

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.5082 of 2012(O&M)

Date of decision:20.01.2015

Jagdish Rai & others

.....Petitioners

Versus

Ajit Singh @ Jit Singh & others

.....Respondents

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

Present: Mr.Anurag Jain, Advocate, for the petitioners.

G.S.Sandhawalia J.

CM No.21702-CII of 2012

Application, filed under Order 22 Rule 4 read with Section 151 CPC, for bringing on record the legal heirs of Banwari Lal, the tenant, is allowed, in view of the averments made in the application, which are duly supported by an affidavit. The legal heirs as mentioned in para No.2 of the application are permitted to prosecute the present revision petition.

CR No.5082 of 2012

Challenge in the present revision petition, which is also barred by 47 days in filing, on account of the death of the original tenant, is to the order of eviction, passed by the Appellate Authority, Hisar dated 28.02.2012, on the ground of *bona fide* requirement. Respondent No.1 filed petition for eviction of the ground floor of the shop which was situated adjoining his property, which had been rented out to the original tenant, Banwari Lal @ ₹275/- per month. The ground for eviction was on account of non-payment of rent from 01.11.2000 and on account of sub-letting to

Jagdish, without the written consent and approval. The third ground for eviction was for personal use and occupation as he wanted to start a big showroom of D.G. Engine set as well as of generators. The relationship of landlord-tenant was denied and the plea taken by the petitioner and the sub-tenant was that the shop in question was constructed several years back and they were continuing in exclusive possession of the same. The following issues were framed by the Rent Controller:

- “1. Whether the respondents are liable to be ejected from suit property? OPP
2. Whether the petition is not maintainable? OPR
3. Whether the petitioner has no cause of action to file the present petition? OPR
4. Relief.”

The Rent Controller recorded that the shop in question was owned by the landlord and there was no proof of ownership that the shop was constructed by the tenant and the alleged sub-tenant. The rent had already been tendered by them and on the ground of sub-letting, it was found that Jagdish, being the son, was doing business jointly with his father and therefore, it could not be proved that he had sub-let the premises. The question of *bona fide* requirement of the shop in question was repelled on account of the fact that one agreement was entered between one Kela Devi and Rajesh, the landlord, during the pendency of the petition, which had been filed on 01.01.2001 and the agreement was dated 09.11.2006 and therefore, the *bona fide* aspect was doubted, in view of the agreement, which was placed on record as Mark-A. Accordingly, the eviction petition was dismissed on 02.11.2007.

Respondent No.1 preferred an appeal before the Appellate Authority, who came to the conclusion that where the son is in exclusive

possession and the father had parted with the possession of the shop in favour of his son, then only because they were staying together, would entitle the landlord the benefit of ejectment. Reference was made to documentary evidence in the form of a plaint (Exhibit P7), whereby the son had filed a suit against the Municipal Committee and taken a specific plea that the shop was in his exclusive possession for the last several years and he was carrying on business. The plea that it was the suit by the firm was rejected as the firm was not a partnership firm but a proprietorship and even a bank loan had been taken by Jagdish Rai. Accordingly, it was recorded that Jagdish was running the disputed shop without any interference and keeping in view the principles that the sub-tenancy is a private arrangement between the tenant and the sub-tenant and it being a secret relationship, it is difficult for the landlord to prove the said factum, accordingly eviction was ordered. On the question of the *bona fide* requirement, it was found that the landlord was the best judge of his own choice and admittedly, he was not occupying any commercial building in his possession and neither he had vacated any commercial building and therefore, liable for the possession of the shop. The agreement, Mark-A had not been duly proved and the Rent Controller had wrongly relied upon the same to deny the benefit of eviction. Nothing had been brought on record that the sale deed was actually executed in favour of the alleged beneficiaries and neither the said persons had been examined to prove that they had purchased the disputed shop. The landlord having stepped into the witness box and sworn that he required the shop for starting the business of generator sets, ejectment was ordered by the Appellate Authority on the ground of personal necessity also.

The reasoning which has been resorted to by the Lower Appellate

Court cannot be said to be perverse or suffering from any error of jurisdiction. It is a settled principle that parting with possession whereby control is given to the other person, is a secret arrangement with a tenant and the sub-tenant and is difficult and difficult task to prove. The factum of the son of the original tenant himself filing a petition and pleading that he had exclusive possession was thus a valid proof of admission of the said sub-tenant. It is also pertinent to notice that the initial plea taken is that the relationship of landlord-tenant was also denied. Once the original tenant, the father was not actively associated with the business and had transferred the control, the Appellate Authority was well justified in ordering eviction since sub-letting can always be inferred from legitimate inferences.

