

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5735 of 2016 (O&M)

Date of decision:26.09.2016

Sarwan Kumar

... Petitioner

Vs.

Krishan Lal and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Anuj Balian, Advocate
for respondent No.1.

AMIT RAWAL J.

Petitioner-tenant is aggrieved of the impugned order dated 21.09.2015, whereby, he has been ordered to be evicted from the demise premises, i.e., shop No.224 situated at Ward No.11, Opposite PNB Naraingarh, Main Bazar, Naraingarh, District Ambala and he has been directed to hand over the vacant possession.

Mr. Sanjiv Gupta, learned counsel appearing on behalf of the petitioner-tenant submits that in the written statement, a specific stand was taken that the respondent-landlord had not complied with the statutory requirement of law *vis-a-vis* remaining shop in occupation and possession. He further submits that both the Courts below have erroneously not appreciated the cross-examination of the respondent-landlord. In fact, issue no.3 was also insisted upon, but the finding “that it was not pressed” is wholly erroneous. The respondent-landlord had not come to the Court with

clean hands, inasmuch as that son of the respondent, namely, Sanjiv Kumar, is running a brick kiln in village Kurali and this fact has not been mentioned as the eviction of the shop has been sought for his necessity, i.e., Sanjeev Goel. The son of the respondent is having two shops at Hussani Road, Naraingarh, but both the Courts below have not adverted to the aforementioned fact. He further submits that the landlord had also sought the ejectment of the remaining shops but did not disclose the outcome of the same. PW2, during his cross-examination, has denied the fact that he is running a brick kiln. In fact, it was a farcical trial, much less, malafide intention and therefore, the ejectment could not have been ordered.

During the course of hearing, he has drawn the attention of this Court to the cross-examination of Krishan Lal, wherein, it has been stated that Sanjeev and Anil are not running any shop. He also submits that he has three sons, namely, Sanjeev Goel, Rajiv Goel and Anil. Sanjeev and Anil are not doing any business in the shop, whereas, Rajiv has shop of Paint. He has also drawn the attention of the Court to the specific answer to the cross-examination that his son Sanjiv Kumar has 25% share in brick kiln and therefore, Sanjiv Goel was not dependent upon him. For seeking eviction of son, it has to be proved that he was dependent. Once it has been proved that Sanjiv Kumar was having 25% holding, therefore, he cannot be said to be dependent and the Court below ought to have dismissed the petition.

He has also drawn the attention of the Court to the notice of motion order dated 05.09.2016, which reads thus:-

“Mr. Sanjiv Gupta, learned counsel for the petitioner on instructions from the petitioner states that even if the

requirement/need of the respondent-landlord is taken to be of two shops, there are adjacent shops such as 222, 223 and 225, 226, 227, which are lying vacant in the Main Bazar and can very well be utilized by the respondent-landlord for the need of his son – Sanjiv Goel.

Notice of motion for 15.09.2016.

Dasti only.

To be shown in the urgent list.”

He, thus, urges this Court for setting aside the order under challenge.

Per contra, Mr.Anuj Balian, learned counsel appearing on behalf of respondent No.1 submits that petitioner by misstating the facts had obtained the notice of motion order and as well as, stay which has been reproduced above. He further submits that respondent No.1 has filed an affidavit, wherein, it has been contended that shop No.222 is in possession of Roshan Lal – tenant against whom ejectment petition has been filed for personal necessity of his son, Rajiv Goel and the same has been allowed. The eviction order has been passed on 21.07.2016, but the appeal is pending and next date is 01.10.2016.

As regards, shop no.223, the same is in possession of deponent which had been got evicted from one tenant, namely, Rajinder for his personal necessity through intervention of the Court and the deponent is preparing to construct the same.

Vis-a-vis shop no.225, the eviction had been sought for Sanjiv Goel and the petition has been allowed and the tenant has been given time

to vacate the premises upto 31st December, 2017. Shop no.226 is in possession of Ashok Kumar, tenant and the eviction has been sought for personal necessity of his son Anil Goel. The petition has been allowed but the appeal is pending for 19.10.2016. Shop no.227 is in possession of M/s Amit Cloth, tenant, and the eviction has been sought for personal necessity of his son Anil Goel, which is stated to be pending for 07.10.2016. Shop no.221, though was not mentioned in the order, is presently in possession of LR's of Beni Parsad, against whom the ejectment petition for personal necessity of Rajiv Goel, has been filed and the matter has been compromised and the tenant has been given time to vacate the premises upto 31.12.2017.

He further submits that during the course of hearing before the Lower Appellate Court, petitioner-tenant was given option of an alternative shop in the Krishna Market but he refused to accept the same. The tenant also owned two shops and running the business. The whole idea is to tire out the landlord, so that he comes under the pressure for getting premium and thus, urges this Court for affirming the finding under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Sanjiv Gupta, for, the explanation given in the affidavit leaves no manner of doubt that the landlord had sought the ejectment of the shop for his all three sons and few petitions had been allowed and some matters are pending. In respect of two shops, the tenant has taken time to vacate the premises upto 31.12.2017.

I would not be refraining myself in not extracting the findings

rendered by the Lower Appellate Court in paragraph 17 which read thus:-

“As against the afore-said evidence, one of the tenants, Sarwan Kumar, entered the witness box as RW1 and denied the bonafide requirement of the petitioner for the demised shop. However, his cross-examination reveals that they (tenants) own a shop in Main Bazar, Naraingarh, which has been purchased by them and in which, they are running shop by the name of “Taj Bikaner Sweets”. He admitted that main gate of Krishna Market opens in the Main Bazar. It was specifically put to this witness that whether he was ready to take on rent any of the shops belonging to the petitioner-landlord lying vacant in Krishna Market, after vacating the demised shop, to which he declined the offer on the plea that the shop owned by him is located near the demised shop and so, that is suitable to him and customers are familiar with the two shops and that in case he accepts the offer of the landlord, he will be put to inconvenience. He further admitted in cross examination that ejectment for personal necessity of Sanjeev Goel has been sought only from two shops including demised shop no.224. He further admitted that Sanjeev Goel has only 25% share in the brick kiln situated in village Kurali, which exists outside limits of Municipal Committee, Naraingarh.”

From perusal of the same, it is evident that tenant owned a shop in Main Bazar, Naraingarh and running the same under the name of “Taj Bikaner Sweets”. He was given option to take on rent any of the shops

belonging to the landlord lying vacant in Krishan Market but he refused to accept the same.

As regards the question qua 25% share in brick kiln, the answer given was that brick kiln is situated outside the limits of Municipal Committee, Naraingarh. Once it is so, there is no concealment of the fact and therefore, it does not lie in the mouth of Mr. Gupta to allege that there has been no compliance of the statutory provisions of the Rent Act.

I am of the view that such type of tenants, who are hell-bent to dictate terms to the landlord, should not be given time to vacate the premises. Had it not been so, perhaps this Court would have been sanguine in granting the time.

As result of aforementioned discussion, the eviction order passed by the Lower Appellate Court is upheld. I do not find any illegality and perversity in the aforementioned findings under challenge.

No ground is made out for interference in the impugned order.

Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

September 26, 2016
savita

Whether reasoned/speaking Yes/No

Whether reportable Yes/No