

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

**Civil Revision No.3885 of 2011 (O&M)
Date of Decision: October 21, 2016**

Kala

.....Petitioner

Versus

Dharam Singh

....Respondent

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present : Mr. A.S. Gill, Advocate
for the petitioner.

Mr. Prateek Pandit, Advocate
for the respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this petition is to the order dated 28.04.2011, passed by the Rent Controller, Jalandhar, whereby the application filed by the petitioner for leave to defend has been dismissed.

It is the contention of learned counsel for the petitioner that the Rent Controller, Jalandhar, while passing the order dated 28.04.2011, has not taken into consideration the specific plea which has been taken by the petitioner in the application for leave to defend that the respondent-landlord was the owner in possession of 8/9 shops in the same vicinity, out of which 6/7 shops are lying vacant which can be utilized by the respondent for starting his own business. He contends that in the reply, which has been filed to the application for leave to defend, there is no specific denial of the fact with regard to the ownership of the shops and some of the shops being vacant. He, on this basis, contends that this would be a good ground for granting leave to defend, as a triable issue is made out.

Learned counsel for the respondent, on the other hand, asserts that the respondent in his reply to the application for leave to defend has denied the contents of sub-para (f) of the application as wrong. It has further been stated that the shop in question is more suitable to the petitioner to run his business and, therefore, he has filed an application for eviction. He contends that there is nothing on record which would indicate that the petitioner is the owner of 8/9 shops and, therefore, the contention of learned counsel for the petitioner cannot be accepted.

I have considered the submissions made by counsel for the parties and with their able assistance have gone through the impugned order dated 28.04.2011. The said order passed by the Rent Controller, Jalandhar although has referred to the factum with regard to the assertion of the petitioner that the respondent is having 8/9 shops in the same locality, out of which 6/7 shops are lying vacant where he can start his business of property dealing but has totally ignored the factum of non-disclosure of the properties of similar nature i.e. non-residential which are under his ownership and are lying vacant. It itself is a ground for granting leave to defend as a triable issue is made out specially when there is no specific denial on the ground of the respondent-landlord that he is the owner of 8/9 shops and out of these 6/7 shops are lying vacant. What has been stated by the respondent in the reply in paras 2(e) and (f) is that the contents of these affidavits are wrong and hence denied and it is disputed that the shop in dispute is not required for the *bona fide* need of the landlord as alleged. What has further been stated in sub-para(f) is that he wants to start the business of property dealing in the shop in dispute, which is the most suitable for the said purpose. These sub paras clearly indicate that nowhere

has the respondent denied the factum of being the owner of the shops and that the shops are lying vacant as has been asserted by the petitioner.

In view of the above, in the considered view of this Court, the impugned order dated 28.04.2011, passed by the Rent Controller, Jalandhar cannot sustain and is hereby set aside. Leave to defend as sought by the petitioner, is hereby, granted.

The parties to appear before the Rent Controller, Jalandhar on 16.11.2016. The Rent Controller shall, thereafter, proceed with the matter in accordance with law.

(AUGUSTINE GEORGE MASIH)
JUDGE

October 21, 2016

ps-I

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No