

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 4461 of 2016 (O&M)

Date of Decision : 27.07.2016

M/s P.K. Store through its proprietor Varinder Kumar
and another

.....Petitioners

Versus

Rajeev Kumar Goyal

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Harsh Aggarwal, Advocate
for the petitioners.

Surinder Gupta, J. (Oral)

This is a revision petition filed by M/s P.K. Store and Varinder Kumar tenant in shop situated at Nabha Gate, Main *Bazar*, Sangrur against his ejectment ordered by learned Rent Controller, Sangrur vide order dated 30.05.2014 and affirmed by Appellate Authority vide order dated 19.05.2016.

2. Landlord-Rajeev Kumar Goyal (respondent) filed petition seeking ejectment of petitioner(s) from demised premises for the personal *bona fide* necessity of his son Dr. Mohit Goyal, Bachelor of Medicine and Surgery, who wanted to start a clinic in the demised premises. Landlord-respondent averred that his son is presently providing preventive and promotive health care services in the Subsidiary Health Centre, village Sahoke, Block Sangrur under an agreement with *Zila Parishad* for a period of three years and date of agreement commenced from 13/14.02.2008. The said agreement can be terminated by *Zila Parishad* or by his son with three months' notice in writing. Landlord-respondent while elaborating the need of his son regarding the premises averred in para 2(C) of the petition as

follows:-

“C) That the applicant requires the shop in dispute & the chobara upon the same on the first floor for the bonafide need of his said son namely Dr. Mohit Goyal, who requires the same for use as a clinic to practice Medicine, Obstetrics and Surgery besides facility of laboratory, Medical Store and room for indoor patients also as he has no other suitable place for the same within the MC limits of Sangrur, except the shop mentioned in the heading of the application & the chobara upon the same on the first floor which is in possession of Shri Krishan alias Shri Ram s/o Sh. Banarsi Dass, r/o Sangrur as tenant. The shop in dispute & the said chobara marked as IJKL shown in the site plan annexure A are most suited to said son of the applicant for his said clinic etc. as the same are located in the heart of the city near to the Bazar, Bus Stand, etc. Said chobara is of the applicant & is under tenancy of Shri Krishan alias Shri Ram s/o Sh. Banarsi Dass r/o Sangrur. The applicant is filing a separate application for the eviction of said Shri Krishan tenant also from the said chobara on the same ground of bonafide need of his said son Dr. Mohit Goyal as is mentioned in this application. It may be mentioned here that the shop in dispute & another room on the back of said chobara marked as MNOP in the attached site plan annexure A, which is in possession of the applicant are not sufficient for the clinic, etc. of his doctor son Mohit Goyal. It is further pertinent to mention here that no part of the building marked as ABCD & EFGH including said living rooms on the ground floor marked as Z, Z1, Z1 as shown in the site plan annexure B are also neither suitable nor sufficient for the said need of the son of the applicant.”

3. Revision petitioners denied the personal *bona fide* necessity of

denied premises as projected by landlord-respondent *inter alia* pleading

that landlord-respondent is in possession of double-storey building, showroom, shops etc. at Dhuri Road, Sangrur and has let out his property to different tenants. Son of landlord-respondent was employed and need of the demised premises has been projected by him on false grounds with ulterior motive to eject the petitioner. It was pleaded that landlord-respondent and his family, who owns considerable property in city including two *kothies*, situated in Guru Nanak Colony, Sangrur, which were got vacated and then let out, could use the said premises for running a hospital by his son as said *kothi* bearing house no. 293-B, Guru Nanak Nagar, Sangrur is a big one and sufficient for running a nursing home. It was also averred that the demised premises is not suitable for the purpose of opening clinic, laboratory, medical store and room for indoor patient as alleged because it is a small shop and its location is not suitable for the purpose for which ejectment of petitioner was sought, rather Dhuri Road, Sangrur is most suitable place for opening a clinic where landlord-respondent owns property. Giving reasons for filing ejectment petition, the petitioner alleged that he was asked by the landlord-respondent to enhance rent of the demised premises, which he refused as a result of which this petition has been filed.

