

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

**Civil Revision No.1406 of 2017 (O&M)
Decided on : 28.02.2017**

Kulbir Singh

... Petitioner

Versus

Tara Chand Uppal and others

... Respondents

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

Present : Mr. Naresh Parbhakar, Advocate
for the petitioner.

G.S. Sandhawalia, J. (Oral)

The present revision petition has been filed by the tenant against the concurrent findings of the Courts below, whereby ejectment has been ordered on the ground of bonafide requirement of the landlord, apart from the fact that there were arrears of rent by the Rent Controller, Sultanpur Lodhi on 12.03.2013 and upheld on 30.09.2016.

Counsel for the petitioner has vehemently submitted that the requirement was for the son as such, and, therefore, the son having been not examined, the eviction order on that ground was not justified. He further submits that the property has been leased out in August, 1991 and, therefore, the claim of arrears which were claimed in 2009 at the time of filing the petition would go on to show that the landlord has not come to the Court with clean hands and, therefore, was not entitled for eviction on the ground of bonafide requirement.

A perusal of the paper-book would go on to show that the eviction petition was filed for the shop measuring 15x10' as a portion of the

building situated opposite BDPO Office, Ber Sahib Road, Sultanpur Lodhi, District Kapurthala. The property is bounded by the landlords property on three sides and on the 4th side is the main road.

The grounds for eviction is that the building was required for his own use and occupation and being an Advocate and also for his son Tanuj Uppal who is doing his LL.M in London. His course was to finish in December, 2009 and, thereafter, he was to return to India and to reside with his father and to join his father in and practice law. It was also specifically pleaded that the petitioner himself had no proper office and he required the premises for setting up a proper office. The space was required for office and also for their juniors/associate lawyers, clerical staff, steno and library alongwith the record room and computer room.

The building was stated to be suitably located on the main road and Courts were near by. It has been further pleaded that a portion of the building approximately 1466.46 square feet was on rent with the United India Insurance Company Ltd. and area approximately 100 square feet was also vacant behind the same. A room with Harjit Singh was on license on the first floor who was to vacate the same when required and separate petition for eviction had been filed against the other tenants. Resultantly, mandatory ingredients of the Act were specifically pleaded that there is no other residential building and neither the landlord had vacated any such building without sufficient cause in the urban area of Sultanpur Lodhi.

It is not disputed that as even the counsel for the petitioner

has admitted that the premises have been got vacated from the Insurance Company and the eviction petition has been decided in favour of the landlord on 15.01.2013.

The rent was claimed @ ₹850/- per month from February, 2008 with arrears @ ₹300/- per month from November, 1991.

The defence of the petitioner was that the rent as such was not ₹850/- per month but ₹550/- per month and the tenant had deposited upto December, 2009 alongwith interest in the State Bank of Patiala. The relationship as such was admitted but plea taken was that the rent has been wrongly claimed at ₹850/- per month and alteration had been made. The petitioner No.1 was already having a proper place for his legal profession and he was also occupying same building for his own use. The following issues were framed by the Rent Controller:-

- “1. Whether the petitioner (s) has (have) no locus-standi to file the petition? OPR*
- 2. Whether the respondent has not paid the rent as alleged? OPP*
- 3. Whether the petitioners require the demised shop for their own use and occupation? OPP*
- 4. Relief.”*

The Rent Controller took into account the statement of the landlord who examined as PW-1 and also the statement of one Rajinder Singh Rana, PW-2. The factum of the identity, the original rent note (Ex.P1), alongwith site plan (Ex.P-2) and proposed building plan (Ex.P3) were taken on record.

On the other hand the respondent examined himself and one Shingara Singh. The handwriting expert Sukhjinder Singh has also been

examined as RW-3 who had compared the questioned portions of the first page and the second page of the rent note. Apart from that the record clerk Shri Arun Dutt has been examined.

It was, accordingly, noted that the landlord wanted to make one office by emerging the entire premises and two separate petitions have been filed. It was also noticed that his son was also an Advocate with the Bar Council of Punjab and Haryana and a certificate from University of Wales, London where Tanuj Uppal was undergoing his law studies was taken into consideration. It has come on record that the respondent is practicing as a counsel since 1975 and practicing before Civil, Criminal and Revenue Courts. Therefore, keeping in view his need and requirement and after taking into consideration the relevant judgments in question, the Rent Controller came to the conclusion that the requirement was bonafide. The premises were required for expanding the work for drafting, library, computer room and waiting room. It was also noticed that the landlord was also appearing on the panel of the banks and thus an argument had been sought to be raised on the other side that his work had declined and therefore, he was appearing for such institutions.

On the issue of the rent note being altered, the statement of the expert witness was taken into consideration that the technique was not correct and he had not taken the sample handwriting of the scribe of the rent note. The relevant portion of the discussion read as such.

