

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 134 of 2006 (O&M)
Date of decision: April 22, 2015

Charanjit Lal and others

...Petitioners

Versus

Mrs. Radha Kapoor

...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. Arun Jain, Senior Advocate, with
Mr. Amit Jain, Advocate,
for the petitioners.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Dhiraj Chawla,
for the respondent.

K. KANNAN, J. (Oral)

1. The revision is by the tenants who have been ordered to be evicted by the appellate court but was successful in fending off the threat of eviction at the trial court. The ground that prevailed with the appellate court was the personal necessity of the landlady to start a business at the ground floor of the building, she being the owner of the first floor and the barsati portion as well.

2. The Rent Controller, who dismissed the petition, was unconvinced that there was any bonafides on the part of the landlady, considering the fact that she had rented out the portion of the building at the first floor in April 1998 for monthly rent of ₹7300/- for a jewellery business

and yet another portion of the building at the monthly rent of ₹1,000/-. The Rent Controller observed that there was no bonafides on her part if she was letting out the portion of the building for a commercial purpose and would seek for ejectment of the portion of the property at the ground floor. The contention was if there was any bonafide need she would have started the business herself at the first floor.

3. The learned Senior Counsel appearing on behalf of the petitioner points out to the fact that the petitioner did not disclose the fact that the portion of the property which she had retained in the very same door number at the first floor had been available with her for business and there was a statutory mandate to disclose the availability of her own property in the same urban area. The counsel would also read to me the evidence of the landlady who in the cross-examination initially denied that she had let out the property to a jeweller but in the next succeeding minute, by the pressure of cross-examination, she admitted that she had let out the property for ₹ 7300/- to yet another tenant at the first floor. The counsel would, therefore, argue that she was not a witness for truth and she was simply not interested genuinely in starting the business but only interested in securing ejectment for an oblique motive for creating a fresh tenancy for higher rent. Her husband was running a business and she continued the same for sometime and abandoned it in the year 1994. She did nothing for four years and was only letting out various portions of the property as and when they fell vacant. Even a back portion of the same building had been the subject of petition for ejectment in CR No. 276 of 2006 and she had compromised with the tenant and got the the tenanted premises vacated from him in the year 2011. She has not put to use any portion of the said property till now

for that would be a further proof of her lack of bonafides.

4. The learned counsel appearing on behalf of the landlady states that there was no scope for the landlady to make an averment of the fact that there was any portion of the property in her possession for commercial purpose at the time when the petition was filed, in view of the fact that the particular business which her husband was carrying out at the first floor could not be continued when the Chandigarh Administration had taken action for resumption on the ground of misuse of residential portion for a non-residential purpose. She had to, therefore, give up that business and only later when the Chandigarh Administration had changed the policy to allow for the residential portion in SCF complex at Sector 23 to be used also for the commercial purpose, the building that fell vacant could be put to use for any commercial purpose. The subsequent policy change of the Chandigarh Administration alone made possible the letting for a jewellery business at the first floor. Her own business could not have been started there, for the access to the first floor portion was through the back portion of the building. The car park and access to the public were from the front portion and the tenant had also admitted in his own evidence that there was no retail shop or allied business in Sector 23 at the first floor. I heard the Senior Counsel who read to me the reasoning adopted by the lower appellate authority while reversing the judgment of the Rent Controller. He had given elaborative reasoning for taking the decision that he did, that the landlady would be the best judge to decide on the suitability of the property and the tenant cannot dictate his terms.

5. A test of bonafide surely shall be in the context of availability of any other property and propensity of the person to start business. If the

first floor which was originally residential portion had been put to use for commercial purpose by her husband but was not successful enough since the access to the property was also through the backyard, I would take that to be a surely a relevant fact. There is documentary evidence to show that she had to stop the business when there was a resumption notice originally by the Chandigarh Administration. The change of possible use became possible only after filing of the petition. It was only natural that the property which she could not put to the best use could be optimally used through the tenant who was willing to pay some rent instead keeping it vacant. There was significant variation in the quality of the property of the first floor and the 2nd floor with regard to the nature of access and the suitability for the particular type of business that was proposed to be done. The lower appellate court was convinced of such a need on factual appraisal.

6. The lower appellate court has also considered the fact that the landlady was a widow who had a grown up son who could not still run his own business but was associated with his paternal uncle in cloath business to assist him. The uncle himself has tendered evidence on behalf of the landlady and spoke about the fact that her son was employed in his own shop and he was gaining experience in the cloath trade. This fact also prevailed on the lower appellate court to make a reversal of the decision of the Rent Controller. The landlady surely was not willing to come out with the whole truth when she was cross-examined about the lease which she created subsequently to the filing of the petition. At least she did not persist with the untruth. I would, therefore, not blacken her prospects for securing possession by the untruth that she initially uttered. Human fallibilities make

persons state what is not true but if courts were to be only institutions of truth, there would be hardly any reason for litigation. We make do with the human conduct speaking lies at times; half truth on many occasions and contentious almost certainly in all cases. All disputes before the courts are not by parties seeking for interpretation of law. The litigations are by ordinary persons who cannot sort out of their own small differences. I would see this case to be an instance of such a dispute where truth and untruth are side by side and ultimately I find for an over all consideration of the need of the landlady as established by the lower appellate court on justifiable grounds and would lend support to such finding. There is a petition for mesne profits pending. The court had earlier passed an order to hear the same along with the main case. It was surely not the best manner of treatment of such an application, but I would not make any comment on that and think it is irrelevant to pass any order on the same now when the revision petition itself has been dismissed.

7. The order of the court below is affirmed and the revision is dismissed. Three months time is granted to the tenant to vacate the demised premises.

April 22, 2015
prem

(K.KANNAN)
JUDGE