

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

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**Civil Revision No.7058 of 2015(O & M)
Date of Decision:03.11.2015**

Rajesh Kumar

....petitioner

Versus

Kamaljit Kaur and another

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?YES**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.R.K.Arya, Advocate
for the petitioner

ARUN PALLI, J.(ORAL):-

Ejectment of the petitioner-tenant was ordered by the Rent Controller, Gurdaspur, vide order dated 21.08.2010. As even the appeal preferred against the said order failed, and, was dismissed vide judgement dated 29.08.2015, the tenant is before this Court, vide this revision petition.

Briefly, eviction of the petitioner was sought on two grounds i.e.personal bona fide need of respondent No.1-landlord, as also, since petitioner-Rajesh Kumar had sub let the demised premises, in favour of Subash Anand-respondent No.2. It was maintained that respondent No.1-landlord required the premises for use and occupation of her sons. Her son namely Prabhdeep Singh, aged 24 years, had graduated in Information and Technology, in the year 2004, and, was unemployed. Likewise, even the other son

namely Amardeep Singh, aged 22 years, who had passed 10+2 examination, was also jobless. Husband of respondent No.1 -landlord namely Ajit Singh had retired as Excise and Taxation Officer on 31.01.2006. In fact, respondent No.1 owned four shops, including the demised premises, that were adjacent to each other. Sons of respondent No.1 being unemployed, intended to start a computer centre cum cyber cafe by getting all the shops vacated and removing the intervening walls. Ejectment applications for vacation of the other tenants had also been filed. Husband of respondent No.1, having retired, also intended to assist his sons in managing their proposed business venture. As regards subletting, it was pleaded that petitioner had put respondent No.2-Subash Anand in possession of the demised premises without any written consent of respondent No.1. In fact, petitioner-tenant was running a readymade garments business in a shop in main bazaar, Gurdaspur, in the name and style Handa Garments and was also operating two STD PCOs from the same premises.

In defence, it was pleaded, inter alia, that the eviction petition preferred by respondent No.1-landlord was not maintainable, being barred under Order 23 Rule 1 CPC, as husband of respondent No.1-landlord had withdrawn an earlier ejectment application, inter se the parties, without any permission to file a fresh petition. The petitioner was engaged in the business of electrical goods and their repairs, and the same was being conducted from the premises itself, in the name and style Handa Electrical Works. It was denied that he was running any business of readymade garments in the main

bazaar as the said business was being conducted by his wife. Respondent No.2 i.e.Subash Anand was alleged to be his maternal uncle, who was only assisting the petitioner in his business. The bona fide need pleaded by respondent No.1-landlord was denied. It was denied that respondent No.1 required the premises for her alleged need.

On a due and comprehensive consideration of the matter in issue and the evidence on record, both the authorities concurrently concluded that husband of respondent No.1, namely Ajit Singh(AW1) was never cross examined on his statement that the earlier ejectment petition was not filed by respondent No.1 Kamaljit Kaur. Further, in the matter in hand, respondent No.1-landlord had prayed for eviction, for the premises was required by her sons and husband and, in the absence of the copies of the previous eviction petition and non cross examination of AW1, the plea that the present eviction petition was not maintainable, was wholly misconceived. Husband of respondent No.1 namely Ajit Singh (AW1), appeared in support of her claim and proved her case. Certificates Ex.A2 and Ex.A3, were duly proved on record to show the educational qualifications of both the sons of respondent No.1-landlord. Likewise, Ajit Singh (AW1) proved the letter of his retirement as Ex.A6, to show that he too was jobless. Further, copy of the power of attorney, executed by respondent No.1 in favour of her husband was also proved as Ex.A1. Nothing was brought on record to show that either the sons of respondent No.1 were employed or engaged in any profitable venture. No evidence was led either to show that the

husband of respondent No.1-landlord was engaged in any avocation, post retirement. It was duly proved that both the sons of respondent No.1-landlord were young, educated and were unemployed. Nothing was brought on record to show that any of the sons of respondent No.1 or even her husband occupied another accommodation in the same local urban area or had vacated any, without any sufficient cause. Needless to assert, once respondent No.1-landlord had established a prima facie case as regards her requirement, the presumption, in law, was that her need was indeed genuine and bona fide. No evidence was led by the petitioner-tenant to rebut the said presumption. The submission advanced by learned counsel for the petitioner that as respondent No.1-landlord herself never appeared in the witness box in support of her claim, an adverse inference was required to be drawn against her, was also found to be wholly misconceived and misplaced. Concededly, husband of respondent No.1-landlord namely Ajit Singh (AW1) appeared as a duly constituted attorney and proved her claim. Being husband of respondent No.1 and father of Prabhdeep Singh and Amardeep Singh (sons of respondent No.1), he had personal knowledge as regards the matter, as a whole, as also the bona fide need of his sons and of himself. As regards subletting, petitioner-tenant himself (RW1) admitted in his statement that the demised premises was taken on rent for running the business of electrical goods. However, he failed to produce any cogent or credible material to show that he indeed was conducting the said business from the demised premises. In fact, he also admitted in his cross examination that

Ashish Anand happened to be the son of Subash Anand (respondent No.2), who used to sit at the shop in question. And, he was neither an employee nor a servant of the petitioner. Petitioner admitted his signatures on the summons Ex.A7 and also of Mr.Ashish Anand on Ex.A8. Concededly, the summons were served at the said shop by the Process Server. No doubt, rent was being paid by the petitioner but the evidence on record conclusively proved that the petitioner had indeed sub let the premises to respondent No.2, pursuant to a secret arrangement between the two, and handed over the actual possession and control of the premises. Not just that, if petitioner was still in occupation and control of the demised premises and conducting business of repair and sale of electrical goods, he could always lead appropriate evidence to substantiate his plea. But he failed to. Concededly, in an another shop, situated in main bazaar Gurdaspur, the business of readymade garments was being conducted and two STD PCOs were being run, though, purportedly by wife of the petitioner. However, again, petitioner failed to lead any evidence to show that the said business was indeed being conducted and controlled only by his wife or she was the sole proprietor. Further, neither did the petitioner examine Subash Anand, who was alleged to be his maternal uncle and only assisting the petitioner to run his business in the demised premises, nor his wife to prove his defence.

Learned counsel for the petitioner could not point out as to how the findings that have concurrently been recorded by both the authorities were either contrary to the position on record or

suffered from any material illegality. No other argument was advanced.

Thus, no interference is warranted in exercise of revisional jurisdiction under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949. The petition being devoid of merit is accordingly dismissed.

03.11.2015

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(ARUN PALLI)
JUDGE