

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

**CR No.3205 of 2015 (O&M)
Date of decision : August 12, 2015**

O.P. Bulani

..... Petitioner

Versus

Vijay Kumar Aggarwal

..... Respondent

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

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

Present : Mr. Saurav Khurana, Advocate
for the petitioner.

Mr. V.K. Sandhir, Advocate
for the respondent.

GURMIT RAM, J.

1. This revision petition is of the petitioner-herein (tenant) against the order dated 24.03.2014 passed by learned Rent Controller, Amritsar vide which application filed under Section 13 of the East Punjab Urban Rent Restriction Act III of 1949 (in short the Act) for the eviction of the tenant from the demised premises was accepted with costs and the judgment dated 06.02.2015 passed by learned Appellate Authority, Amritsar vide which appeal preferred by the tenant against the aforesaid order of learned Rent Controller was dismissed with costs.

2. The case of the respondent-herein (landlord) before learned

Rent Controller in brief was that firm M/s Bhool Chand Bhagat Ram through Kishan Dass Bhulani was inducted as tenant in the first floor along with inter-floors of building bearing No.259/1-2, situated at Katra Kanahaya, Amritsar shown as red in the site plan annexed with application (hereinafter referred as demised premises) by Kanshi Ram at the rate of ₹210/- per month. The present rent of the demised premises is stated to be ₹500/- per month. The terms of the tenancy were reduced into writing vide rent note dated 15.02.1968. Kanshi Ram was the grandfather of the present respondent-herein (landlord) and after his death, he (respondent-herein) became landlord of the demised premises. The abovesaid Kishan Dass also surrendered his tenancy rights with the consent of the applicant in favour of O.P. Bhulani, i.e. petitioner-herein (tenant). The ejectment of the tenant from the demised premises was sought on the ground of non-payment of rent w.e.f. January, 2007 and for personal necessity. It was the case of the respondent-herein (landlord) that he bona fide required the demised premises for the residential use of his son namely Vinay Aggarwal. He has two sons namely Vinay Aggarwal and Nitin Aggarwal, who both are married having their children and they all are residing together at 27, Green Avenue, Amritsar. Now there arose a dispute between both of his sons and their families and it was not possible for them to live together under one and same roof, which resulted into filing of instant application

3. Notice of application was given to the respondent, who in his written statement took preliminary objections that this petition was

not maintainable and that it had been filed with mala fide intention to seek ejectment of the tenant from demised premises and to let out the same at higher rent. The arrears of rent upto March, 2007 had already been paid. Then he had given a cheque in the sum of ₹6,000/- as subsequent rent for one year which the landlord did not present with an ulterior motive to make out a ground for non-payment of rent. Landlord is having three storey building out of which 1st Floor i.e. demised premises is in his possession and whereas the ground floor and second floor of said building are in possession of the landlord, which was stated to be sufficient accommodation for the residence of landlord and his sons. The wife of Vinay Aggarwal, one of the sons of the landlord was stated to be already expired who has no family to keep in the entire floor. The residential accommodation of the landlord at 27, Green Avenue, Amritsar is stated to be double storey bungalow comprising 500 square yards with separate stairs, three bedrooms, kitchen, bath rooms, drawing room etc. etc. on the ground and first floor each. Further the landlord was also having land and *kothi* at Batala Road, Amritsar. The alleged personal necessity of the landlord qua demised premises was stated to be not genuine one. Rest of the averments were also denied by the tenant.

4. Learned Rent Controller after hearing learned counsel for both the parties and going through the record as well came to the conclusion that demised premises is bona fidely required by the landlord for the personal use and occupation of his son and accepted the ejectment application vide the impugned order dated 24.03.2014.

The tenant preferred an appeal against aforesaid ejectment order before learned Appellate Authority, Amritsar, which was declined vide the impugned judgment dated 06.02.2015.

The petitioner-herein (tenant) feeling aggrieved from the findings recorded by both the Courts below has come up before this Court by way of instant revision petition, notice of which was given to the respondent-herein (landlord). Photostat copies of record of both the Courts below was also requisitioned.

5. I have heard learned counsel for the parties and have also gone through the record.

6. Learned counsel for the petitioner-herein (tenant) has contended that the ground floor and second floor of the building of which tenanted premises is the part are already in possession of the respondent-herein (landlord). It is also his contention that wife of Vinay Aggarwal for whose personal necessity, the respondent-herein (landlord) has sought the ejectment of the tenant from the demised premises, has expired and as such, now he is not having any family to keep in the demised premises. Then, it is also his contention that accommodation in residential property at #27, Green Avenue, Amritsar where the respondent-herein (landlord) along with his sons and their children is residing at present, is sufficient for all of them and as such, plea of the respondent-herein (landlord) that he required the demised premises for the personal use and occupation of his son Vinay Aggarwal is neither genuine nor bona fide one. In support of his contention, he has referred to the cross-examination of AW-1 Arun

Kumar and AW-3 Vinay Aggarwal. It is his further contention that both the Courts below have failed to take note of abovesaid facts while passing the impugned order and judgment and as such, the same are not tenable in the eyes of law. In order to justify his above contention, learned counsel for the petitioner-herein (tenant) also relied upon certain case laws, which are detailed as under:-

i. ***T. Sivasubramaniam vs. Kasinath Pujari, 1999(2) R.C.R. (Rent) 236.***

In this case landlord sought the ejectment of the tenant from the demised premises on the ground that he desired to live separately from his father. No compelling reasons for residing separately was shown. It was held that such a desire is not the substitute of the need for the premises which the landlord is required to plead and prove. The alleged need of the landlord was found to be not bona fide.

ii. ***Rattan Devi vs. Vijay Kumar, 2013(1) R.C.R. (Rent) 565.***

In this case in the course of evidence, it was elicited from the petitioner that there were four shops out of which two were lying vacant. It was held that the alleged requirement of the landlord qua the demised shop is not bona fide one and hence he was not entitled to obtain eviction.

