IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2893 of 2015(O&M)
Date of Decision : 28.5.2015

Phool Chand

.....Petitioner

Versus

Dharam Pal

.....Respondent

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

Present: Mr. Brijender Kaushik, Advocate for the petitioner.

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GURMIT RAM, J.

This revision petition is preferred by the petitioner herein (tenant) Phool Chand against the judgment dated 18.2.2014 passed by the learned Rent Controller, Naraingarh vide which ejectment petition filed under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (in short – *the Act*) for the eviction of the petitioner-tenant from the demised shop was accepted and the judgment dated 16.2.2015 passed by the learned Appellate Authority, Ambala vide which the appeal of the tenant preferred against the above said judgment dated 18.2.2014 passed by the learned Rent Controller was dismissed.

2. The case of the respondent herein (landlord-petitioner) before the learned Rent Controller in brief was that the petitioner is the owner cum-landlord of the demised shop. The petitioner herein is the tenant in this shop w.e.f. January 2008 @ 700/- per month. Then it was his further plea that the tenant took this shop on rent from him vide a rent note dated 9.1.1982. The ejectment of the tenant from the

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demised shop was sought on the ground of non-payment of rent w.e.f. February 2011 up to date and that respondent herein (landlord) required the same for his own bonafide use and occupation to do business. Hence this petition.

3. On notice, the tenant filed written statement taking preliminary objection that the petition is not maintainable. On merits, it was replied that the alleged need of the landlord qua demised shop is not sincere and honest one. It is merely a whimsical desire of the landlord to seek his eviction from the demised shop. The landlord is living separately from his sons at Ambala City. The tenant is in possession of the demised shop for the last more than 30 years and is paying its rent regularly. The respondent herein (landlord) is stated to be a man of more than 65 years old. He did not do any business of the nature during his entire life where the shops were required. He has filed the instant ejectment petition with a malafide intention in order to fetch higher rent by getting the same vacated from him. The landlord had also got the fair rent fixed/revised as many as 4 to 5 times during the last 30 years through the Court. 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 came to the conclusion that the demised shop is bonafidely required by the landlord for his business and accepted the petition filed for the ejectment of the tenant from the demised shop vide impugned judgment dated 18.2.2014. The appeal preferred by the tenant against this judgment was dismissed by the learned Appellate Authority, Ambala vide judgment dated

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5. Being dissatisfied with the impugned judgments delivered by both the Courts below, the petitioner-tenant has come up before this Court by way of the instant revision petition.

6. I have heard the learned counsel for the petitioner-tenant and have also perused the records as available on the file.

7. The learned counsel for the petitioner-tenant has contended that the landlord did not approach the Court with clean hands and tried to suppress the material facts from the Court. It is further his contention that he also failed to substantiate his claim of personal necessity qua demised shop by bringing on record cogent and trustworthy evidence to prove the same. Then he has also contended that the respondent herein (landlord) is a co-owner of 24 shops along with his brothers which are not partitioned so far amongst them. He wrongly stated that he is the owner of seven shops only. Both the Courts below did not appreciate the above-said facts while passing the impugned judgments and as such the same are unsustainable in the eyes of law. In support of his above contentions he has referred to an authority of this Court as delivered in ***Shankar Lal Versus Madan Lal and ors., 2011(1) R.C.R.(Rent) 139***.

8. The respondent herein (landlord) appeared as PW1. In his affidavit Ex.PW1/A he deposed that he alongwith his brothers owned 24 shops and he owns seven shops, out of these shops. But for the present petitioner (tenant) it is difficult to say as to whether the above said 24 shops are partitioned or the same are still owned jointly by the

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respondent herein (landlord) along with his brothers. It is the claim of the respondent herein (landlord) that he owns only seven shops out of these shops, which matter is amongst the three brothers including the present respondent. Even if the respondent herein is co-owner in all these 24 shops, even then it is for him to see and decide which one is suitable for him for doing the business. From the pleadings as raised in the petition, it cannot be said that there is concealment of any fact on the part of the respondent herein (landlord) as he clearly mentioned in the petition that he is the owner of seven shops which are on rent. In Shankar Lal's case cited supra the landlord sought the eviction of the tenant from the demised shop as he required the same for the business of his son. He owns another two shops also which fact was concealed by him. It was held that the landlord is guilty of concealment and as such his eviction petition was dismissed, interalia, on the ground of concealment. Since, it is held that there is no concealment of fact on the part of respondent herein (landlord) in this case, so the ratio of said case law cannot be attracted to the case in hand.

9. Then it is also contended by the learned counsel for the petitioner herein (tenant) that the respondent (landlord) failed to comply with the statutory provisions of the Act since he did not plead and prove the basic ingredients of Section 13 of this Act. In support of his contention, he has also cited an authority of Hon'ble Apex Court as delivered in ***Onkar Nath Versus Ved Vyas, 1980(1) R.C.R.(Rent) 304***. In this case the ingredients as mentioned in Section 13(3)(a)(i) of the Act were neither pleaded nor proved. It was held that filing of affidavit at a

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later stage of litigation is not adequate to meet the requirement of the provisions of said section. The landlord was allowed to file proceedings for eviction *de novo*.

