

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

115

Civil Revision No.6065 of 2015 (O&M)

Date of Decision: September 16, 2015

Sunil Kumar

...Petitioner

Versus

Nikko Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. G.C. Shahpuri, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J.

This is tenant's revision against the order of eviction passed by the Rent Controller, Yamuna Nagar at Jagadhri, dated 10.10.2014, against which the appeal preferred by him has been dismissed by the Appellate Authority, Yamuna Nagar at Jagadhri, on 05.08.2015.

2. Petition for eviction was filed by the respondents-landlords against the petitioner-tenant for getting vacant two shops measuring 10 feet X 12 feet and 6 feet X 8 feet, situated at Gulab Nagar, Yamuna Nagar. Admitted case of the parties is that Roshan Lal was the owner/landlord of the shops in question, who rented the bigger shop to the petitioner-tenant on 01.07.2004 at the rate of ₹600/- per month up to 31.05.2005. The rent was enhanced from time to time. The shop was rented for ten months at the monthly rent of ₹850/- with effect from 01.05.2011 to 01.03.2012 by rent deed dated 15.04.2011 and the other shop which is adjoining and smaller was rented out at the monthly rent of ₹300/- with effect from 01.05.2011 to 01.03.2012 by rent deed dated 16.04.2011. All the taxes for both the shops were to be paid by the petitioner-tenant. Roshan Lal

required the shops in dispute for use and occupation of his son Dinesh Kumar for running tyre puncture repair shop and for selling second hand tyres, which was clearly stated at the time of entering into the rent deeds with an assurance that it would be vacated by the petitioner-tenant for the said purpose as and when requested.

3. The petitioner-tenant was requested to vacate the premises but he did not abide by his assurance. The matter was considered in a Panchayat, which was convened on 19.05.2012, where the petitioner-tenant agreed to vacate the shop in question by 20.07.2012. The compromise was reduced into writing in the presence of the respectables, which was duly signed by the petitioner-tenant as well but despite that he did not abide by the same. Shri Roshan Lal died on 28.06.2012 and the shops in question along with other properties devolved upon the respondents-landlords. They requested to vacate the premises so that the son of Nikko Devi-respondent No.1 (widow of Roshan Lal) i.e. Dinesh Kumar-respondent No.3 could start his business of tyre puncture and repair shop and for selling second hand tyres, which he was running in a rented shop near village Udhamgarh, and his landlord was insisting upon to vacate the same. The petitioner-tenant did not vacate the demised shops, which forced the respondents-landlords to file the eviction petition.

4. The grounds, on which the eviction was sought, were non-payment of arrears of rent and the requirement of the shops in question for the personal use and occupation of Dinesh Kumar. It would not be out of way to mention here that respondents 2 to 4, who are sons and daughters of Roshan Lal deceased, had relinquished their shares in the properties including the demised shops in favour of respondent No.1-Nikko Devi their

mother by release deed dated 09.10.2012 and, therefore, she had become the owner of the demised shops but the petition was filed on behalf of all the legal heirs to avoid technical objections.

5. The rent petition was allowed on the ground of personal necessity and occupation only. The appeal was preferred which was dismissed by upholding the findings recorded by the Rent Controller.

6. It is the contention of learned counsel for the petitioner that the petition was not maintainable as the respondents-landlords had concealed the correct facts from the Court. It has not been mentioned in the petition that apart from these two shops, there were other shops also, which were rented out. He, therefore, contends that the basic ingredients as per the requirement of Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the '1973 Act'), have not been fulfilled, according to which the respondents-landlords were required to disclose the said fact and, therefore, on this ground alone, the eviction petition should have been rejected by the Courts below. He places reliance upon the judgments passed by this Court in the case of ***Manmohan Lal Versus Shanti Parkash Jain 2014 (2) HLR 622 (P&H)***, ***Mahanagar Telephone Nigam Limited Versus State of Maharashtra and others 2014 (1) Civil Court Cases 111 (SC)***, ***Shankar Lal Versus Madan Lal and others 2011 (1) RCR (Rent) 139 (P&H)***, ***Kashetariya Punjab Khadi Mandal, Kharar Versus Prem Kumar and others 2012 (2) HLR 606 (P&H)***. He further contends that the respondents-landlords owned other shops in the same vicinity, which are under tenancy of some other tenants and, therefore instead of getting those shops vacated, they are wanting the vacation of these shops. It has not come on record as to how these shops are

the most suitable and not the other shops. The *bona fide* requirement for use and occupation of Dinesh Kumar for running the business, therefore, is not made out. He, thus, contends that the present revision petition deserves to be allowed and the orders passed by the Courts below deserve to be set aside.

