-examination, however, does not substantiate the case set up by him. His testimony shows that he admitted that he could not produce electricity bills pertaining to the premises for the preceding seven or eight years. At the same time, he claimed that fans and



electric tubes were being used in the shop. He also did not produce his account books and did not produce invoices relating to purchase and sale of the Karyana goods which, according to him, were being dealt with from the demised premises.

16. The above circumstances cannot be ignored. Had the tenant merely failed to produce electricity bills, such omission by itself may not have been sufficient to establish cessation of occupation. Likewise, non-production of account books by itself may not justify an order of eviction. The present case, however, is not founded upon any one of these circumstances in isolation.

17. What is material is that the tenant made a positive assertion of continuing business from the premises, but failed to substantiate that assertion by any supporting material. There was no electricity record produced by him despite his assertion regarding use of electrical appliances; no account books were produced; no purchase or sale invoices were produced; and the witness examined by him, Rakesh Kumar, did not turn up for cross-examination.

18. The absence of electricity consumption over such a prolonged period, particularly when coupled with the tenant's own assertion that electrical appliances were being used in the shop, is a circumstance of considerable evidentiary implication. It is not being treated as conclusive proof by itself. Its consequence arises from the fact that it remains wholly unexplained when considered alongside the absence of any other reliable material showing that the alleged Karyana business was actually being conducted from the demised premises.

19. The learned Appellate Authority, appears to have approached the matter from the standpoint that unless the landlord himself summoned the electricity record or examined the Meter Reader, the initial burden could not be said to have been discharged. Such an approach does not accord with the



principle of shifting onus explained in ***Ram Dass (supra)***, in which the Hon'ble Supreme Court held that the landlord has to establish the foundational facts, but once the premises are shown by evidence to be not in occupation of the tenant, the onus shifts. The Court specifically held that the availability of a reasonable cause for ceasing to occupy the premises would ordinarily be within the knowledge, and sometimes within the exclusive knowledge, of the tenant.

20. The same principle is applicable here. The landlord could reasonably testify about the prolonged closure of the shop and the circumstances within his knowledge. He could not, however, be expected to have continuous personal knowledge of what business, if any, the tenant was conducting inside the shop over a period of several years. That information was particularly within the knowledge of the tenant himself.

21. Once the landlord's plea of prolonged closure was coupled with the specific allegation that the tenant had shifted his business elsewhere, and the tenant responded with the positive assertion that he continued to conduct Karyana business from the demised premises, the evidentiary burden did not remain static. It shifted upon the tenant to show actual occupation and use.

22. The tenant failed to discharge that onus.

23. In ***Devinder Gupta v. Savitri Devi (supra)*** also, the Court emphasised that the landlord's access to evidence regarding the tenant's actual business activity is limited. Once the landlord establishes a prima facie case and raises a fair presumption of cessation of occupation, the tenant is required to rebut the same by producing evidence within his special knowledge.

24. The reliance placed by the learned Appellate Authority upon ***Geeta Bhalla and others v. Krishan Kumar (dead) through LRs, 2006(2) RCR (Rent) 379***, and ***Yash Kumari Trikha v. Arun Kumar, 2010(1) Rent LR 49***, does not alter the conclusion. The proposition emerging from those judgments, as noticed by



the Appellate Authority itself, is that mere non-consumption of electricity or mere non-production of account books cannot, by itself, establish cessation of occupation.

25. That proposition is acceptable. But the present case has to be decided on its own evidentiary foundation. Here, the landlord's allegation of prolonged closure is coupled with the tenant's own failure to substantiate his positive case of continuing commercial activity. The Court is not drawing an adverse inference merely from the non-production of electricity bills. Rather, it is drawing the inference from the cumulative effect of the evidence and the unexplained admissions of the tenant.

26. There is also substance in the submission that the tenant's own evidence regarding electricity consumption is inconsistent with the position emerging from the record. If fans and electric tubes were allegedly being used for the preceding seven or eight years, the tenant would ordinarily have been in a position to explain the absence of electricity bills or consumption records. No satisfactory explanation is forthcoming.

