

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

C.R. No. 1808 of 2014
Date of decision: 13.01.2015

Prem LalPetitioner(s)

Versus

Ram Chand ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Johan Kumar, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed against the eviction order dated 19.03.2013 whereby, the eviction petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 has been allowed on the ground of bona fide requirement. Challenge is also to the order passed by the Appellate Authority on 30.01.2014 whereby, the appeal has been dismissed.

The respondent-landlord filed the said eviction petition on the ground that the property consisting of two rooms and a vacant plot having A.C.C. sheetroom behind the two rooms and having boundary wall measuring 20 ft. x 20 ft. marked as letters ABCD had been taken on rent at ₹309/- per month since 04.05.2003. Ejectment was sought on the ground of non-payment from 01.09.2009 and that the premises is a house and is required for personal bona fide necessity of the other co-owners and the landlord, his sons and family members since there was no sufficient accommodation. It was mentioned that the petitioner has 3 sons and one daughter and that his brother Bal Kishan also had two sons. Another

brother Chunni Lal had died and he had 3 daughters and one widow and thus, the house was required by the owners and family members. Reference was made to an earlier ejectment petition which had been filed on account of arrears of rent which was still pending since the Appellate Court had accepted the appeal of the tenant. The petitioner-tenant had admitted the relationship of the landlord-tenant by pleading that Shish Ram, father of the respondent was the owner of the house mentioned and that they were tenants for the last 20 years. That he was ready to tender the rent. The ground of bona fide need was denied as it had been mentioned that the earlier petition had been dismissed.

The Rent Controller, after taking into consideration the statement of the parties, came to the conclusion that the landlord was in a best position to see how he is to utilize his property and that the sons at one time would want to live separately and the landlord's need was bona fide. It was rightly observed that res judicata is not attracted when the ground of personal bona fide requirement is there since the circumstances keep on changing. The need of the landlord was held to be genuine because of the large number of family members and accordingly, eviction was ordered on the ground of bona fide requirement.

The Appellate Authority noticed that the co-owner had two sons, Jai Bhagwan and Sanjay, who had further got one son and three daughters. The brother Chunni Lal had died and he had one son and was also survived by three daughters and one widow. The factum of the number of family members could not be shattered in cross examination. It was noticed that there were 18 to 20 family members and the house of Ram Chand was 150 sq. yds., even as per the case of the tenant and the parties

belong to a lower strata being Balmikis (Harijan). Accordingly, the appeal was dismissed.

Counsel for the petitioner has vehemently argued that earlier C.R. No. 2876 of 2006 is pending before this Court and, therefore, matter should be heard alongwith it. It is submitted that since earlier the petition has been rejected, it would be a ground to doubt the bona fide of the landlord.

After hearing counsel for the petitioner, this Court is of the opinion that no case is made out for interference in the concurrent findings recorded by the Courts below. The earlier petition is of the year 2006 and the present petition was filed in 2010. Over the period of time, the need of the family for additional accommodation has increased. As noticed, the large number of family members would, thus, necessarily require the additional accommodation which is now sought to be got vacated on the said ground. It is settled principle of law that the landlord cannot be expected to live in an accommodation and restrict his need whereas the tenant will continue to occupy the premises at the cost of the landlord. Reference can be made to judgment of the Apex Court in ***Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta, 1999 (6) SCC 222***. In the said case, the requirement was of the landlord for his son and the Apex Court held that the tenant is not the one who can dictate to the landlord as to how he is to live in an alternative accommodation far away from where the rest of the family members are staying.

Even otherwise, on an earlier occasion, costs of ₹20,000/- had been imposed on 24.05.2014. A period of almost one year has expired and the said costs have not been deposited. The Full Bench of this Court in

Anand Parkash vs. Bharat Bhushan Rai and another, AIR 1981 P&H 269

has held that for proceeding further, payment of costs is the condition precedent. In such circumstances, the petitioner is not entitled for hearing also on merits for the non-payment of costs.

Lastly, the Apex Court in ***Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh, 2014 (9) SCALE 657*** has held that this Court is not sitting as an Appellate Court to scrutinize the findings recorded. The relevant observations read thus:-

“45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself

to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

Accordingly, keeping in view the cumulative factors mentioned above, this Court finds no ground to interfere in the well reasoned orders passed by the Courts below and the present revision petition is dismissed.

13.01.2015
shivani

(G.S. SANDHAWALIA)
JUDGE