10. As above-said in the case in hand, it was the claim of the respondent herein (landlord) that he is the owner of seven shops and all these are on rent. Then in para No.3(3) of the ejectment petition, it has been specifically mentioned that the petitioner is not occupying any other shop within the Municipal limits, Naraingarh nor has vacated any such shop without sufficient cause after the commencement of the Act, in the said urban area. Then it was also his claim that he requires the demised shop for his bonafide use and occupation. So in the case in hand all the ingredients as mentioned in the above said Section 13(3)(a)(i) of the Act are mentioned in the ejectment petition. Hence, the above contention of learned counsel for the petitioner is also held to be not tenable being misconceived as well as misconstruction of the pleadings of the landlord. Onkar Nath's case cited supra as such has nothing to do with the case in hand.

11. Learned counsel for the petitioner has further contended that it is the duty of the Court to see all the facts of the case and act and conduct of the landlord in order to hold as to whether his alleged personal requirement qua the demised premises is bonafide one or not. The basic principle that the landlord is the best judge of the requirement is to be considered in the light of this fact as to whether his requirement qua the demised premises is genuine, justifiable with the element of need and not tainted with any ulterior motive. Then it is also

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his contention that the respondent herein (landlord) is in the habit of getting vacated the shops from the tenants for getting higher rent. Then it is also his submission that both the Courts below have wrongly ignored the reply as submitted by the respondent herein (landlord) to the interrogatories. Then in order to lend the support to his above contention he has also cited the case laws as laid down in ***Nand Kishore Versus Surinder Kaur, 2010(2) Rent L.R. 372*** and ***Maqboolunnisa Versus Mohd. Saleha Quaraishi, 1998(9) SCC 585***. I have carefully gone through the record and found that the alleged reply filed by the respondent herein (landlord) to the application filed by the tenant under Order 11 Rule 1 & 14 CPC is available on the record as Annexure P-4. It has been mentioned in the reply that shop No.735 was given on rent to one Surinder in the year 2001-02 who expired in the year 2006. Thereafter, the rent note qua this shop was executed in the name of Om Parkash the father of said Surinder (since deceased) in the year 2007. It has also been mentioned that at the time when the shop was let out, the same was not required by the petitioner for his bonafide use and occupation. Moreover, this shop is far away from Aggarsain Chowk. Then, it was also his submission that he and his brothers Jai Parkash and Sat Pal got vacated one shop from Sheela Devi, Manoj Kumar, Sanjeev Kumar and Rajesh Kumar on the ground of ceased to occupy and got its vacant possession. In this shop the petitioner was only one of the co-sharers along with his said brothers. Then it was also submitted that petitioner rented out shop No.749 to one Arun Kumar in the year 2004 which was not required by him for his personal use and occupation at that

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2015.07.06 18:31
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time and as such it was rented out. Then it was also his plea that he and his said brothers also got vacated shop No.737 from Public Carrier Union, Naraingarh on the ground of ceased to occupy and got its vacant possession. In this shop also, the respondent herein (landlord) was only one of the co-sharers along with his above-said two brothers. Then it was also his submission that he filed an ejectment petition against Fateh Singh on the ground of bonafide use and occupation of his son Mohit Aggarwal which was allowed and the appeal filed in this regard was dismissed. Then it was also his admission as mentioned in the impugned judgment dated 18.2.2014 that he had filed a suit against Ashwani Gupta for getting vacated an other shop for use of his son namely Sandeep. So the respondent herein (landlord) gave very clear cut reply to the interrogatories filed by the petitioner herein (tenant). It was also his stand that earlier he started the work of transportation in one of the shops which did not work well and he stopped the same.

12. The mere fact that respondent herein (landlord) is about more than 65 years of age is no ground to decline his plea that he required the demised shop to run his own business or to suspect his bonafide need qua the demised shop.

13. In the case law cited supra i.e. Maqboolunnisa Versus Mohd. Saleha Quaraishi, the landlady sought eviction of the tenant from the demised shop measuring 10' x 15' on the ground of bonafide requirement of the shop to enable her sons to run embroidery business. During the pendency of the proceedings in the trial Court, a shop adjacent to the demised shop of the same size was vacated by another tenant and

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the appellant did not amend the pleadings to assert that the said shop which had been vacated by another tenant was not sufficient for her son to shift his business. In Nand Kishore's case cited supra the landlady sought the eviction of the tenant on the ground that she required the demised premises to start commercial college by demolishing intervening wall and converting adjacent shop and demised premises into one unit. She let out adjacent shop during pendency of the eviction petition. It was held that had there been any need, the landlady would not have let out adjacent shop. The need was not held to be bonafide and the eviction order was set aside.

14. In the case in hand, there is no material on the record to show that any shop belonging to the respondent herein (landlord) had fallen vacant during the pendency of the instant ejectment petition or that the same was let out by him to some other tenant.

15. So the facts of both the case laws i.e. Nand Kishore's case and Maqboolunnisa's case are entirely different from the facts of the case in hand and as such the same cannot be said to have any bearing on it.

16. In the light of the above discussion, it is concluded that there is nothing on the record to say as to whether the impugned judgments passed by both the Courts below are either perverse or not tenable on the basis of the evidence available on the file. This revision petition being meritless stands dismissed and disposed of accordingly.

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

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of having been rendered infructuous.

28.5.2015 **(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

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