27. Similarly, a tenant who asserts that a Karyana business has continuously been carried on from a shop cannot ordinarily be expected to have no contemporaneous record whatsoever of purchase or sale of goods. The tenant did not produce such material. The Appellate Authority noticed these deficiencies but, instead of considering them as part of the shifting evidentiary burden, treated them essentially as weaknesses, which could not assist the landlord.

28. In the considered opinion of this Court, that approach is erroneous. Once the landlord had established the foundational facts sufficient to raise a prima facie case, the question was not whether the tenant's omissions could independently prove cessation of occupation. The question was whether those



omissions, considered cumulatively with the landlord's evidence, rebutted or strengthened the presumption arising against the tenant. They plainly strengthened it.

29. The fact that the landlord admitted that he had not personally visited the shop for about five or six years also does not conclude the matter against him. That admission may affect the weight to be attached to his direct observation of the premises, but it does not render his evidence incapable of consideration. More importantly, it does not absolve the tenant of the burden which shifted to him once the landlord's prima facie case stood established.

30. Nor is the case of the landlord dependent upon proving that the tenant had actually shifted his business to the shop of his brother. That allegation is only one of the circumstances relied upon by the landlord. Even if that particular aspect is kept aside, the question remains whether the tenant was occupying and using the demised shop. The evidence regarding prolonged closure and the tenant's inability to establish actual business activity from the premises is independently material.

31. Learned counsel for the tenant has raised three further objections, which also require consideration. *Firstly*, it has been submitted that the present petitioner purchased the demised shop after the order of ejectment had been passed by the learned Rent Controller and was thereafter impleaded as respondent No.2 in the appeal. It is, therefore, argued that the learned Appellate Authority rightly dismissed the ejectment petition at the instance of the subsequent purchaser. *Secondly*, it is submitted that no issue regarding cessation of occupation had initially been framed and the said issue was framed by the learned Rent Controller only at the fag end of the proceedings. *Thirdly*, it is contended that the advocate representing the tenant before the Court below purchased the demised premises in the name of his wife, who is the present



petitioner, and this circumstance, according to learned counsel, justified the view taken by the learned Appellate Authority.

32. The first contention does not merit acceptance. It is not disputed that the present petitioner acquired the demised premises after the order passed by the learned Rent Controller and was subsequently impleaded in the appeal as respondent No.2. The mere fact that the transfer took place after the order of ejectment does not render the order of the Rent Controller non-est or extinguish the cause of action, which had already accrued to the landlord. Once the transferee-landlord was impleaded in the pending appeal and chose to support the order of ejectment, the Appellate Authority was required to adjudicate the appeal on its merits. The subsequent transfer did not erase the evidence, which had already been led before the Rent Controller, nor did it render the statutory ground of eviction under Section 13(2)(v) incapable of adjudication.

33. Further, the ground of eviction under Section 13(2)(v) is founded upon the tenant's conduct in relation to the demised premises. Once the tenant had allegedly ceased to occupy the premises for the statutory period during the subsistence of the tenancy, a subsequent transfer of the property by the landlord could not retrospectively obliterate that cause of action. The transferee steps into the shoes of the landlord in relation to the tenancy and is entitled to prosecute the pending proceedings, subject to the rights of the parties and the orders passed therein.

34. The fact that the present petitioner was impleaded as respondent No.2 in the appeal is also significant. The tenant had full notice of her claim and had an opportunity to contest her entitlement. No prejudice has been established merely on account of the subsequent transfer. The learned Appellate Authority, therefore, could not have dismissed the ejectment petition



merely because the property had changed hands during the pendency of the litigation.