It has been held by the Apex Court in *Vinaykishore Punamchand Mundhada Vs. Shri Bhumi Kalpataru (2010) 9 SCC 129* that the sub-tenancy is always a clandestine arrangement and having been entered at the back of the landlord, it is difficult to prove the same. The order directing eviction on the ground of sub-letting was restored by making the following observations:

“15. We are not impressed by the submission made by the learned counsel for the respondents that unless payment of consideration was established as a fact between the tenant and sub-tenant, the application under the provisions of the Rent Control order filed by the landlord cannot be allowed. Is it possible for any landlord to establish the actual agreement or understanding between the tenant and the person to whom the possession of the premises is delivered? It is well settled that sub-tenancy or sub-letting comes into existence when the tenant voluntarily surrenders possession of the tenanted premises wholly or in part and puts another person in exclusive possession thereof without the knowledge of the landlord. In all such cases, invariably the landlord is kept out of scene rather, such arrangement whereby and whereunder

the possession is parted away by the tenant is always clandestine and such arrangements take place behind the back of the landlord. It is the actual physical and exclusive possession of the newly inducted person, instead of the tenant, which is material and it is that factor which reveals to the landlord that the tenant has put some other person into possession of the tenanted property. It would be impossible for the landlord to prove, by direct evidence, the arrangement between the tenant and sub-tenant. It would not be possible to establish by direct evidence as to whether the person inducted into possession by the tenant had paid monetary consideration to the tenant. Such arrangement which may have been made secretly, cannot be proved by affirmative evidence and in such circumstances, the Court is required to draw its own inference upon the facts of the case proved at the enquiry. Delivery of exclusive possession by the tenant to a stranger to the landlord and without the prior permission of the landlord is one dominant factor based on which the Court could infer as to whether the premises was sub-let.”

Similarly, in *M/s S.F.Engineer Vs. Metal Box India Ltd. (2014)*

6 SCC 780, the Apex Court held that the High Court, in revision, would not interfere with the finding of the Lower Appellate Court, until and unless it is found to be perverse and arbitrary. The order of the Bombay High Court, allowing the revision of the tenant was, accordingly, set aside by holding that once the legal possession had been parted, the Court was right in drawing an inference upon the facts. Relevant observations read as under:

“23. We have referred to the aforesaid decisions only to reaffirm the proposition that the Court under certain circumstances can draw its own inference on the basis of materials brought at the trial to arrive at the conclusion that there has been parting with the legal possession and acceptance of monetary consideration either in cash or in kind or having some kind of arrangement. The aforesaid authorities make it further spectacularly clear that the transaction of subletting can be proved by legitimate

inference though the burden is on the person seeking eviction. The materials brought out in evidence can be gathered together for arriving at the conclusion that a plea of subletting is established. The constructive possession of the tenant by retention of control like in *Cooks and Kelvey Properties (P) Limited* (supra) would not make it parting with possession as it has to be parting with legal possession. Sometimes emphasis has been laid on the fact that the sub-tenancy is created in a clandestine manner and there may not be direct proof on the part of a landlord to prove it but definitely it can bring materials on record from which such inference can be drawn.”

Resultantly, keeping in view the settled principle as to when the Court is to order eviction because of sub-letting, this Court is of the opinion that the findings recorded by the Appellate Authority do not suffer from any infirmity, which would warrant interference in the revisional jurisdiction, especially keeping in view the observations made in *Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh (2014) 9 SCC 78*. Relevant portion of the judgment 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 reappreciate 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.”

Coming to the second issue also, the reasoning which has been recorded by the Appellate Authority does not suffer from any infirmity, on the ground that it was the case of respondent No.1-landlord that he required the premises for his own use. It is to be noticed that the petition was filed wayback almost 14 years earlier, for *bona fide* requirement and the relief was only denied to respondent No.1-landlord on account of the fact that there was some alleged agreement during the pendency of the eviction petition. The said agreement was never proved on the record by examining the alleged purchasers or the witnesses and it was only placed on record as Mark-A. The said document having not been proved, in any manner, the Rent Controller was wrong in placing reliance upon the same. The Lower Appellate Court was well justified in reversing the said finding wherein the Rent Controller failed to exercise its jurisdiction on the ground of *bona fide* requirement. It has been time and again held that the *bona fide* requirement should not be doubted merely because the tenant asserts so. The mandatory provisions that the landlord was not in possession of any other shop having

been pleaded and nothing have been brought on record, the presumption could arise that the requirement was *bona fide* and there was nothing on record to show that he did not want to start his business as he had put in appearance as a witness and deposed about his requirement. Reliance can be placed upon the judgment of the Apex Court in *Atma S. Berar Vs. Mukhtiar Singh (2003) 2 SCC 3* wherein it has been held as under:

