

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

CR-6134-2006 (O&M)

Date of decision : 11.02.2016

M/s Hari Ram Raj Kumar

..... Petitioner

Vs

Bachan Lal

..... Respondent

Coram : Hon'ble Mr. Justice Ajay Tewari

Present: Mr. J.R. Mittal, Sr. Advocate, with
Mr. Dhirender Chopra, Advocate
for the petitioner.

Mr. Rahul Sharma, Advocate
for the respondent.

Ajay Tewari, J. (Oral)

This petition has been filed by the tenant assailing the concurrent orders dated 24.3.2003 and 18.8.2006 passed by the learned Rent Controller, Chandigarh as well as the Appellate Authority, Chandigarh, respectively, vide which his eviction was ordered from the small portion of ground floor of Godown No. 179, Sector 26, Grain Market, Chandigarh on the ground of personal necessity of the respondent/landlord.

The pleaded case of the respondent/landlord was that he had five sons, there were three tenants and it was difficult for him to adjust his fifth son in the business running in the accommodation in his possession and he required the entire ground floor for setting up the business for his fifth son and for

this purpose he filed eviction petition against the two other tenants also. In the written statement, the bona fide need of the respondent was denied by the petitioner and additionally it was averred that the respondent was in possession of half share of SCO No. 152, Sector 26, Chandigarh ground floor and entire first floor. During evidence, it transpired that the premises SCO No. 150 was on rent with the respondent and one of his sons was doing an independent business there. Both the Authorities below held that the bona fide need of the respondent to settle one of his sons was established and consequently ordered the eviction of the petitioner.

The first argument of the learned counsel for the petitioner is that during this interregnum both the other tenants of the petitioner in the other portions of the demised premises vacated the same and those portions were again let out, one of them being let out more than two times during this period. As per him, this act of letting out clearly establishes that the need of the landlord was not bona fide and rather he was actuated by greed because the subsequent tenancy of the other portions are at a higher rate of rent.

Counsel for the respondent has countered by arguing that the major portion of the demised premises was vacant for 12 years and it was only because of the fact that the present litigation was dragging on and since the requirement of the landlord was for the entire premises that is why he was

constrained to let out that portion. As per the learned counsel, this subsequent development, which is otherwise adequately explained, cannot stand in the way of the bona fide necessity, which the respondent had proved as on the date of filing of the eviction petition and the subsequent tenancies were only because of the realisation that leaving the building vacant would render its degradation. Counsel for the respondent has further argued that the mere fact that one of his sons is doing an independent business in another tenanted premises cannot be held to dis-entitle the respondent from seeking another portion for his son. He has further argued that during the pendency of this petition the petitioner has purchased another Showroom No. 183 and rather it is the greed of the petitioner to somehow or the other to hold on the premises.

Learned counsel for the petitioner has countered by arguing that the said showroom was purchased by the wife of the petitioner and she has only 24% share in the said showroom.

In my considered opinion, neither the acquisition of the second showroom by the petitioner nor the subsequently created tenancies would be determinative in the matter. It is trite to say that a landlord cannot wait indefinitely and if one portion of his building is under litigation and he has waited for more than a decade then the fact that he was ultimately constrained to let it out would not in any way dis-entitle him from seeking eviction of the tenant. The argument of learned counsel for the

respondent carries more weight. What has to be seen is the requirement of the landlord on the date of filing of the petition and subsequent events cannot normally affect that. Though the Courts have recognised the concept of complete eclipse, to my mind in the facts and circumstances of this case, it cannot be said that the need of the respondent landlord has been eclipsed. Looking at it from another angle, the concurrent judgments of the Courts below cannot be held to be vitiated or perverse in any manner.

Resultantly, this petition is dismissed.

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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