35. The second objection concerns the framing of the issue regarding cessation of occupation. It is true that the issue as to whether the tenant had ceased to occupy the demised premises was not included amongst the issues initially framed and was subsequently framed by the learned Rent Controller at a later stage. But the mere fact that an issue was framed subsequently cannot, by itself, vitiate the proceedings. The purpose of framing an issue is to crystallise the controversy between the parties and to afford them an opportunity to lead evidence in support of their respective cases. The material question is whether the tenant was taken by surprise, or was deprived of an effective opportunity to meet the ground.

36. In the present case, the ground of alleged closure of the shop and cessation of business was not a matter introduced for the first time through the judgment of the Rent Controller. The landlord's ejectment petition specifically contained an allegation that the shop had been lying closed since April, 2008 and that the tenant had shifted his entire business to the shop in possession of his brother. The tenant specifically denied these allegations and asserted, in defence, that he was carrying on his Karyana business from the demised premises with the assistance of his sons.

37. Thus, the parties were conscious, from the pleadings themselves, of the factual controversy concerning the alleged closure of the shop and the continuance or discontinuance of the tenant's business therein. The subsequent formal framing of the issue merely crystallised a controversy, which was already present in the pleadings and on which the parties had led evidence. Indeed, the tenant himself entered the witness box as RW1 and gave evidence on precisely this aspect.



38. The tenant cannot, therefore, legitimately contend that he was taken by surprise by the subsequent framing of the issue. His own defence was that he continued to carry on business from the demised shop, and his evidence was directed towards establishing that assertion. The Appellate Authority itself records the rival contentions regarding closure of the shop, the alleged shifting of business and the evidence led by both sides.

39. It is also noteworthy that the tenant has not established before this Court what further evidence he would have produced had the issue been framed at an earlier stage. No application for additional evidence has been made, nor has any specific prejudice caused to his defence been identified. The objection, therefore, remains one of form rather than substance. Where the pleadings disclose the controversy, the parties have understood it, evidence has been led by both sides and no prejudice is shown, a subsequent formal framing of the issue cannot by itself result in dismissal of an otherwise established statutory claim.

40. The third objection is founded upon the circumstance that the advocate representing the tenant purchased the property in the name of his wife, who is the present petitioner. This circumstance, in the submission of learned counsel, justified the conclusion of the learned Appellate Authority. The submission cannot be accepted in the absence of any finding, or even cogent material, establishing collusion, fraud, coercion or any other circumstance rendering the transfer legally ineffective.

41. The mere fact that the purchaser is the wife of an advocate, who had represented the tenant in the proceedings does not, by itself, determine the merits of the statutory ground under Section 13(2)(v). The question before the Rent Controller was whether the tenant had ceased to occupy the demised premises for the statutory period without reasonable cause. That question has



to be answered on the evidence relating to occupation of the premises and cannot be displaced by an unsubstantiated allegation concerning the identity or relationship of the subsequent purchaser.

42. If the tenant's case is that the transfer in favour of the present petitioner was a product of collusion between the advocate and the landlord, or that the transfer was otherwise fraudulent or intended to defeat his rights, such a plea required appropriate pleading and proof. No finding of fraud or collusion has been recorded merely on the basis of the relationship between the purchaser and the advocate. A matrimonial relationship, by itself, is not proof of a sham transaction.

43. More importantly, the alleged relationship between the purchaser and the tenant's former counsel has no bearing upon the evidentiary question whether the tenant had actually ceased to occupy the shop. The subsequent purchaser cannot be denied the benefit of a statutory ground otherwise established merely because of a circumstance extraneous to the tenant's occupation of the premises.

44. It is also relevant that the learned Appellate Authority itself did not record any finding that the sale in favour of respondent No.2 was sham, fictitious, fraudulent or otherwise legally ineffective. The appeal was decided essentially on the basis that the landlord had failed to establish cessation of occupation. The additional circumstance now relied upon by the tenant, therefore, cannot be elevated into a legal bar to the maintainability or continuation of the ejectment proceedings.

