

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

115

CR No.1083 of 2017 (O&M)
Date of decision: 15.02.2017

Ajay

....Petitioner

Versus

Om Parkash

...Respondent

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

Present: Mr.C.B.Goel, Advocate, for the petitioner.

G.S. SANDHAWALIA, J. (Oral)

The present revision petition is directed by the petitioner-tenant against the concurrent findings recorded by the Courts below, on the ground that there was a *bona fide* requirement of the grandson of the respondent-landlord and resultantly, the eviction has been ordered by the Rent Controller, Bhiwani on 31.10.2015.

The eviction petition was filed on the ground that the rent of the demised shop was revised on 16.07.2012. The rent had not been paid for 38 months, amounting to Rs.19,998/-. It is pleaded out that the tenant had taken another shop and ceased to occupy the premises and the value and utility of the demised shop had been diminished by keeping it closed. Plea of *bona fide* requirement was taken for the grandson-Ashutosh, on the ground that he wanted to start business at Bhiwani with the landlord as he was doing private job at Delhi and was not content with his employment. Specifically it was also mentioned that the grandson did not possess any other vacant shop in Bhiwani town nor he had vacated any other shop after the commencement of the Haryana Urban Control of (Rent & Eviction) Act, 1973. Since the relationship, as such, was admitted along with the rate of rent and the fact that the rent had been paid as per the provisional assessment made, the landlord did not press the other

grounds regarding seize to occupy and the change of user etc. The only stress laid was on the ground of *bona fide* requirement.

The petitioner-tenant had objected in the written statement that Ashutosh was not residing with the petitioner and was not dependent and that he was doing service at Delhi and therefore, contested the stand that the *bona fide* requirement could not be, as such, extended to the grandson.

The said thread of argument has been picked up by counsel for the petitioner herein also, to this effect and reliance has been placed upon three judgments which will be discussed below.

It is pertinent to mention here that in the rejoinder filed, the landlord had specifically reiterated the fact that Ashutosh was a family member and the shop was required for him as he was doing a temporary service at Delhi. The grandson, accordingly, appeared as PW2 along with the landlord, PW1. Resultantly, the Rent Controller noticed that the tenant himself had appeared as RW2 and taken a plea that his brother had purchased another shop at some distance and he had no concern with the said shop. He also admitted that none of the shops were lying vacant and all the shops were not in possession of the landlord and that he had not filed any other petition for eviction from the premises, earlier. Resultantly, the argument raised that the eviction qua the *bona fide* requirement of the grandson was only a tool to evict the tenant, was rejected. It was proved that Ashutosh was doing a private job at Delhi whereas his other family members were residing at Bhiwani and even in his evidence, he has stated that he has done the business with his uncle from the year 1996 to 2005 and that he was not satisfied with

his job. The argument that the grandson was not dependent, was repelled by falling back on the judgment of this Court in **Sant Footwear Pvt. Ltd. & another Vs. Daya Bindra 2013 (2) HLR 600.** It is pertinent to note that in the said judgment, reference has also been made to various other precedents that eviction can be sought for the grandson also. It was specifically held that sufficient evidence had been brought on record that the grandson was not content with his private job and therefore, the *bona fide* requirement, as such, was there and resultantly, eviction was ordered by the Rent Controller on the said ground, vide order dated 31.10.2015.

An appeal was preferred before the Appellate Authority, which has approved the findings of the Rent Controller on 27.01.2017. It is pertinent to notice that the Appellate Authority has also taken into account the fact that the father of Ashutosh, namely, Pawan had expired and therefore, the responsibility, as such, to settle the grandson had fallen upon the respondent and resultantly, the stamp of approval has also been given by the Appellate Authority. Resultantly, the present revision petition has been filed.

Counsel for the petitioner has relied upon the judgment of this Court in **Naresh Kumar & another Vs. Krishan Lal Kohli 2009 (2) RCR 52** to submit that the grandson would not be dependent and eviction could not be ordered on the ground of personal requirement. A perusal of the said judgment would go on to show that it was the case where eviction had been ordered for accommodating the brother's son, namely, Ravinder Mohan. It was, resultantly, held that he was not dependent upon the landlord nor he had

any funds to start his own business and thus, the revision petition was allowed. It was also noticed that the nephew had filed an affidavit, as such, whereby he had taken the plea that he was not requiring the premises and therefore, keeping in view the said fact, the revision petition had been allowed. The said judgment, in the above facts and circumstances, thus, would not be applicable.

The Apex Court in *Ragavendra Kumar Vs. Firm Prem Machinery & Company 2000 (1) SCC 679* held that the freedom for starting his business by the landlord was absolute and could not be faulted. Similarly, in *Joginder Pal Vs. Naval Kishore Behal 2002 (5) SCC 397*, the Apex Court held that the concept of *bona fide* necessity has to be meaningfully construed by discarding a narrow interpretation and the Courts have to adopt reasonable and balanced approach and give equal treatment to both landlord and tenant. Relevant observations read as under:

“24. We are of the opinion that the expression 'for his own use' as occurring in [Section 13\(3\)\(a\)\(iii\)](#) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove we have found the *pari materia* provisions being interpreted so as to include the requirement of the wife, husband, sister, children including

son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependents and kith and kin in the requirement of landlord as "his" or "his own" requirement and user. Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire : (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close inter-relation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by landlord for his son's office. The case squarely falls within the scope of [Section 13\(3\)\(a\)\(ii\)](#) of the Act.

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32. If we do not meaningfully construe the concept of requirement the provision may suffer from the risk of being branded as unreasonable, arbitrary or as placing uncalled for and unreasonable restrictions on the right of

the owner to hold and use his property. We cannot place a construction on the expression 'for his own use' in such a way as to deny the landlord a right to evict his tenant when he needs the accommodation for his own son to settle himself well in his life. We have to give colour and content to the expression and provide the skin of a living thought to the skeleton of the words which the Legislature has not itself chosen to define. The Indian society, its customs and requirements and the context where the provision is set in the legislation are the guides leading to acceptance of the meaning which we have chosen to assign to the words 'for his own use' in Section 13(3)(a)(ii) of the Act.”

In **Mohinder Kaur Vs. Balwinder Kumar 2010 (1) CCC 717**

a similar view has been taken that the requirement of the accommodation has to be seen from the angle of the landlord and not from the view point of the tenant.

As noticed, in the present case, the son has died and the grandson wants to start his business and merely the fact that he is working at Delhi would not, as such, absolve the responsibility of the grandfather. It has been specifically averred, both in the petition as well as in the rejoinder, to this extent and therefore, the argument which has been raised by the counsel, is not liable to be accepted. The judgment of this Court in **Kasturi Lal Sharma Vs. Kartar Singh 1984 (1) RCR 211 (P&H)** pertained to a case where the married son, for whom ejectment had been sought, was living separately for the last 8 years and was not dependent upon the landlord. In **Surinder Pal Singh Vs. The Geologist Director of Industries & others 1985 (2) RCR 210 (P&H)** relied upon by counsel for the petitioner, the landlord

was living abroad and the requirement was sought for the father and they were held not to be family members.

This Court, in revisional jurisdiction, is not sitting as a Court of appeal, as has been held by the Apex Court in **Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh, 2014 (9) SCC 78.** Concurrent findings have been recorded by the authorities below, which do not warrant any interference and in the absence of any procedural illegality or infirmity in the orders impugned, finding no merit in the present revision petition, the same is hereby dismissed in limine. However, keeping in view the fact that the petitioner has been a tenant for long, he would require some time to re-locate, the eviction order shall not be executed till 30.06.2017.

February 15th, 2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No