4. Learned Rent Controller on appraisal of evidence held the need of demised premises projected by the landlord-respondent as *bona fide* and ordered the ejectment of petitioner. Appellate Authority also found need of the demised premises projected by the landlord-respondent as *bona fide* and dismissed the appeal filed by tenant-petitioner.

5. I have heard learned counsel for the petitioner and perused the paper-book with his assistance.

6. Learned counsel for the petitioner(s) has sought interference in

concurrent findings of authorities under the Rent Act that the demised premises is required for personal *bona fide* necessity of landlord-respondent to settle his son on the grounds as follows:-

- (i) Son of landlord-respondent, who is employed and was getting ₹55,000/- as fixed salary was not dependent on landlord-respondent, as such, requirement of demised premises by son of landlord-respondent cannot be termed as personal *bona fide* need of the landlord-respondent;
- (ii) that the shop in question was owned by Kaushlaya Rani and all the legal heirs have not joined to seek ejectment of the demised premises. Ishwar Chand was tenant in the disputed shop and all his legal heirs were not arrayed as respondents;
- (iii) that the demised premises, as it is, is not in a fit condition to use as clinic and the landlord-respondent has nowhere alleged that he will reconstruct or renovate the same;
- (iv) that the *kothi* in Guru Nanak Nagar, Sangrur bearing no. 293-B was got vacated and then let out in April, 2008 and this petition was filed in June, 2008. That *kothi* was most suitable for running a clinic;
- (v) that the shop is situated in a crowded commercial area and is not a suitable place for starting a clinic and providing medical facilities.

7. On giving a careful thought to submissions of learned counsel for the petitioner, I find no merit therein so as to agree with him. This contention of learned counsel for the petitioner that the demised premises cannot be got vacated for the need of son, who is temporarily employed, requires outright rejection. In case **Joginder Pal vs. Naval Kishore Behal**, **AIR 2002 SC 2256**, Apex Court has held that it is the moral obligation of the father to settle his son in business well and make him economically

independent. Dr. Mohit Goyal, who appeared as PW-3 has stated that earlier he was working with *Zila Parishad*, Sangrur as medical officer where he resigned and now doing job as medical officer at village Sahoke. He will leave his job as soon as petitioner vacates the demised premises and start his medical practice in the demised shop, *chaubara* and the room there. During pendency of petition, ejectment order dated 07.03.2013 has already been passed by this Court against the tenant in *chaubara* on the demised premises. There was no reason for the Rent Controller or Appellate Authority to doubt the statement of Dr. Mohit Goyal, who is curious to start his medical practice after resigning his job.

8. Admittedly, the petitioner is carrying on business in the disputed shop. Earlier his father was tenant in the premises. The petitioner in his reply has pleaded that after death of his father, he alone is doing business in the disputed shop. The law is well settled that where commercial premises let out is in possession of one of the legal heirs of original tenant exclusively, petition seeking his ejectment from the demised premises is maintainable. It is no more *res integra* that petition filed by one of the co-owners seeking ejectment on the ground of personal *bona fide* necessity is maintainable even without joining all the co-owners. Reference in this regard can be made to observation of Apex Court in **Dhannalal vs. Kalawatibai and others, 2002 (6) SCC 16** and **Mohinder Prasad Jain vs. Manohar Lal Jain, 2006 (2) SCC 724**.

