

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

**CR No.5364 of 2013 (O&M)
Date of decision : July 28, 2015**

Jiwan Kumar

..... Petitioner

Versus

Harinder Kaur

..... 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. Sanjay Majithia, Senior Advocate with
Mr. Jatinder Kumar, Advocate
for the petitioner.

Mr. Atul Lakhanpal, Senior Advocate with
Mr. Chanchal Kumar Singla, Advocate
for the respondent.

GURMIT RAM, J.

1. This revision petition is of tenant preferred against the order dated 07.09.2010 passed by learned Rent Controller, Dhuri, vide which the ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short “the Act”) for the eviction of the tenant from the demised shop was accepted and the judgment dated 20.08.2013 passed by the learned Appellate Authority, Sangrur vide which the appeal preferred against the abovesaid order of learned Rent Controller was dismissed.

2. The case of the respondent herein who was the landlady before

learned Rent Controller in brief was that, she is owner-cum-landlady of the shop in dispute. Petitioner-herein was the tenant in the said shop under her at the rate of ₹2,000/- per month. His ejectment was sought from this shop on the ground of non-payment of rent since 01.09.2000 along with house tax and that the said shop is required by her for her personal use and occupation. Presently, she is running her business under the name of Simran Trading Company from her house for want of accommodation.

3. On notice, tenant in his reply took preliminary objection that petition is false and frivolous. He is in possession of the shop in dispute as the tenant under the petitioner since the year 1991. The rent as settled between the parties as per rent note dated 25.03.1991 was ₹700/- per month. Sewa Singh-husband of the petitioner used to receive rent since the very inception of tenancy. Even on 08.04.2005, he had received a sum of ₹30,000/- from him on account of rent against a receipt and as such, this amount is liable to be adjusted towards the alleged arrears of rent. The petitioner has formed a fictitious concern to create a ground for eviction of the tenant from demised shop. It was denied that the petitioner required the demised shop for her personal use and occupation bona fide. Rest of the averments were also denied by the tenant.

4. The learned Rent Controller after hearing learned counsel for both the parties and going through the record as well, came to the conclusion that the demised shop is required by the petitioner-landlady for her bona fide use and occupation and accepted her ejectment petition on the ground of personal necessity vide the impugned order dated 07.09.2010.

The tenant preferred an appeal against this order before learned Appellate Authority, Sangrur, which was dismissed vide the impugned

judgment dated 20.08.2013.

5. The tenant being not satisfied with the abovesaid both the impugned order as well as judgment passed by both the Forums below has come up in the instant revision petition, notice of which was given to the respondent.

Learned counsel for both the parties were heard and the record as available on the file was also perused.

6. Learned counsel for the petitioner-herein (tenant) has contended that as per the case of the respondent-herein (landlady), she retired from her service in the year 2004 as J.B.T. teacher and that she had filed the instant application for the ejectment of the tenant from the demised shop on 10.02.2007, i.e. after a gap of about 3 years from the date of her alleged retirement. It is also his contention that no Sales Tax Number, Bill, receipts etc. has been brought on record to establish the fact regarding the business which she is carrying on at present and also to show that she requires the demised shop on the ground of personal necessity. Even nothing has come on record to show that she had any experience for dealing in any business. Then it is also his contention that it was the case of respondent-landlady that rate of rent of the demised shop is ₹2,000/- per month, which was denied by the tenant who took the plea that rate of rent is ₹700/- per month. Her plea of rate of rent to be ₹2,000/- per month was disbelieved by the learned Rent Controller while coming to the conclusion that rate of rent of the demised shop is ₹700/- per month. Relating thereto, it is also his submission that the alleged plea of personal necessity of the respondent-landlady qua the demised shop is an after thought story and as such, the same cannot be said to be bona fide one having been filed with

same ulterior motive.

7. On the other hand, learned counsel for the respondent-landlady has contended that age is no ground to hold that the alleged personal need of the landlady qua the demised premises is not bona fide one. Herein he has referred to case law as laid down by this Court in ***Ishwar Chander vs. Saroj Karwal, 2010(1) R.C.R. (Civil) 65***, wherein it has been held in brief that mere advancement in age is no ground to dislodge the claim of a landlord that he requires the demised premises to start his own business. The plea that she has no experience of running any business is also held to be not tenable. Herein, learned counsel for the respondent has also relied upon another case law of this Court as laid down in ***Ravinder vs. Kumari Saneh Lata Jain and others, 2011(2) R.C.R. (Rent) 567***. In this case law it was laid down that landlord is not required to have any previous experience nor he is required to be qualified for the same, if he wishes to do any particular business. Even if he is not having any requisite qualification or experience it will also not make any difference with regard to his/her personal necessity. Landlord is best judge of his requirement and tenant is nobody to dictate any terms and conditions to the landlord.