“One of the grounds for eviction contemplated by all the rent control legislations, which otherwise generally lean heavily in favour of the tenants, is the need of the owner landlord to have his own premises, residential or non-residential, for his own use or his own occupation. The expressions employed by different legislations may vary such as 'bona fide requirement', 'genuine need', 'requires reasonably and in good faith', and so on. Whatever be the expression employed, the underlying legislative intent is one and that has been demonstrated in several judicial pronouncements of which we would like to refer to only three.

In *Ram Dass Vs. Ishwar Chander & Ors.*, (1988) 3 SCC 131, M.N. Venkatachaliah, J. (as His Lordship then was) speaking for the three-Judges Bench, said "Statutes enacted to afford protection to tenants from eviction on the basis of contractual rights of the parties make the resumption of possession by the landlord subject to the satisfaction of certain statutory conditions. One of them is the bona fide requirement of the landlord, variously described in the statutes as "bona fide requirement", "reasonable requirement", "bona fide and reasonable requirement" or, as in the case of the present statute, merely referred to as "landlord requires for his own use". But the essential idea basic to all such cases is that the need of the landlord should be genuine and honest, conceived in good faith; and that, further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it and that, that desire, to become a "requirement" in law must have the objective

element of a "need". It must also be such that the court considers it reasonable and, therefore, eligible to be gratified. In doing so, the court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down."

In *Gulabbai Vs. Nalin Narsi Vohra & Ors.*, (1991) 3 SCC 483, reiterating the view taken in *Bega Begum Vs. Abdul Ahad Khan*, (1979) 1 SCC 273, it was held that the words "reasonable requirement" undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire.

Recently, in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*, (1999) 6 SCC 222, this Court in a detailed judgment, dealing with this aspect, analysed the concept of bona fide requirement and said that the requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to himself - Whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest? If the answer be in positive, the need is bona fide. We do not think that we can usefully add anything to the exposition of law of requirement for self occupation than what has been already stated in the three precedents. Let us revert back to the facts of the case. Can it be said that the desire of the landlord to be in his own house and live comfortably in his own castle every home is a castle to the inmate restricting his movements so as to adjust with ailing physique and weakening faculties is unnatural, illusory, a pretext or mere pretence for getting rid of the tenant? What is there to demonstrate that the need is divorced of reality, sincerity and honesty? Fed up by the litigation and alarmed by the delays which eviction matters unfortunately take in law

courts, having acquired a proverbial notoriety, brought down the landlord on his knees and he offered the tenant to sell his house so that he could settle himself by utilizing the sale proceeds in some other house but in the heart of Moga Tehsil which he loves, for, he was born there and remained attached to it in spite of moving at places. There is no evidence adduced nor any material brought on record to hold that the landlord had ever tried to sell the house to anyone other than the tenant himself or at any time before and after the month of January and February 1990. We must give weight to the factor that the landlord has not felt shy of admitting having written the two letters - rather having negotiated the sale with the tenant- but then he assigns reason which sounds reasonable and probable and explains his conduct. His determination to live in his own house is emboldened by the attitude of the tenant. We find nothing unnatural about it. The learned appellate authority took into consideration the entries contained in the passport showing the landlord's frequent movements between India and Canada wherefrom the appellate authority inferred that the appellant's links with Moga were still alive. The learned senior counsel for the respondent criticized this finding submitting that the passport entries show the landlord's entry into India but not necessarily his stay at Moga. Suffice it to observe, where else and for what the landlord, having reached India, would have gone excepting visiting his own place which is the natural urge of any son of the soil to do while visiting the country or returning to the motherland."

Accordingly, keeping in view the settled principles, this Court is of the opinion that the jurisdiction which has been exercised by the Appellate Authority does not suffer from any infirmity which would warrant interference by this Court under the revisional jurisdiction. Accordingly, the present revision petition is dismissed on merits and on the ground of limitation also.

20.01.2015
sailesh

(G.S.Sandhawalia)
JUDGE