

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

**Civil Revision No.7436 of 2016 (O&M)
Date of Decision:November 10, 2016.**

Puran Chand

.....PETITIONER(s).

VERSUS

Ram Kishan and another

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. G.C. Shahpuri, Advocate
for the petitioner (s).

SURINDER GUPTA, J.

This is revision petition by the tenant against the order of ejectment passed by Rent Controller, Yamuna Nagar at Jagadhari and affirmed by Appellate Authority, Yamuna Nagar at Jagadhari, whereby he was ordered to vacate and hand over possession of the shop situated in Chhota Model Town, Yamuna Nagar.

2. Respondent No.1-landlord sought ejectment of the revision petitioner on the ground of non-payment of rent and his personal bona fide necessity for his son Gulshan Kumar, who is in footwear business but had no shop for his business. The petitioner pleaded that he and Gulshan Kumar had no other shop within the municipal limit of Yamuna Nagar or had vacated any other shop in the urban area concerned after the commencement of 1949 Act.

3. The Rent Controller found the need projected by respondent-

landlord as bona fide and genuine. The Appellate Authority on appraisal of evidence also concurred with the observations of learned Rent Controller and dismissed the appeal.

4. Learned counsel for the revision petitioner has mainly stressed on the point that the respondent-landlord has suppressed the material facts while filing the petition. Admittedly, he is having three shops, out of which one is with the revision petitioner on rent and second shop is with other son of respondent-landlord. He has not mentioned in the ejectment petition that he got vacated 3rd shop which he allegedly merged with the second shop. In support of his contention, he has relied on observations in case of ***Shankar Lal Vs. Madan Lal & Others 2011(1) R.C.R. (Rent) 139; Rajiv Gupta Vs. Jiwan Ram 2014 (4) PLR 503; Sadhu Ram Verma Vs. Pawan Kumar 2006(3) PLR 666; and Baljit Kumar Sharma Vs. Ramesh Kumar Aggarwal and another 2013(1) R.C.R. (Rent) 260***, and argued that petition filed by landlord is to be dismissed for non-compliance of mandatory provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 (later referred to as 'the Haryana Rent Act') and for concealment of material facts.

5. Section 13(3)(a)(i) of the Haryana Rent Act, reads as follows:-

(3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession—

(a) in the case of a residential building, if, —

(i) he requires it for his own occupation, is not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area.”

6. In the citation *Shankar Lal Vs. Madan Lal & Others (supra)* referred by learned counsel for the revision petitioner, it was held by a Bench of this Court that where the landlord is seeking eviction from the shop on the ground that he requires it for the business of his son, it is mandatory to plead and prove that his son for whose occupation the eviction is sought, was not occupying any other building or has not vacated any building. Similar were the observations in case of *Rajiv Gupta Vs. Jiwan Ram (supra)*. In case of *Sadhu Ram Verma Vs. Pawan Kumar (supra)*, landlord had not mentioned that he was in possession of portion of non-residential building and dismissal of his petition on this score was upheld.

7. In the ejectment petition, copy of which has been made part of the paper-book as Annexure A-1, respondent-landlord has specifically mentioned that he and his son have no other shop in their occupation or have vacated any shop within the municipal limit of Yamuna Nagar after the commencement of 1949 Act. Learned Rent Controller took note of similar provisions under Section 13 of East Punjab Urban Rent Restriction Act, 1949 and observed in para 26 of the judgment as follows:-

“26. The same facts were deposed by the petitioner when he stepped into witness box as AW1 in his affidavit at para no.4. Thus, in my opinion the replication is a part of the pleading and evidence to the same was led by the petitioner as respondent has admitted this fact in his cross-examination as in the opening lines of the cross-examination, the respondent himself admitted that applicant had only two shops on main road and the petitioner about eight years ago had increased the area of his one shop by demolishing the middle wall. Further, I am of the view that any ambiguity in the pleadings

regarding the ingredients of the section of the Rent Act, if made good in the evidence then it is sufficient compliance of the statutory provision. For this I rely upon authority titled as M/s Bhatia Cloth House Vs. Dr.Raj Kumar Gupta 2008 (2) RCR, 281. Thus in my opinion the concealment of vacation of another shop is not found and as per the replication the same was revealed by the petitioner by describing the factual position which is even admitted by the respondent.”

8. It is evident that respondent-landlord has pleaded and proved the ingredients as per the provisions of Section 13(3)(a)(i) of the Haryana Rent Act and argument of learned counsel for petitioner has no merits.

9. Second argument of learned counsel for the revision petitioner that there is concealment of fact about one shop in possession of respondent-landlord, which has not been disclosed, is also without merit. The respondent has three shops, out of which one is on rent with the revision petitioner and in the other shop son of respondent-landlord namely Ajay Kumar was running business. Respondent-landlord got vacated 3rd shop from tenant Ashok Kumar Ahuja much prior to filing of this petition and merged that shop with the shop of his son Ajay Kumar. The Appellate Authority took note of this argument in para 19 of its judgment, wherein it was observed as follows:-

“19. The thrust of the argument of learned counsel for the appellant is that the petitioner/ landlord has not come to the court with clean hands and has concealed fact of in occupation of another shop vacated from Ashok Kumar Ahuja. A careful perusal of pleadings of appellant/ tenant would indicate that he himself admitted in para no.6 that other shop was got vacated by landlord

and Gulshan Kumar under the tenancy of Ashok Kumar Ahuja where after Gulshan Kumar and Ajay Kumar started joint business of footwear in both the shops, making that a showroom, after removing middle wall. Hence, it would be apparent that presently there is only one shop in existence at the spot which is run by Ajay Kumar or by Ajay Kumar and Gulshan Kumar as per the version of the tenant. The cross examination of tenant Puran Chand RW1 would indicate that he admitted therein that Ram Kishan landlord has two shops on the main road. He also admitted that one of the shops has been extended by the landlord after removing the intervening wall about 8 years prior to that date of his deposition and that other shop was vacated 8 years ago wherein his son is now running a show room. He also admitted that Ajay Kumar is separate from Ram Kishan. In this view of the matter, it could not be substantiated that landlord is in possession of any other shop suitable for his son Gulshan Kumar for running business of shoes.”

10. Being a father, respondent-landlord at his advance age of more than 80 years, is eager to settle his son in business. One of his son is already doing business and the other namely Gulshan Kumar is doing footwear business but is not having any shop. Landlord requires his shop to settle his son. There is nothing doubtful in the assertion and need projected by the respondent-landlord. There is no concealment of fact and the argument of learned counsel for the revision petitioner is not based on pleadings and evidence on record. Learned Rent Controller as well as Appellate Authority both have taken note of all the pleas which have been raised by learned counsel for the revision petitioner-tenant and have

discarded the same.

11. It is to be noted here that revision petitioner is not in appeal but has filed a revision where the scope of interference in the concurrent findings of facts recorded by learned Rent Controller and Appellate Authority is limited one. Reference to this effect can be made to the observations in case of *Hindustan Petroleum Corporation Ltd Vs. Dilbahar Singh* 2014(9) SCC 78, wherein Hon'ble Supreme Court has observed as follows:-

“We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above.

However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

12. In view of my discussion above, I find no legal or factual infirmity in the concurrent findings recorded by learned Rent Controller and Appellate Authority that the shop in dispute is required by the respondent-landlord for his personal bona fide requirement, calling for any interference.

13. This revision petition has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

November 10, 2016.
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***