8. In the light of principles laid down in the case laws cited supra, the above contention of learned counsel for the tenant are held to be not sustainable. The plea that the respondent-landlady had filed the instant ejectment petition after about 3 years from the date of her alleged retirement is also no ground to suspect her alleged bona fide personal requirement qua the shop in dispute.

9. Then the learned counsel for the petitioner-herein (tenant) has further contended that learned Appellate Authority has committed a legal

blunder by not recording the findings issue-wise. It is further his contention that first Appellate Authority is Court of facts as well as of law and as such, it is legally required for such a Court to record its findings on all the issues, issue-wise and as such, impugned judgment dated 20.08.2013 of the Appellate Authority is not tenable, being defective legally as well as technically. In support of his contention, he has relied upon certain case laws as laid down in ***Madhukar vs. Sangram 2001(2) R.C.R. (Civil) 704, Mrs. Vijaya Shrivastave vs. M/s Mirahul Enterprises & Ors 2006(3) R.C.R. (Civil) 740*** and ***Smt. Harjit Grewal and others vs. Dr. Vinod Kumar Batra and others 2010(5) R.C.R. (Civil) 340.***

10. On the other hand, learned counsel for the respondent-landlady has contended that findings on issue No.2 with regard to rate of rent were recorded by learned Rent Controller in favour of the tenant and the landlord did not file any appeal/cross-objection qua this finding before the learned Appellate Authority, so as such, the only issue of personal necessity was to be decided mainly by the learned Appellate Authority and consequently there was no occasion for the Appellate Authority to record issue-wise finding on all the issues. As per the record, this contention of learned counsel for the respondent-landlady is held to be correct. So the case laws titled as ***Madhukar vs. Sangram, Mrs. Vijaya Shrivastave vs. M/s Mirahul Enterprises & Ors. & Smt. Harjit Grewal and others vs. Dr. Vinod Kumar Batra and others*** cited (supra) by learned counsel for the petitioner-herein (tenant) have no bearing on the facts of instant case. Moreover none of these case laws is under the Rent Act.

11. The evidence of the respondent-landlady which was brought by her before learned Rent Controller in order to substantiate her claim of

personal necessity qua demised shop in brief is as under:-

AW-1 Jagdish Kumar has tendered his affidavit Ex.AW1/A, besides producing the house tax assessment record for the year 2001-02. As per his statement, respondent-herein (landlady) is recorded to be owner of the shop in dispute as per entry made at Sr. No.173/85 of the record.

Then respondent-herein (landlady) herself tendered in evidence her duly sworn affidavit Ex.AW2/A wherein she reiterated her stand that the demised shop is required by her bona fide for her personal use and occupation. She intends to start her business under the name and style of Simran Trading Company in the demised shop, which business she has been running at present in her house due to lack of accommodation.

AW-3, Vimal Kumar has tendered in his statement duly sworn affidavit Ex.AW3/A. He has produced the original record of registration No.03762018593 of sales tax and import export Code No.3006003420 and balance sheet of Simran Trading Company for the year 2006-07 & 2007-08. He was working in the said firm as a Manager since the last 2 ½ years. Further he has proved the cover letter Ex.A2, import export certificate Ex.A3, copy of balance-sheet Ex.A4 to Ex.A6, statement of profit and loss Ex.A7 and Ex.A8 and ledger of Harinder Kaur Ex.A9, the sole proprietor of said Simran Trading Company.

12. On the other hand respondent-Jiwan Kumar has himself appeared as RW-1 and tendered in his statement his duly sworn affidavit Ex.RW1/A, wherein he reiterated his stand as taken by him in his written statement. It is also in his affidavit that respondent-herein (landlady) did not require the demised shop for her bona fide personal necessity.

RW-3 Rajvir Sharma also supported the version of tenant.

13. From the above discussed evidence, it is amply established that presently respondent-landlady is running her business under the name and style of Simran Trading Company in her house due to paucity of accommodation, so as such she urgently requires the demised shop bona fide for her own use and occupation. The tenant failed to bring on record any material to show that the alleged need of the respondent-landlady qua demised shop is not genuine one. Further, he also failed to bring on the record any evidence to show that respondent-landlady has any shop within the municipal limit of Dhuri, other than demised shop.

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

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

July 28, 2015

Gaurav Sorot

**(GURMIT RAM)
JUDGE**