

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

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Civil Revision No.7437 of 2016 (O&M)

Date of Decision: November 11, 2016

Satnam Singh

...Petitioner

Versus

Tarlok Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rajinder Sharma, Advocate
for the applicant-petitioner.

Mr. Arun Jain, Senior Advocate
with Mr. Abhishek Dhull, Advocate
for the respondents.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Notice of motion.

2. Mr. Abhishek Dhull, Advocate, accepts notice on behalf of the
caveator-respondent.

3. Caveat discharged.

4. Petitioner has approached this Court assailing the order
dated 22.09.2016 passed by the Appellate Authority, Amritsar, whereby the
appeal preferred by the respondent-landlord against the rejection of the
petition preferred under Section of The East Punjab Urban Rent Restriction
Act, 1949 (hereinafter referred to as 'Act'), on the grounds of personal
bona fide need, was accepted.

5. It is the contention of learned counsel for the petitioner that the
respondent-landlord has not impleaded all the tenants of the
demised premises. He contends that without impleading all the tenants in
the premises, where the tenancy has been admitted to be qua
three persons, the petition itself for eviction under Section 13 of the Act,

was not maintainable. Apart from that, he contends that the personal *bona fide* necessity of the son of the respondent-landlord cannot be accepted in the light of the fact that the son of the respondent Kulwinder Singh, while appearing in the witness box, has not specified as to why the petition has been filed qua the demised premises only, when eviction could have been sought of the other tenants in the other shops. That apart, he contends that one of the witnesses, who has appeared for the respondent-landlord, has with reference to the site plan Exhibit AW6/1 asserted that there are five shops and out of which one was vacant and was being used for carrying out the business by the respondent-landlord. He on this basis submits that the appeal as allowed by the Appellate Authority, Amritsar, by impugned order dated 22.09.2016, cannot sustain and deserves to be set aside.

6. On the other hand, learned senior counsel for the respondent-landlord, states that in the eviction petition, it was specifically pleaded by the respondent that the petitioner is only in occupation of the demised premises and is running business from there. Reply to the said assertion is not in the form of a denial. He, therefore, contends that there is an admission on the part of the petitioner that the demised premises is in his exclusive possession and he alone is running the business in the demised shop as a sole proprietor. Assertion has also been made by learned senior counsel that in the light of the fact that the respondent was holding the premises and running his exclusive business from the same, he was the only necessary party, however, one of the other persons, out of the three were also impleaded as a party and the 3rd person namely Kashmir Singh appeared as RW-4 but did not move any application for

being impleaded as a party to the petition despite fully being aware of an eviction petition having been preferred by the respondent-landlord, therefore, no prejudice has been caused to Kashmir Singh. Had he been aggrieved, he would have availed of the remedy as per law.

7. As regards the contention of the counsel for the petitioner that there were five shops as per the statement of AW-1 Bakhshish Singh, the same cannot be accepted as the response thereto in the cross-examination was to site plan Exhibit AW-6/1, where the shop which is now alleged to be the 5th shop, is in fact shown as a passage which is 5 feet wide and if that is a passage, the same cannot be treated as a shop. Responding to the argument of the counsel for the petitioner that Kulwinder Singh son of the landlord in the cross-examination has not responded as to why he wanted the specified demised premises under tenancy with the petitioner, he states that that is not the requirement as no other shop is lying vacant and it is the choice of the landlord as to where he would like to start his own business, especially when it is for the personal *bona fide* necessity. Prayer on this basis is made for dismissal of the revision petition.

8. Having considered the submissions made by the counsel for the parties and having gone through the records of the case as also the evidence which has been brought to the notice of the Court, I am of the opinion that the revision petition cannot be accepted, as has been preferred by the petitioner.

9. The assertion of the counsel for the petitioner that the 3rd tenant namely Kashmir Singh has not been impleaded as a party to the eviction petition and, therefore, the petition under Section 13 of the Act is

not maintainable, cannot be accepted for the simple reason that there is a specific and clear assertion on the part of the respondent-landlord that the petitioner is in the exclusive possession of the demised premises and is running his business alone in the said premises which fact is not disputed by the petitioner in the written statement. That apart, Kashmir Singh had appeared as a witness RW-4 and, therefore, it cannot be said that he was not aware of the pendency of the eviction petition. Had he been aggrieved, he would have moved an application for impleading himself as a party to the same. It may be pointed out here that the petitioner was running a sole proprietorship in the demised premises as has come in the evidence.

10. As regards the contention of learned counsel for the petitioner that there were five shops which was not disclosed by the respondent in his pleadings, suffice it to say that in the written statement which has been filed by the petitioner, on an assertion made by the respondent that there are four shops, the said fact has been admitted by the petitioner. That apart, with reference to the statement of AW-1 Bakhshish Singh that there are five shops, the said assertion again cannot be accepted for the simple reason that the admitted site plan Exhibit AW-6/1 with reference whereof the response was given by the witness in the cross-examination, clearly depicts that it is a 5 feet wide passage. If that is so, the fact remains that there are four shops in the ownership of the respondent and none of the shops are vacant, which is an admitted fact.

11. As regards the contention of the counsel for the petitioner with reference to the cross-examination of the son of the respondent namely Kulwinder Singh, suffice it to say that it is a settled preposition of law that

the sole choice is of the landlord as to where and in which premises, he would like to start his own business or venture. The tenant cannot question him on that aspect except for the *bona fide* necessity, which the respondent has been able to establish in the present case on the basis of the pleadings and the evidence brought on record.

12. In view of the above, the present petition being devoid of merit, stands dismissed.

13. In the light of the dismissal of the petition, the application for stay i.e. CM No.22603-CII of 2016, stands disposed of as infructuous.

November 11, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No