9. In case of ***Dhannalal (supra)***, Apex Court observed in para 16 as follows:-

“16. *It is well settled by at least three decisions of this Court, namely, Sri Ram Pasricha Vs. Jagannath and Ors., (1976) 4 SCC 184, Kanta Goel Vs. B.P. Pathan and*

*Ors., (1977) 2 SCC 814 and Pal Singh Vs. Sunder Singh (dead) by LRs. and Ors. (1989) 1 SCC 444 that one of the co-owners can alone and in his own right file a suit for ejectment of tenant and it is no defence open to tenant to question the maintainability of the suit on the ground that other co-owners were not joined as parties to the suit. When the property forming subject matter of eviction proceedings is owned by several owners, every co- owner owns every part and every bit of the joint property along with others and it cannot be said that he is only a part owner or a fractional owner of the property so long as the property has not been partitioned. He can alone maintain a suit for eviction of tenant without joining the other co-owners if such other co-owners do not object. In **Shri Ram Pasricha's case (supra)** reliance was placed by the tenant on the English rule that if two or more landlords institute a suit for possession on the ground that a dwelling house is required for occupation of one of them as a residence the suit would fail; the requirement must be of all the landlords. The Court noted that the English rule was not followed by the High Courts of Calcutta and Gujarat which High Courts have respectfully dissented from the rule of English law. This Court held that a decree could be passed in favour of the plaintiff though he was not the absolute and full owner of the premises because he required the premises for his own use and also satisfied the requirement of being "if he is the owner", the expression as employed by Section 13(1)(f) of W.B. Premises Tenancy Act, 1956."*

10. Similar observations were made in case of **Mohinder Prasad Jain (supra)** in para 10 of the judgment, which reads as follows:-

"10. A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co- owner to show before

initiating the eviction proceeding before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event, a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings initiated by the respondent herein.”

11. Learned counsel for the petitioner has argued that the demised premises is not in a condition that son of the landlord-respondent can start his clinic, laboratory, operation theater etc. in the same without making reconstruction, modification etc. but the landlord-respondent has nowhere stated that he will reconstruct the demised premises for this purpose, as such, the demised premises is not suitable for the need projected by the landlord-respondent. The landlord-respondent has elaborately pleaded personal *bona fide* necessity of his son for the demised premises in para 2(a) of the petition. The clinic of son of the landlord-respondent is to be started in the shop, *chaubara* and adjoining room etc. Here learned counsel for the petitioner has referred to provisions of Municipal Council (Erection and Re-erection of Building) Bye-laws, 2004 and has argued that for nursing home/hospital the minimum space required is 250 sq. yard while the demised premises is a small shop. The facilities required to set up a nursing home/hospital like basement, parking, water storage, alternate power supply are not available in the demised premises, as such, it cannot be used for the need of son of landlord-respondent.

12. The above submission of learned counsel for the petitioner is without basis. The landlord-respondent has not projected the need of demised premises for setting up a nursing home. His son wants to set up a

clinic and provide basic medical facilities there. He will be bound by the rules regarding setting up of a clinic, as such, can start only those medical facilities in the demised premises, which are permissible. This argument was advanced before the Appellate Authority and has been rightly discarded. So far as suggestions given by the tenant-petitioner that location of the demised premises is not suitable for starting clinic and that the area of Dhuri Road is most suitable to set up a nursing home/clinic are without basis, as the status of tenant cannot be that of a advisor to landlord. It is now well settled that landlord is the best person to look after his need.

13. On perusal of orders passed by learned Rent Controller and Appellate Authority, I find that both the authorities have recorded well reasoned orders upholding the personal *bona fide* necessity of the landlord-respondent qua the demised premises, which call for no interference in this revision. The contentions raised by learned counsel for revision-petitioner during course of argument have no merit or make out any ground to differ with the observations made by authorities under the Rent Act.

14. In case of **Hindustan Petroleum Corporation Ltd vs. Dilbahar Singh, 2014(9) SCC 78**, Hon'ble Supreme Court has observed as follows:-

“We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence

or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

15. As a sequel of my discussion above, I find that orders of authorities under the Rent Act suffer from no legal infirmity calling for any interference in this revision, which has no merit.

Dismissed.

July 27, 2016

jk

(SURINDER GUPTA)

JUDGE

Whether speaking/non-speaking

Yes/No

Whether Reportable

Yes/No