IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.1868 of 2015(O&M)
Date of Decision : 21.5.2015

Krishan Kumar

.......Petitioner

Versus

Ramesh Kumar

.......Respondent

CORAM:- **HON'BLE MR. JUSTICE GURMIT RAM**

Present: Mr. Gurcharan Dass, Advocate for the petitioner.

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GURMIT RAM, J.

This revision petition has been preferred by Krishan Kumar (tenant) against the judgment dated 15.7.2014 passed by the Rent Controller, Hansi vide which the ejectment petition for the eviction of the tenant from one shop having house tax unit No.775B/16 (in short – *the demised shop*) was accepted and the judgment dated 18.2.2015 passed by the learned Appellate Authority, Hisar vide which the appeal of the petitioner herein (tenant) preferred against the above said judgment dated 15.7.2014 passed by the learned Rent Controller was dismissed.

2. The case of the respondent herein who was the landlord before the learned Rent Controller in nutshell was that he let out the demised shop to the petitioner herein (tenant) on 1.4.1997 for running

a scooter repairing shop on rent @ Rs.900/- per month excluding house tax. The rent was increased to Rs.1,400/- per month w.e.f. 1.4.2002 excluding the house tax which has been further increased to Rs.2,000/- per month w.e.f. 1.4.2007 excluding the house tax with the concurrence of the parties. The present rate of rent was stated to be Rs.2,000/- per month. The respondent herein (landlord) sought the ejectment of the petitioner herein (tenant) on the ground of non-payment of rent w.e.f. 1.7.2009; that the demised shop is unsafe for inhabitation being in a dilapidated condition and that the petitioner requires the demised shop for the bonafide need of his son. In this connection it was his case that Aseem who is his son has passed out C.A. internal examination and he intends to open educational academy/tuition centre/training centre as well as the office of Chartered Accountant by raising new construction and hence the instant petition.

3. On notice petitioner herein (tenant) filed reply by taking plea that he took the demised shop on rent about 25 years back @ Rs.300/- per month including house tax and that he had already paid the rent of the demised shop @ Rs.600/- per month including house tax. It was further his case that respondent herein (landlord) tried to evict him from the demised shop forcibly and in this connection he (tenant) had filed a suit for injunction against the landlord which is stated to be still pending. He had tendered the rent for the last 36 months @ Rs.600/- per month as provisionally assessed by the learned Rent Controller under protest. He was entitled to recover the excess rent paid for the period from 1.1.2009 to 31.7.2010. It was denied that Aseem son of the landlord has

passed out C.A. Examination and is unemployed or that demised shop is required by the landlord for the establishment of his son as alleged in the petition. Rest of the averments were also denied by the tenant.

4. Learned Rent Controller after hearing the learned counsel for the parties and going through the record as well accepted the ejectment petition filed for eviction of the tenant from the demised shop vide impugned judgment dated 15.7.2014 on the ground of non-payment of rent and personal necessity whereby ordering the ejectment of the tenant from the demised shop. The appeal preferred by the tenant against this judgment was also dismissed by the learned Appellate Authority, Hisar vide impugned judgment dated 18.2.2015.

5. Being dissatisfied with the findings recorded by both the Courts below, the petitioner-tenant has come up before this Court by way of the instant revision petition. Records of both the Courts below were also requisitioned.

6. Learned counsel for the petitioner was heard and records of both the Courts below as available on the file were also perused.

7. The learned counsel for the petitioner-tenant has contended that findings recorded by both the Courts below vide the impugned judgments are merely based on surmises and conjectures being against the law and as such the same are not tenable in the eyes of law. It is further his contention that both the Courts below have wrongly recorded the finding with regard to rate of rent @ Rs.2,000/- per month w.e.f. 1.4.2007, whereas there is no documentary evidence in support of

this finding. Oral statements made AW1 Raj Kumar, AW6 Chander Bhan and AW7 Amar Singh are not up to the mark to hold the rate of rent of the demised shop as Rs.2,000/- per month w.e.f. 1.4.2007. It is further his contention that the respondent herein (landlord) as AW2 in his cross-examination has admitted that the rent of the demised shop as recorded in the house tax assessment register of the concerned municipality was Rs.600/- per month.

8. Admittedly, in this case no rent note/agreement qua the demised shop had been brought on the record by either of the parties. As above-said the respondent herein (landlord) has claimed that rent of the demised shop was Rs.2,000/- per month w.e.f. 1.4.2007, whereas on the other hand as per plea of the petitioner-tenant, initial rent of the demised shop was Rs.300/- per month which was subsequently enhanced to Rs.600/- and that he had paid the same up to 31.7.2010. But his plea that he took the demised shop on rent about 25 years back @ Rs.300/- per month including the house tax is found to be incorrect being inconsistent with record of house tax assessment of the municipality concerned. In this connection, respondent herein (landlord) brought on the file copies of house tax assessment register of Municipal Committee, Hansi for the years 1984-85, 1989-90, 1994-95 and 1999-2000 as Ex.A18, Ex.A19, Ex.A20 and Ex.A21, respectively which show that during this period the demised shop remained in occupation of different tenants other than the present petitioner-tenant. No doubt the said copies of assessment register Ex.A18 to Ex.A21 rebut the stand of the petitioner herein(tenant) that he took the demised shop on rent about 25 years back, but that does not

mean that the landlord is absolved from his obligation to prove that the present rate of rent of the demised shop is Rs.2,000/- per month as claimed by him in the petition. He was legally bound to prove the rate of rent in question by leading cogent and documentary evidence to that effect which in the present case he had failed to do. The learned Rent Controller had mainly relied upon the statement of AW1 Raj Kumar while coming to the conclusion that the rate of rent of the demised shop was Rs.2,000/- per month as claimed by the landlord. The deposition of this witness is not to be treated as a gospel truth. As per his statement he had earlier remained in possession of the demised shop as a tenant under the respondent herein (landlord) and for this purpose he might be an interested person to depose in favour of the landlord. His statement is not to be considered as a substitute to the basic principle that the rate of rent is to be proved by the landlord as claimed by him by producing on the record reliable, cogent and documentary evidence. So is the fate of statements of AW6 Chander Bhan and AW7 Amar Singh.

