

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.2577 of 2014
Date of decision:05.02.2015

G.K.Traders

....Petitioner

Versus

Gurbachan Singh

.....Respondent

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

Present: Mr.B.S.Jaswal, Advocate, for the petitioner.

Mr.Veneet Sharma, Advocate, for the respondent.

G.S.Sandhawalia J.

Challenge in the present revision petition, filed by the petitioner-tenant, is to the eviction order passed by the Rent Controller, Sirsa, dated 18.12.2012 (Annexure P1), from the shop in question for the *bona fide* requirement of the son of the respondent/landlord-Inderdeep Singh. The said order has also been upheld by the Appellate Authority on 21.12.2013 (Annexure P3), which is also subject matter of challenge.

The case set up by the respondent-landlord was that the petitioner was inducted as a tenant in shop No.2, ground floor, measuring 15'x9', which was part of building No.260-A, East Mohan Nagar, Amritsar for 11 months @ ₹2000/- per month, vide rent note dated 27.09.2002. It was alleged that improvements were made in the size of the tenanted shop and the rate of rent increased to ₹2500/- per month and the last rent paid was ₹2757/-, on account of the enhancement clause.

Ejectment was sought on the ground of non-payment of rent from April, 2010 and that the premises were required for the *bona fide* use and occupation of Inderdeep Singh for establishing his business of direct marketing

associate of the HDFC Ltd. and other housing and financing institutions, for disbursement of loans. Inderdeep Singh, the son of the respondent was working as key resource person and the landlord was handicapped and was suffering from paralysis and required his son to be near him. Both the respondent and his son were not occupying any other commercial building/shop in the urban area of Amritsar had not vacated the same without any sufficient cause. The payment of rent was denied to the landlord and it was stated that he had not received the rent despite repeated requests.

In reply, the *bona fide* and personal requirement of the premises were also denied though the tenancy was admitted. The tenant paid the rent as per the provisional rent assessed and the issue was only whether the premises were required by the landlord which came up for consideration of the Rent Controller on the basis of the statement of Inderdeep Singh, the attorney holder, who appeared as AW1 and Sunil Kumar as AW2 and one Surinder Singh as AW3. The proprietor of the present petitioner, Gurpreet Singh examined himself as RW1 and also Jagmohan Singh as RW2.

The argument that the original landlord had not stepped into the witness box was rejected on the ground that the requirement was for the son and he was the special power of attorney. He needed the tenanted shop for starting his business for taking direct Marketing Associate of HDFC Ltd. The statement of RW2, who was the Deputy Manager (Sales) of the Finance Company was also taken into consideration that they were ready to appoint him as Direct Marketing Associate, if he had suitable accommodation. The factum of the respondent having 5 shops in the same building and that the 3 shops were lying vacant was rejected in the absence of any title deed and it was, accordingly, held that it was a *bona fide* and genuine requirement. It was also noticed that there was no such

by the respondent-landlord. The medical condition of the landlord was also taken into consideration and his handicap which prevented him from appearing, while passing the ejectment order.

The Appellate Authority also scanned the evidence and after noticing the facts and keeping in mind the principle that the landlord was the best judge of his requirement, rejected the argument that an adverse inference was to be drawn against the landlord, since admittedly, he was suffering from paralysis and could not walk. It was also noticed that no cross-examination had been done regarding the availability and utilization of the alleged 3 vacant shops.

The view that has been taken by the authorities below are based on cumulative facts and the evidence which has come on record regarding the requirement of the son of the respondent for setting up his business. An independent witness of the rank of Deputy Manager (Sales) from the HDFC Ltd. had also deposed regarding the fact that Inderdeep Singh has been serving as key resource for the last 7 years and on having suitable accommodation, the company was ready to appoint him as Direct Marketing Associate. In such circumstances, the factum of the requirement of the shop in question for the *bona fide* need of the son of the respondent has been established beyond doubt. Both the authorities below have not erred in ordering ejectment and there is no illegality or infirmity in the concurrent findings, which would warrant interference of this Court, keeping in view the law laid down by the Apex Court in **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh 2014 (9) SCC 78**. Relevant para reads as under:

“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 reappraisal 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 reappraise or reassess 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, in view of the abovesaid observations, the present revision petition is dismissed.

05.02.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE