

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

CR-3888-2014 (O&M)

Date of decision : 11.02.2016

Vikram Jain

..... Petitioner

Vs

Usha Rani & Ors.

..... Respondents

Coram : Hon'ble Mr. Justice Ajay Tewari

Present: Mr. R.N. Lohan, Advocate,
for the petitioner.

Mr. Vikram Anand, Advocate
for the respondents.

Ajay Tewari, J. (Oral)

This petition has been filed against the judgment dated 12.2.2014 passed by learned Appellate Authority, Kapurthala reversing the judgment dated 9.4.2011 passed by learned Rent Controller, Kapurthala and allowing the petition filed by the predecessor-in-interest of the respondent for eviction of the petitioner from the shop in dispute on the ground of personal necessity.

As per the case set up by the landlord-Chander Kant Jain he had shifted to Delhi in the year 1990-1991 because of terrorism problem in Punjab and had started his business over there. In the year 1998 he became owner in possession of the shop in question earlier owned by his uncle and it was pleaded that now he wants to come back to his native village and intends

to open jewellery business there along with his wife because she gained knowledge about jewellery business and would also help him in the business.

Learned Rent Controller held that the bona fide need was not proved because the landlord had a flourishing business in Delhi and consequently dismissed the petition. It is not disputed that during the pendency of the appeal the landlord predecessor-in-interest of the present respondent died. Notwithstanding his death, as mentioned above, the Appellate Authority accepted the appeal and ordered the eviction of the petitioner and that is why now the petitioner is before this Court.

The first argument of learned counsel for the petitioner is that after the death of the landlord his need was completely eclipsed and, therefore, on this ground alone the petition was required to be dismissed. In this connection he has relied upon ***Seshambal (dead) through L.Rs. Vs. M/s Chelur Corporation Chelur Building & Ors., 2010(1) SCC (Civil) 737.***

Learned counsel for the respondents states that in that case the Hon'ble Supreme Court had itself noticed that the averments were only to the effect that the petitioner-landlord required the premises for his own use while in the present case the landlord had pleaded that his wife would assist him in the business since she had also gained knowledge of the trade during this period. Had the shop been vacant on the date of

filing of the petition and the landlord had started his business, as per the averments made in the present case that business would have not closed on his death and his wife would have continued the same.

Counsel for the petitioner has countered by arguing that even if the landlord had at one stage mentioned that his wife would have assisted him yet at another place in the petition he had unequivocally mentioned that he required the premises for his own use and occupation.

In my considered opinion, the judgment in ***Seshambal's*** case (supra) could not be applicable to the present case. In that case the landlord and his wife had sought the eviction of the tenant on the ground that they required the same for bona fide personal occupation and both passed away during the pendency of the case before the High Court. In paragraph 18 their Lordships held as follows :-

18.As noticed earlier, the requirement pleaded in the eviction petition by the original petitioners was their own personal requirement and not the requirement of the members of their family whether dependent or otherwise. Indeed if the deceased landlords had any dependent member of the family we may have even in the absence of a pleading assumed that the requirement pleaded extended also to the dependent member of their family. That unfortunately, for the appellants is neither the case set up nor the position on facts. The

deceased couple did not have any dependent member of the family for whose benefit they could have sought eviction on the ground that she required the premises for personal occupation.”

In my opinion, the extracted portion above would completely cover the case of the respondents. Her need was not only independent but she also wants to return to her roots. This fact was mentioned in the petition. In these circumstances, I am constrained to come to the conclusion that the approach of the learned Appellate Authority, Kapurthala is correct and consequently dismiss the present petition.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

11.02.2016
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