9. So if an admission is made by AW1 Raj Kumar qua the rate of rent of demised shop in his statement, then the same cannot be held to be binding upon the present petitioner-tenant. The learned Rent Controller has wrongly interpreted the provisions of Sections 17 and 18 of the Indian Evidence Act while making the statement of AW1 Raj Kumar binding upon the present petitioner-tenant in order to hold that the rate of rent of the demised shop as Rs.2,000/- per month. Section 17 of this Act defines admission. Then for attracting the provisions of Section 18 of this Act, the alleged admission is to be made by the parties to

proceedings or his agent; by suitor in his representative character; by a party interested in subject matter and by person from whom interest derived. In the case in hand, AW1 Raj Kumar does not fall in any of the categories of the persons as mentioned in this section. Finding with regard to rate of rent is not to be recorded merely on the basis of presumption and oral statements.

10. In the copy of the assessment register Ex.A21 for the year 1999-2000, the rate of rent of the demised shop is recorded as Rs.600/- per month. The oral statements made by the respondent herein (landlord) with regard to rate of rent and by the witnesses examined by him cannot over-ride the fact with regard to rate of rent as recorded in the above said document Ex.A21, which was brought on the record by the respondent-landlord himself before the learned Rent Controller.

11. In the light of the above discussion the rate of rent of the demised shop is held to be Rs.600/- per month. Consequently, the finding recorded by both the Courts below that rate of rent of demised shop is Rs.2,000/- per month is set aside.

12. Now the next question which is to be seen in this case is as to whether the tender made by the petitioner herein (tenant) with regard to arrears of rent is valid or not. Then it is also to be seen as to whether the tenant is entitled to recover any refund on account of excess payment of rent as claimed by him in the written statement. In the petition the landlord has claimed the arrears of rent w.e.f. 1.7.2009. The tenant had made the tender with regard to arrears of rent on 24.12.2011 for the last 36 months @ Rs.600/- per month as provisionally assessed by the

Rent Controller. So, as such he had claimed the refund of excess payment of arrears of rent @ Rs.600/- per month for the period w.e.f. 1.8.2010 to 24.12.2011. Then the tenant has failed to produce any documentary evidence in the shape of receipt that he had already paid the rent to the landlord up to 31.7.2010 as claimed by him in the written statement. So the tender made by the tenant is held to be a valid tender, but it is also held that he is not entitled to recover any amount from the landlord on account of the alleged excess payment of rent since he had failed to prove the same. So the matter with regard to the rate of rent is decided in favour of the petitioner herein (tenant) and against the respondent herein (landlord).

13. The next ground on which the landlord has sought the ejectment of the tenant from the demised shop was the personal necessity. His claim was that his son namely Aseem has passed out Chartered Accountant internal examination. He requires the demised shop bonafidely to open educational academy/tuition centre/training centre and office of Chartered Accountant of his son after raising new construction. The respondent herein (landlord) has himself appeared as AW2 in this case and he has fully supported his version as put forth in the petition. His said son namely Aseem also appeared as AW8 in this case. He produced the copies of his testimonials pertaining to his academic qualification as Ex.A36 to Ex.A43. Ex.A36 to A43 clearly establish the fact that the said son of the respondent herein (landlord) has passed out his C.A. Examination. If the respondent herein (landlord) wants to settle

his said son in demised premises after raising new construction by opening his office of Chartered Accountant/Educational Academy/Tuition centre etc. ,then there is nothing to suspect his plea of bonafide need qua the demised shop. It is the sincere desire of every parent to settle his children within their possible means whatever available at their disposal. There is nothing worthwhile on the record to say that the alleged personal need of the respondent herein (landlord) qua the demised premises is either malafide or tainted with any ulterior motive. Herein I want to discuss an authority of Hon'ble Apex Court as delivered in ***Joginder Pal Versus Naval Kishore Behal, 2002(2) Rent L.R.1***. In this case, suit premises situated on the ground floor of the building owned by the landlord – respondent was in occupation of the tenant-appellant for non-residential purpose. The same was required by the landlord – respondent for the office of his son who was a Chartered Accountant residing with him. In this case it was held as under:-

> *"24. We are of the opinion that the expression 'for his own use' as occurring in Section 13(3)(a)(iii) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove we have found the pari materia provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependents and kith and kin in the requirement of landlord as "his" or "his own" requirement and user. Keeping in view the social or socio-religious milieu and*

practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire : (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close inter-relation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act."

14. The facts of the present case and of the case law cited supra are quite identical with each other. So the ratio of this case law is fully applicable to the case in hand.

15. In the light of the above discussion the findings recorded by both the Courts below that the respondent herein(landlord) bonafidely required the demised premises for settling his son who is the Chartered Accountant are held to be correct and the same are upheld accordingly.

16. In view of the above discussion, this revision petition on the ground of personal necessity is held to be meritless. So, it stands

dismissed and disposed of accordingly.

Since the main revision petition has been disposed of, the miscellaneous application, if any, also stands automatically disposed of having been rendered infructuous.

21.5.2015 **(GURMIT RAM)**
Brij **JUDGE**

1. To be referred to the Reporters or not?Yes/No
2. Whether the judgment should be reported in the Digest? Yes/No