7. I have considered the submissions made by learned counsel for the petitioner and with his assistance have gone through the impugned orders but I do not find any substance in the arguments raised by him.

8. The first contention of learned counsel for the petitioner-tenant is that the respondents-landlords have concealed the fact that they are owners of other shops apart from these two shops and, therefore, by non-disclosing the said fact, they are guilty of concealment of facts and violating the provisions as contained under Section 13 of the 1973 Act and, thus, not entitled to any relief, which is not sustainable as in the petition itself, it has been mentioned that on the death of Roshan Lal on 28.06.2012, apart from these shops, other properties have also devolved upon the applicants being his legal heirs and, therefore, it cannot be said that they have not disclosed the true facts. Further it has been mentioned that the applicants have no other similar premises/shop in their possession nor they have vacated any such shop without sufficient cause since the commencement of the Rent Act. It has further been stated that they are not occupying another such building in urban area of Yamuna Nagar and have not vacated such building without sufficient cause after the commencement of the 1949 Act. It would also not be out of way to mention here that a suit for permanent injunction was filed by the petitioner-tenant against respondents 1 to 3, where a statement was given by them that they would

not take possession of the shop except in due course of law. The judgments, thus, relied upon by the counsel for the petitioner i.e. *Manmohan Lal Versus Shanti Parkash Jain 2014 (2) HLR 622 (P&H) (supra)*, *Mahanagar Telephone Nigam Limited Versus State of Maharashtra and others 2014 (1) Civil Court Cases 111 (SC) (supra)*, *Shankar Lal Versus Madan Lal and others 2011 (1) RCR (Rent) 139 (P&H) (supra)*, *Kashetariya Punjab Khadi Mandal, Kharar Versus Prem Kumar and others 2012 (2) HLR 606 (P&H) (supra)* would not be of any help to the petitioner-tenant as there has been no misstatement or concealment of facts with regard to non-disclosure of other shops owned by them.

9. It may not be out of way to mention here that this Court in the case of ***Rekha Rani and others Versus Dr. Raj Kumar Jindal and another 2014 (2) HLR 14*** and ***Deepak Kumar Versus Charanjit Rai 2014 (2) RCR (Rent) 108*** that the landlord is not required to disclose his other properties, which are not suitable for his business and cannot serve his purpose.

10. The second contention, which has been raised by the counsel for the petitioner-tenant, is that the demised shops are not required *bonafidely* for the use and occupation of Dinesh Kumar for running the business of tyre puncture repair shop and sale of second hand tyres and for such a contention, it has been stated that the respondents could have got the other shops owned by them vacated and why these shops only. A further contention has also been pressed into service that both the shops are not required and only one would be fulfilling the purpose, for which it is being sought but these cannot be accepted as it has been authoritatively held by the Supreme Court in various judgments such as ***Maganlal Versus Nanasaheb 2009 (1) Civil Court Cases 102 (SC)*** that the tenant cannot

dictate terms to the landlord nor can he advise him what he should do or what he should not. It is always the privilege of the landlord to choose the nature of business and the place of business. This Court also in various judgments has held the same. Reference in this regard can be made to the judgments of this Court in ***M/s Satpal Vijay Kumar Versus Sushil Kumar 2011 (1) RCR (Rent) 160, Yash Pal Juneja Versus Satish Kumar Sandooja 2009 (2) RCR (Civil) 680 (P&H), Rani Devi and others Versus Shakuntla Devi and others 2009 (4) RCR (Civil) 74***, where this Court has held that when the eviction is sought on the grounds of *bona fide* necessity and if the ingredients thereof are fulfilled, the same should not be doubted and because an alternative accommodation is available, he being the owner of the same, it is for the landlord to decide as to how and in what manner his requirements shall be fulfilled as he is the best judge of his requirements and to adjudge the suitability of the premises for the purpose for which the same is sought for by seeking eviction. Cogent and convincing evidence has been brought on record which would prove the *bona fide* need of the respondents-landlords which has been discussed in detail by the Courts below which cannot be faulted with.

11. There are concurrent findings returned by both the Courts below on proper appreciation of the pleadings and the evidence, which do not call for interference by this Court and further is no illegality in the impugned orders, which would persuade this Court to exercise its jurisdiction.

12. In view of the above, the present revision petition stands dismissed.

13. In the light of the dismissal of the petition, the application for

stay i.e. CM No.19200-CII of 2015, stands disposed of as infructuous.

September 16, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE