

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

C.R. No. 132 of 2017 (O & M)

Date of decision: 06.02.2017

Kanhiya Lal

....Petitioner(s)

Versus

Harish Chander

...Respondent(s)

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

Present: Mr. Vikram Punia, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J.

The petitioner-tenant is aggrieved against the order of the Appellate Authority, Sonapat dated 17.11.2016 whereby, ejectment has been ordered on the ground of cease to occupy while allowing the cross objections of the respondent-landlord. The appeal filed by the tenant had also been accepted and the ground of ejectment on bona fide necessity was allowed and accordingly, ejectment ordered by the Rent Controller on the said ground was set aside.

The petition was instituted by the respondent for eviction from the shop in question which had been let out in the year 1975 @ ₹80/- per month. The grounds of eviction were that on account of cease to occupy for a continuous period of 4 months and since the respondent was not carrying on any business for the last 2 years, ejectment was liable. The landlord was stated to be a retired person and his daughter-in-law had done M.A. and B.Ed., required the premises to start the business of ladies garments in the shop in question. The plea was contested regarding ceasing to occupy

whereas the rate of rent @ ₹80/- per month was admitted. It was alleged that earlier, a rent petition had been dismissed in the year 2002 and, therefore, the bona fides as such of the landlord were questioned. Keeping in view the averments and the statement of the landlord who appeared as AW-1 to whom a suggestion had been made that the wife of the tenant had met with an accident in October, 2013 and in view of the evidence of the daughter-in-law who had appeared as AW-2 and the fact that there was documentary proof of consumption of bills from January, 2013 to August 2015, the ground for eviction on cease to occupy had been rejected by the Rent Controller. The eviction had been ordered, as noticed, on the ground that the premises in question were required by the daughter-in-law. Mere ownership of the two other shops were held not to be a ground to disbelieve or consider the requirement not a genuine requirement keeping in view the settled principle that the landlord was not to be dictated the terms as to how the property is to be utilized.

Since both the parties were not satisfied with the order of the Rent Controller, the appeal was filed by the petitioner whereas, cross objections were preferred by the landlord. To arrive at the conclusion, the Appellate Authority in detail, considered the statements of as many as 7 witnesses examined by the respondent-landlord and the 4 witnesses examined by the petitioner-tenant. To dismiss the rent petition on the ground of bona fide requirement and while allowing the appeal of the present petitioner, it was held that the mandatory requirements were not mentioned in the rent petition and on account of earlier dismissal of the petition on the same ground and he had not pursued the occupation which he had pleaded. The sale had taken place of a shop and letting out of shops

had been done to the other tenants and, therefore, the act and conduct of the landlord showed the mala fide intention and, therefore, there was no genuine and bona fide need as such. It was also noticed that he was aged around 80 years and the shops which had been sold and let out were adjacent to the shop in dispute and were not at any other place and, therefore, the claim that the shop was required for running the business for himself as well as daughter-in-law was not genuine and resultantly, the appeal of the tenant was allowed.

However, while taking into consideration the facts, it is to be noticed that the eviction petition was filed on 05.08.2013 and the tenant was running the shop of a watchmaker. As noticed, defence had been taken that the tenant had not ceased to occupy. However, evidence was brought on record as such regarding the fact that the appellant-tenant was busy seeking treatment of his wife who was admitted in Apollo Hospital, Delhi. Thus, in a way, an admission as such had been made by the tenant that the shop was lying closed and a valid cause of action as such had arisen to the landlord. The defence never was such that there was sufficient cause which he could have explained if such a plea had been taken in the written statement. It was not disputed that the Rent Controller had appointed a Local Commissioner also to visit the premises in question and who had taken photographs to show that the shop continued to remain closed during working hours. The Local Commissioner as such had been appointed on the date of institution for taking photographs on 05.08.2013 and he had accordingly submitted his report Ex.AW-4/A. The said report had thereafter been proved by him and the photographs had been brought on record as AW-4/2 to AW-4/6. The report was accordingly considered that the Local Commissioner had also not

only visited the shop but also made inquiries from the neighbours and, therefore, reliance can be safely placed upon his report. The other photographs which were taken between 03.02.2014 to 24.03.2015 during the pendency of the eviction petition were placed on record as AW-7 to AW-15 by Shanti Lal AW-7, the photographer. Similarly, the witness of the tenant himself namely Parveen Kumar RW-2 himself admitted that the wife of the petitioner was unwell and the shop was lying locked since the tenant did not have any servant or assistant to look after his business in his absence.

The Appellate Authority had, thus, rightly held that on account of the admission, the burden would shift upon the tenant to show that the closure was for reasonable cause or for justified reasons and merely because there was consumption of electricity on minimal and virtually insignificant consumption of units, would not go on to show that he continued to run his business specially keeping in view the fact that nothing was placed on record as to any bill book or records of any sales tax return. On cumulative examination of the evidence as such, the issue of cease to occupy was thus answered in favour of the respondent-landlord by recording that the Rent Controller had faulted in the appreciation of evidence while denying ejection on this ground. The reasoning, thus, which has been recorded by the Appellate Authority is very much justified as right from the initiation of the proceedings, evidence was brought on record by getting Local Commissioner appointed on the very first day that the shop was already lying closed. The necessary requirement of the cause of action was well justified by examining the Local Commissioner who was an independent person being an Advocate. Prior to that, for 4 consecutive months, there

were postal receipts to show that service could not be affected of the registered notices being sent to the tenant on account of the closure. During the pendency, the closure continued and more material was placed on record in the form of photographs. The tenant himself by taking a contrary plea that his wife was as such admitted in hospital brought the said defence on record by way of evidence, though not pleaded and, thus, admitted the factum of the cause of action which arose to the respondent-landlord. The photographs had been examined to notice that the closure was during the period when other shops were open. The argument as such of the counsel for the petitioner which is now raised that the closure had to be seen prior to the date of institution also would pale into insignificance keeping in view the fact that from February to August, registered envelopes had been sent containing notices Exs. A-1 to A-3, A-5 and A-6 which had all been received back undelivered with the report that the shop was lying locked prior to the institution of the petition. Keeping in view the fact that the registered letters had been received back by the landlord, it was held that it was cogent and independent piece of evidence by government officials in the discharge of their duties and, therefore, the said fact was also taken into consideration.

Keeping in view the cumulative findings which are based on proper appreciation and detailed scrutiny of the evidence, this Court is of the opinion that the order as such passed by the Appellate Authority is not liable to be interfered in revisional jurisdiction. No procedural infirmity or illegality has been pointed out in the facts and circumstances which would

warrant interference. Resultantly, the present revision petition is dismissed.

06.02.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No