7. On the other hand, learned counsel for the respondent-herein (landlord) has denied the above entire contention of learned counsel for the petitioner-herein (tenant) and has contended that there is no scope for making interference in the impugned order and judgment

as passed by the learned Courts below, the same being having been passed after making proper evaluation of the evidence of both the parties.

8. Now, it is required to see the deposition of AW-1 Arun Kumar and AW-3 Vinay Aggarwal as made by them in their respective cross-examination. AW-1 in his cross-examination has stated that Vinay Kumar is having a plot in the area of Batala Road, Amritsar, again said there is a factory at Batala Road. There is a factory in the area of Hide Market, which is closed one and it is opposite to National Shopping Complex, Hide Market, Amritsar. The ground floor portion of the property in dispute is under possession of the applicant. The second floor of this property which consists of only one room is also in his possession. Then it is further in his cross-examination that Nitin Aggarwal younger son of landlord and his family is residing on the first floor portion at Green Avenue which consists of one room. Two of the properties as pointed out by learned counsel for the petitioner herein (tenant) in the cross-examination of AW-1 are pertaining to factory premises and as such, same cannot be used for the residential purposes. Moreover, in the case in hand the need of the respondent herein (landlord) is for residential accommodation and not for any commercial one. Then the first floor of the residential house in Green Avenue Amritsar, in which Nitin Aggarwal along with his family is residing at present consists of only one room.

9. Then AW-3 Vinay Aggarwal in his cross-examination has stated that on the second floor of the residential premises No.27, Green

Avenue Amritsar, there is only servant quarter. The ground floor of this house consists of 2 bed rooms, attached with bath rooms, drawing room and dining room along with kitchen. On the first floor of this house, there are only 2 bed rooms with attached bath room and washing area. Then it is also in his cross-examination that kitchen of their house is common. He and his son are residing at ground floor of this house. The remaining cross-examination of this witness is also on the same lines as that of AW-1.

10. Then it is also case of the respondent-herein (landlord) that there remains a dispute between his two sons and their families and as such, they are unable to pull on together under one roof. One of his sons is having his wife and children, so as such with the passage of time, some more accommodation is certainly to be required by him for his personal use and occupation. Nowadays everybody wants to live independently and separately without interference of anybody into his personal life. So in these circumstances, it is difficult to say that the alleged need of the respondent-herein (landlord) qua demised premises is not bona fide one. Neither the tenant nor the Court can compel any person to reside at any particular place in a particular accommodation when the relation of that person with the other members of his family with whom he is residing at present are not cordial. It is not necessary that there should be some criminal proceedings going on between them in order to hold their relation to be not cordial. The demise of wife of son of landlord namely Vinay Aggarwal is also no ground to decline the relief of personal necessity in this case.

11. The case laws *T. Sivasubramaniam vs. Kasinath Pujari* and *Rattan Devi vs. Vijay Kumar*, cited supra are on different footings than the case in hand and as such, the same have no bearing on the facts of the case in hand. Then it is also the settled law as laid down by Hon'ble Apex Court in case titled as *Sarla Ahuja vs. United India Insurance Company Ltd. 1998(2) RCR (Rent) 533* that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of tenanted premises. Then there is another authority of Hon'ble Apex Court cited as *Babu vs. T.K. Vasudevan, 2001(2) R.C.R. (Rent) 596* to the effect that the condition in which the additional accommodation is to be used by the landlord cannot be dictated by the tenant.

12. There is nothing on the file to say that there was any concealment of the material facts on the part of respondent-herein (landlord) in filing the instant ejectment petition. The properties which are pointed out by the petitioner-herein tenant in the abovesaid cross-examination of AW-1 and AW-3 are the commercial properties and as such, the plea of learned counsel for the petitioner-herein (tenant) that the respondent-herein (landlord) has concealed material facts from the Court is found to be not tenable and same is declined and disposed of accordingly.

13. In the light of the above discussion, this petition being merit-less stands dismissed and disposed of accordingly.

14. At this stage, petitioner-herein (tenant) who is present in the Court in person made a request for grant of some time to him to

vacate the demised premises on the plea that he is having two daughters of marriageable age. He is requesting for grant of two years time for vacating the demised premises. On the other hand, respondent-herein (landlord) who is also present in person in Court has submitted that he has no objection, if six months time is granted to the petitioner-herein (tenant) to vacate the demised premises. So, keeping in view all the probabilities and circumstances of the case, the petitioner-herein (tenant) is granted time of one year i.e. upto 31 July, 2016 to vacate the demised premises and to deliver its vacant possession to the respondent-herein (landlord) by that date positively. Further he is directed to pay arrears of rent, if any, within 21 days from today and monthly rent of the period in question by 11th of each month without any default. In case, he does not comply with any of these conditions, then in that eventuality the respondent-herein (landlord) would be at liberty to get vacant possession of the demised premises from the petitioner-herein (tenant) by filing execution application in due course of law.

Since, the main case has been disposed of, hence pending miscellaneous application, if any, also stands disposed of automatically having been rendered infructuous.

August 12, 2015

Gaurav Sorot

**(GURMIT RAM)
JUDGE**