

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

Civil Revision No.6838 of 2016 (O&M)

Date of Decision: October 17, 2016

Gurmeet Singh

.....Petitioner

Versus

Mamta Goel

....Respondent

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Divanshu Jain, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.20963-CII of 2016

Application is allowed and exemption from filing certified/typed copies of the impugned orders as well as Annexure P-1 to Annexure P-4 is granted and the same are taken on record subject to just exceptions.

CR No.6838 of 2016 (O&M)

Petitioner has approached this Court, challenging the order of eviction passed by the Rent Controller, Guhla, dated 27.08.2014 whereby the petition preferred by the respondent-landlady under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short, "1973 Act"), has been allowed on the ground of personal necessity, appeal against which preferred by the petitioner has been dismissed by the Appellate Authority, Kaithal, vide order dated 17.08.2016.

It is the contention of learned counsel for the petitioner that as per the provisions of Section 13 of 1973 Act, the respondent was mandated

to disclose that she had other properties also and that she had sold three shops. That apart, it has been pleaded that the shops, which are five in number, were required by her and her husband Sh. Deepak Goyal. However, said Sh. Deepak Goyal has not stepped into the witness box to project his personal necessity and, thus, in the light of the judgement of the Hon'ble Supreme Court reported as Ajit Singh and another Vs. Jit Ram and another, 2008 (4) R.C.R. (Civil) 300, the rent petition deserves dismissal. Counsel further contends that the three shops which the respondent requires, out of which two are connected with each other but the shop which is in possession of the petitioner measuring 8'3" x 8'3" has been separated from other two shops by a staircase, which the respondent-landlady categorically states that she would not demolish. Since the shop in possession of the petitioner has no connectivity with the other two shops which she requires alongwith the third shop for starting a boutique, the intention of the respondent appears to be only to get the premises vacated and it is not her *bona fide* requirement as the said shop cannot be utilized for the purpose it is intended to be got vacated for. He, on these grounds, submits that the findings returned by the Courts below cannot sustain and deserves to be set-aside, resulting in dismissal of the rent petition preferred by the respondent.

I have heard the submissions made by learned counsel for the petitioner and with his assistance have gone through the impugned orders but do not find myself in agreement with the contentions as raised by him.

The first contention, which has been raised by counsel for the petitioner, is that the respondent has not disclosed the factum of three shops having been sold after coming into force of 1973 Act as mandated under the provisions of Section 13 of 1973 Act. The said plea cannot be accepted as

what has come in the evidence is that one of the shops was sold by her father and the other two shops were sold by her mother, who had inherited the property from her father. It is only after the death of her mother that the respondent had inherited the remaining five shops. As a matter of fact, the respondent has not sold any property herself and, therefore, it cannot be said that she had not disclosed the factum of having sold the shops as from the day she became the owner of the property, she has actually not sold any property and, therefore, this plea of the petitioner cannot be accepted.

The second contention raised by learned counsel for the petitioner is that the *bona fide* necessity, as has been projected, is primarily qua the shops of which three are required by the respondent for her personal use and occupation for starting her own business of boutique and the remaining two shops for her husband to start his own business. However, husband of the petitioner has not put in appearance in support of the contention of the respondent-landlady in this case. Learned counsel for the petitioner, on a categorical question put by this Court, has very fairly stated that the shop in question in the present case is required by the respondent-landlady for her personal use. If that be so and she having appeared as a witness, the plea, as has been sought to be raised by counsel for the petitioner with regard to non-appearance of husband of the respondent-landlady, would not be fatal to the case in hand as it is an admitted case that the shop in dispute was not required by the husband of the respondent-landlady. The plea, thus, cannot hold the field and the judgment of the Hon'ble Supreme Court in Ajit Singh's case (supra) would not be applicable to the facts of the present case.

The third contention, which has been raised by learned counsel for the petitioner is that there is no *bona fide* necessity on the part of the respondent-landlady as she intends to start a boutique in three shops, which she intends to get vacated, out of which two shops are adjacent to each other and the third shop, which is in possession of the petitioner, is separated by a staircase, which she does not want to demolish and, therefore, there being no connectivity, the same cannot be used for the purpose of running a boutique. This plea again cannot be accepted primarily on the ground that it is for the landlady to see as to how she wants to utilize the said premises for the purpose for which it is sought to be got vacated for personal necessity i.e. for running a boutique. It cannot be said that merely because there is a staircase in between the said shops, the same cannot be utilized for the said purpose as it is not at a far of distance which cannot be managed. In any case, it is for the landlady to see as to how the premises in question would be utilized in the best manner. The plea, thus, as raised by the counsel for the petitioner again cannot be accepted.

Another plea, which has been raised by learned counsel for the petitioner is that the respondent is well settled in Patiala after her marriage and is residing with her husband and there is no requirement or necessity with regard to her shifting to Cheeka which is not financially and otherwise a better place than Patiala for business related activities, however, the said plea cannot be accepted as there is no evidence on record indicating that there was any property in possession of the respondent in Patiala which was utilized for the purpose of business. Further, in any case, if the *bona fide* necessity has been found to be fully justified and two authorities below have returned the findings, there is no evidence on record indicating otherwise to

disbelieve the plea as has been raised by the respondent.

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

Since the main appeal stands dismissed, *CM No.20964-CII of 2016* has become infructuous.

October 17, 2016
ps-I

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No