45. Even otherwise, the subsequent transfer and the identity of the purchaser cannot improve the tenant's evidentiary position. The material question remains whether, during the relevant period, the tenant had ceased to occupy the demised shop. As noticed hereinbefore, the landlord's case of



prolonged closure stood coupled with the tenant's own failure to establish actual business activity from the premises. The subsequent transfer does not alter those facts.

46. For all the above reasons, none of the three objections raised on behalf of the tenant—namely, the subsequent purchase of the demised premises by the present petitioner, the subsequent framing of the issue regarding cessation of occupation, or the relationship between the purchaser and the advocate, who had represented the tenant—constitutes a legal impediment to adjudication of the ground under Section 13(2)(v) on its merits.

47. The Court would, therefore, return to the material question as to whether, on the evidence available on record, the tenant had ceased to occupy the demised premises for the requisite statutory period without reasonable cause. For the reasons already recorded, the answer is in the affirmative. The landlord established the foundational facts sufficient to shift the onus, whereas the tenant failed to rebut the same by indicating actual occupation or any reasonable cause for non-occupation.

48. The learned Appellate Authority, therefore, fell into error in allowing the appeal and setting aside the order of ejectment passed by the learned Rent Controller.

49. Another aspect, which deserves notice is that the statutory ground does not require the landlord to prove that the tenant had abandoned the tenancy, or intended to surrender his tenancy rights. The requirement is cessation of occupation for the statutory period without reasonable cause. As explained in ***Ram Dass (supra)***, the tenant cannot defeat the statutory ground merely by asserting that he continues to retain juridical possession. Actual occupation and useful use of the premises are material.

50. In the present case, no reasonable cause for the alleged non-use



has been pleaded or established by the tenant. His case throughout has been that the shop was actually being used for Karyana business. Having taken that stand, he was required to establish it by credible evidence once the onus shifted. He failed to do so.

51. The conclusion of the learned Rent Controller, therefore, cannot be characterised as one based merely on conjecture or the weakness of the tenant's defence. It was a conclusion arising from the cumulative assessment of the evidence. The learned Appellate Authority, while reversing that finding, failed to give due effect to the tenant's own admissions and to the settled principle that the onus in a case under Section 13(2)(v) is not static.

52. The revisional jurisdiction of this Court is undoubtedly narrower than appellate jurisdiction. This Court would not ordinarily substitute its own appreciation of evidence merely because another view is possible. However, where the Appellate Authority has failed to apply the correct legal test to material evidence and has thereby arrived at a conclusion, which is contrary to the settled principle governing the shifting burden, interference is warranted.

53. In the present case, the error is not merely one of choosing between two possible views of the evidence. The material admissions of the tenant regarding absence of electricity bills for seven or eight years, non-production of account books and absence of any documentary material supporting the alleged continuing Karyana business were required to be considered in the context of the landlord's prima facie case. That exercise has not been undertaken in its proper perspective.

54. On a cumulative consideration of the evidence, this Court is satisfied that the landlord succeeded in establishing a prima facie case that the tenant had ceased to occupy the demised premises for the requisite statutory period. The onus consequently shifted to the tenant. The tenant failed to rebut



the same and failed to establish any reasonable cause for such non-occupation.

55. The learned Rent Controller was, therefore, justified in ordering eviction on the ground contained in Section 13(2)(v) of the Act.

56. Consequently, the judgment dated 23.07.2018 passed by the learned Appellate Authority, Gurdaspur, is set aside. The order of ejectment passed by the learned Rent Controller on the ground of cessation of occupation under Section 13(2)(v) of the Act is restored.

57. The revision petition is, accordingly, allowed.

58. The tenant is granted period of two months from today to hand over vacant possession of the demised premises to the petitioner-landlord, subject to filing an undertaking before the learned Rent Controller that he shall hand over peaceful and vacant possession within the aforesaid period and shall clear/pay the rent and other charges, if any, legally payable up to the date of delivery of possession.

59. Pending miscellaneous application(s), if any, shall stand disposed of accordingly.

20.08.2026

Yogesh

**(DEEPAK GUPTA)
JUDGE**

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No

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