

CR No. 6105 of 2016 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 6105 of 2016 (O&M)

Date of Decision: September 21, 2016

M/s Sant Footwear (Pvt.) Ltd. & another

...Petitioners

Versus

Hemi Lamba

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. C.M. Munjal, Advocate
for the petitioners.

Mr. Raj Kumar Chandana, Advocate
for the caveator-respondent.

AUGUSTINE GEORGE MASIH, J. (Oral):

Petitioner has approached this Court challenging the order dated 15.10.2015 passed by the Rent Controller, Ludhiana, whereby the eviction petition preferred by the respondent-landlady on the ground of *bona fide* necessity has been allowed, appeal against which preferred by the petitioners has been dismissed by the Appellate Authority, Ludhiana, on 18.08.2016.

It is the contention of the learned counsel for the petitioners that the respondent is not really in need of the demised premises and it is merely her desire to obtain the possession of the premises as she has neither any source nor means to establish the business. He further contends that the respondent has not yet decided as to which business she intends to start in the demised premises as in the beginning, she had stated that she would start

the bakery business and then, confectionery business. This shows that the intention of the respondent is only to seek the possession of the demised premises and the prayer of *bona fide* necessity/requirement of the demised premises is merely an excuse. Assertion has also been made by the counsel for the petitioners that the adjacent shop is in the ownership of the mother of the respondent which has been got vacated and the possession of the same is with the mother of the respondent, which shop could have been utilized by the respondent for the business, if she wanted and further, the said shop till date has not been utilized for any business purpose for which an application under Section 13 (4) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Rent Act'), has been filed for restoration of possession, which application is still pending before the Rent Controller. On this basis, the learned counsel submits that the intention of the respondent is only to get the premises vacated and it appears that it is not to be used by her for any purpose and specially not for the purpose for which she has projected in her eviction petition. He, thus, prays for allowing the revision petition by setting aside the impugned orders.

Notice of motion.

Mr. Raj Kumar Chandana, Advocate, accepts notice on behalf of the respondent-caveator. Caveat stands discharged.

Having heard the counsel for the parties and having gone through the impugned orders, this Court is unable to accept the contention as has been raised by the counsel for the petitioners.

The respondent, admittedly, is now an issueless widow as she

has lost her husband on 14.02.1996 and her only son on 15.09.2004. She had been residing with her husband in Jalandhar, where she was running a Verka Milk Agency at Model Town, Jalandhar. The said business which she had started failed because of the untimely death of her husband and son and had to surrender the said Milk Agency and sell the shop. She now intends to shift to Ludhiana, where her mother and brother are residing as she was all alone in Jalandhar with no support and that was the only option available to her especially when the demised shop is her ownership and therefore, to earn a livelihood, she had taken a decision to start her own business there. The objection of the petitioner that she does not have the means to start the said business would not hold the court for long for the simple reason that it is for the landlady to see as to how she would start her own business. Assuming she is unable to start the same within a continuous period of 12 months, a right has been made available to the petitioners-tenants to avail of their remedy under Section 13 (4) of the Rent Act and therefore, this plea of the petitioner cannot be accepted. Similar would be the position with regard to the adjacent shop which is stated to be got vacated by the mother of the respondent and is lying vacant, suffice it to say that the said premises has nothing to do with the present demised premises except that the owner of the adjacent shop is the mother of the respondent. The respondent obviously being the owner of the demised premises can assert her right for eviction qua the demised premises only and utilize it for starting her own business when she has no other source of livelihood. She has taken this decision like a reasonable person in the

CR No. 6105 of 2016 (O&M)

given facts and circumstances i.e. to establish the business as mean to survive as is being planned by her, which cannot be doubted as there is no evidence on record which would indicate that she would not be in a position to establish her own business. In any case, the Court has no concern with the said aspect as the primary requirement of the statute is to test the *bona fide* of the respondent-landlady and in the considered view of this Court and as per the evidence which has been brought on record, the *bona fide* necessity of the respondent has been fully established and the Courts below have rightly returned the findings in this regard.

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

CM No.18803-CII of 2016

In view of the order passed in the main revision, no order is required to be passed in the present application for stay as the same has been rendered infructuous.

Disposed of as such.

September 21, 2016

Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No