

CR No. 5816 of 2016 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 5816 of 2016 (O&M)

Date of Decision: October 19, 2016

Ramesh

...Petitioner

Versus

Amarjeet Singh

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rajesh Goyal, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.19426-CII of 2016

The ejectment petition dated 01.08.2007 is taken on record as
Annexure P-3, subject to all just exceptions.

Application stands disposed of.

CR No. 5816 of 2016

Petitioner has approached this Court assailing the order dated
04.08.2016 passed by the Executing Court, whereby, the objections filed by
the petitioner-judgment debtor for dismissal of the execution proceedings
under Section 13 (3-A) (proviso) of the Haryana Urban (Rent & Eviction)
Act, 1973 (hereinafter referred to "1973 Act") have been dismissed.

2. It is the contention of the counsel for the petitioner that as per
the proviso to Section 13 (3-A) of the 1973 Act, possession of the non-

residential building can only be taken qua one shop and not to the other shop. He contends that there are two adjoining shops which were owned by the respondent of which one was with Hakam Rai, which shop has been evicted and since the possession of the said shop has been obtained by the respondent-landlord under Section 13 (3-A) of the 1973 Act, the present execution application against the petitioner is not maintainable as it would be barred by the proviso to Section 13 (3-A) of the 1973 Act. His further contention is that since the building admittedly is being used for residential and non-residential purposes, the same could not be got vacated under Section 13 (3-A) of the 1973 Act. In support of this contention, he has placed reliance upon the judgment of this Court in Harjit Singh Vs. M/s Daya Ram Sat Narain 2003 (1) Rent Law Reporter 173. He, accordingly, prays for allowing the present revision petition by setting aside the order dated 04.08.2016 passed by the Executing Court.

3. I have considered the submissions made by the counsel for the petitioner and with his assistance, have gone through the impugned order passed by the Executing Court.

4. No doubt there are two adjoining shops of which the respondent is the owner and he had sought eviction of both the shops for which he had filed two eviction petitions. Eviction petition as to Shop No.1, which was in possession of Hakam Rai, has resulted in the eviction of which possession has also been obtained by the respondent-landlord. The counsel for the petitioner has, therefore, relied upon the proviso to Section

13 (3-A) of the 1973 Act, to contend that since possession of the non-residential building has been obtained by the respondent, the second building could not have been got vacated. He should have filed a joint and single petition for eviction of both the tenants, if he intended to take possession of both the shops especially when he wanted to utilize the same for the purpose of his personal necessity and starting a business. Therefore, he has prayed the dismissal of the execution petition on the basis of the said objection.

5. This plea of the counsel for the petitioner cannot be accepted in the light of the pleadings as referred to in paras 8 to 13 of the eviction petition filed by the respondent (Annexure P-3), where it has been specifically mentioned that he required both the shops for the commercial purposes and has disclosed with regard to the factum that apart from the two shops, there are other rooms also i.e. three rooms on the first floor and two rooms on the backside of the shop in dispute. It is not in dispute that only two shops were given on rent and the remaining residential portion was in possession of the landlord where he and his family alongwith his brother were residing. He having retired from the Indian Armed Forces was seeking eviction of the tenants from these two shops for the purpose of starting his own occupation and business. He having specifically mentioned in the eviction petition that his necessity is of the two shops and the eviction order has attained finality and the findings, therefore, in itself is established that he requires both the shops for his personal necessity and use.

6. The contention of the counsel for the petitioner that since the respondent has got possession of one of the shops which is a non-residential building, he would not be entitled to possession of the other shop, cannot be accepted especially when he has pointed and specified the requirement of the two shops which is admittedly part of the same building as is apparent from the building, as the back portion are the rooms as also the first floor where there were three rooms which is being used for the residential purposes by the landlord himself. Since the respondent had sought eviction of both the shops and that too by separate petitions as he was required to do so for the reason that there were two different tenants on the basis of two different contracts entered with them so the requirement of law was filing of two separate petitions which factum is not disputed that the two eviction petitions were preferred by the respondent landlord. Accordingly, the objection as raised by the petitioner has been rightly rejected by the Executing Court.

7. Hon'ble Supreme Court in **Zenobia Bhanot Vs. P.K. Vasudeva & another, 1996 (1) R.C.R. (Rent) 72: AIR 1996 (SC) 601** has held that specific landlord has right to recover immediate possession of residential or scheduled building and such right of landlord is not limited/restricted to one tenant only. It has further been held that he can recover the whole building or a part thereof if he so chooses. This judgment is a clincher against the petitioner.

8. As regards the submission of the learned counsel for the

petitioner relying upon the judgment of *Harjit Singh's* case (supra) to contend that a building which is being used for non-residential and residential purpose cannot be sought to be vacated under Section 13 (3-A) of the 1973 Act, the said judgment would not be applicable to the facts of the present case as it was a case where the rented premises was with the tenants both for the residential and non-residential purpose. It is in those circumstances, this Court had said that the building cannot be got vacated. Present is a case where only two shops were given on rent and the remaining residential portion was being used and utilized by the landlord and his family which was never rented out. The judgment, therefore, is distinguishable on facts would not be of any help to the petitioner.

9. In view of the above, finding no merit in the present revision petition, the same stands dismissed.

October 19, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No