

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

**Civil Revision No.1012 of 2017 (O&M)
Decided on : 13.02.2017**

Nisar Khan

... Petitioner

Versus

Dr. Vijay Gupta

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Parveen Kumar Saini, Advocate
for the petitioner.

G.S. Sandhawalia, J. (Oral)

The present petition has been filed against the concurrent findings recorded by the Rent Controller, Yamuna Nagar and the Appellate Authority on the issue of the bonafide requirement.

While the Rent Controller vide order dated 14.05.2013 had dismissed the ejectment application on the ground of ceased to occupy, the cross-appeal of the landlord has also been allowed by the Appellate Authority, Yamuna Nagar on 17.11.2016 by holding that there is no electricity connection in the premises in question, since 2008. Therefore, the running of the shop of mobiles and property financing without electricity connection is not possible and, therefore, ejectment has also been ordered on that ground.

The petition was filed by the respondent-landlord on the ground that the tenant was under tenancy of the Chhobara @ ₹1,200/- per month and there was non-payment of rent from the period of 01.03.2009 till 31.12.2009. On the ground of bonafide requirement, it was alleged by the

landlord that a Dental Hospital was being run by him and the accommodation on the ground floor was insufficient and *Chhobara* in dispute is also an entry through the stair case and the same was bonafide required by the respondent-landlord and also to accommodate his son. The tenant was doing the business under the name of Bharat Mobiles, Bharat Finance and Property Adviser, but he is not doing the business anymore and there is no electricity connection or telephone connection and thus he ceased to occupy the premises in question for a continuous period of two years, when the petition was filed on 04.01.2010.

The defence by the tenant was that the shop in dispute is not required by the respondent-landlord and he and his son were running a number of institutions in Himachal Pradesh and respondent-landlord himself never sat in the present shop. It has been stated that he was doing the business of Mobile and property adviser and using the premises regularly and paying the rent regularly but the same had not been accepted by the respondent-landlord. The following issues were framed by the Rent Controller:-

- “1. Whether the respondent is liable to be ejected from the demised premises on the grounds as alleged?OPP*
- 2. Whether the petition is not maintainable? OPR*
- 3. Whether the petitioner has no locus standi to file the petition?OPR*
- 4. Relief.”*

The landlord examined himself and his son Gaurav Gupta and placed on record the electricity and water bills and the copy of the income tax return. The petitioner-tenant examined himself as RW-1.

The Rent Controller rejected the ground of ejectment on ceased to occupy by holding that whether these bills pertain to premises in question or not had not been proved and merely oral evidence is not sufficient. The bonafide necessity of the respondent-landlord was established but it was held that there was no necessity for his son. It was noticed that he was running a Dental Hopsital alongwith an optician shop on the ground floor and, therefore, in the absence of occupying any other premises of same measurements within the same area and since the *Chhobara* in dispute exists on the first floor it was held that for the extension of the business, the premises were required by the respondent-landlord.

An appeal was filed by the petitioner-tenant and cross-objections were also preferred by the respondent-landlord.

The Appellate Authority held that the Rent Controller was not correct in holding that because the son was a trustee in a number of dental institutions in Himachal Pradesh, therefore, he was in occupation of commercial property. It was, accordingly, held that once he had stepped into the witness box and submitted that he is merely a trustee in several Dental Colleges and visited these colleges but he was residing in Jagadhri, then there was no material to draw an inference that he owned commercial property. Thus, in view of the evidence of the respondent-landlord and his son, it was held that even the daughter-in-law Preeti had been helping the landlord and, therefore, the premises were required for expansion and the plea was as such bonafide. On the issue of ceased to

occupy it was held that it was categorically admitted by the tenant that since 2008 he has no electricity connection. He claimed that the connection had been disconnected by the landlord. Accordingly, it was held that there was no electricity connection in place and he had ceased to occupy the premises. Resultantly, eviction order was modified to the extent that the requirement was both on the account of requirement of the landlord and his son and also he had ceased to occupy the premises.

Counsel for the petitioner has vehemently submitted that an application for additional evidence under Order 41 Rule 27CPC to bring on record the material fact to show that the landlord had sufficient accommodation in the urban area even and, therefore, non-decision of the said application has led to serious prejudice.

A perusal of the said application which has now been appended would go on to show that it has no relevance as such which could help the Court to decide the issue. The application under Order 41 Rule 27 CPC is not to be resorted to in normal course. It is for the Court to come to the conclusion that the evidence is not sufficient for it to adjudicate the issue and decide the same on merits and where the trial Court had not allowed such evidence to come on record and for any substantial cause. Reference can be made to the observations of the Apex Court in '**Basayya I. Mathad Vs. Rudrayya S. Mathad and others'** 2008 (1) SCR 1155. The relevant observations read as under:-

“It is clear that parties to the lis are not entitled to produce additional evidence as of course or routine but must satisfy the

conditions stated in sub-clauses (a) & (aa). Admittedly, such recourse has not been resorted to neither by the party concerned nor adhered those principles by the High Court. Paragraph 3 of his order shows that the learned Judge verified the document produced on his direction without complying the mandate as provided under Rule 27 Order 41. Hence, we are of the view that the finding of the learned Judge based on a document produced at the time of argument de hors to Rule 27 referred above cannot be sustained in the eye of law. In such circumstances, his ultimate conclusion treating the suit property as a family property partible among the members of the family is also liable to be set aside. In fact, sub-clause (2) of Rule 27 mandates that wherever additional evidence is allowed to be produced by an Appellate Court, it shall record the reason for its admission. It is needless to mention that the High Court neither followed those conditions for production of additional evidence nor recorded the reason for basing reliance on the same.

The said necessary ingredients are not made out as such in the present application which is for inquiry regarding the area which is available with the landlord. The application seeks to bring evidence pertaining to the property of the wife of the landlord and is in the form of a roving enquiry.

It is settled principle that the tenant is not to dictate the landlord as to how utilize his properties and how to be squeezed in the accommodation. In such circumstances, in view of the evidence which has come on record that there is no electricity connection in the premises in question since 2008 and the fact there is a bonafide requirement of the respondent-landlord to expand his dental hospital, this Court is of the opinion that the findings of the Courts below would not warrant any

scope for interference. Accordingly, the present revision petition is dismissed.

FEBRUARY 13, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No