“In order to substantial his assertions he examined Hand

Writing expert namely Sukhjinder Singh. In his opinion, in Ex.RW3/1, this Expert Witness has stated that originally the digit was '5' and this digit '5' has been converted into digit '8' to make the figure as '850' from figure '550'. He was crossexamined at length. In his cross-examination he has stated that he has not taken the sample handwriting of the scribe of rent note Ex.P1. He stated that there are enough standard digit '7' in the rent note from which he could compare. To my mind, this not the correct procedure because if sample handwriting is not taken, then natural variation of a person in writing can not be compare. Therefore, the technique of this Expert is not correct. He should have taken number of samples in order to give opinion on the natural variations of a person. In his cross-examination, he stated that at point "A" there is 'kanna' from which he has concluded that digit '1100' has been converted into '1700'. At point S3, there is an independent digit '7', which is clause No.7 in the rent deed. At point S1, there is independent digit '8' which is clause '8'. Further at point S2 the date is 13.08.1991 which gives the independent digit '8'. Had '1' being converted into '7' then there should have been pen lift, but it is not so. As it has been held earlier, he has not taken sample of digit 'kanna' of the scribe. Further, digit '7' in Q2 and S3 are same. The digit is to be compared with digit and not 'kanna' of the language. In his cross-examination, he has stated that he can not say whether there is extra thickness of the portion of the stroke. In his further cross-examination, he has stated shade and tint of the ink in all stroke are same. If it is so, then it is not possible that there are interpolations. When the rent note is scribe by a deed writer, then the original is with the landlord and the extract of the same is entered into Deed Writer's register."

It was, accordingly, held that the deed writer should have been summoned to find out whether there is any forgery and the fact that expert sings to the tune of his master was kept in mind. Accordingly, the conclusion was arrived at that the rate of rent was ₹850/- from December,

2008 and there was an entitlement for a period for 216 months from 01.11.1991 to 31.12.2009 @ ₹300/- per month and the entitlement to the arrears of the rent came to ₹64,800/-. The interest part was calculated as ₹19,125/-. Resultantly, eviction was also ordered on the ground of non-payment.

The matter was taken in appeal before the Appellate Authority who confirmed the findings by holding that an identity card had also been issued to Tanuj Uppal that he was a law graduate and, therefore, the requirement as such was bonafide. The findings which were on the issue of forgery were also upheld by noting that sample handwriting of the scribe had not been taken. Therefore, the rent note having been scribed by the deed writer and the deed writer having not been examined, the forgery could not be detected as such. Accordingly, the finding on the non-payment of the rent was also upheld and, therefore, the arrears having been found, the ejectment was ordered on that ground also.

It is settled principle that the bonafide necessity is to be looked at from the angle of the landlord and not from the angle of the tenant. In the present case the specific averments have been made that the premises are required by the Advocate/landlord for expanding his office.

As noticed the property is located as such which is on the main road in a small town in Sultanpur Lodhi. The respondent No.1 is an Advocate having standing since 1975, who wants to improve his working

conditions. 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.

Both the Courts below have also examined the issue in detail regarding the alleged forgery of the rent note and have come to an adverse finding.

It is settled principle that this Court is not sitting as a Court of second appeal which would re-examine the evidence for the third time. The said view has been laid by the Constitutional Bench of the the Apex Court in '**Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh**' **2014 (9) SCC 78**. The relevant observations read as under:-

“45. 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.

The said view has been followed and reiterated in '**M/s Boorugu Mahadev & Sons & another Vs. Sirigiri Narasing Rao & others'** (2016) 3 SCC 343 wherein the High Court had interfered with the findings of the fact and the reasoning was held to be not justified in view of the law laid down. The relevant observations read as under:

*“21. Likewise, when we peruse the impugned order, we find, as rightly urged by the learned counsel for the appellants, that the High Court did not keep in mind the aforesaid principle of law laid down by the Constitution Bench in the case of **Hindustan Petroleum Corporation Ltd. (supra)** while deciding the revision petition and proceeded to decide the revision petition like the first appellate Court. The High Court as is clear from the judgment probed in all the factual aspects of the case, undertook the appreciation of whole evidence and then reversed all the factual findings of the appellate Court and restored the order of the Rent Controller. This, in our view, was a jurisdictional error, which the High Court committed while deciding the revision petition and hence it deserves to be corrected in this appeal. In other words, the High Court should have confined its inquiry to examine as to whether any jurisdictional error was committed by the first appellate Court*

while deciding the first appeal. It was, however, not done and hence interference in this appeal is called for.”

The judgments relied upon by the counsel for the petitioner in '**Mohan Lal Jain Vs. Mohan Lal son of Walaiti Ram and another**' 1973 RCR (Rent) 380, '**Mehar Chand and another Vs. Tilak Raj Girdhar**' 1981 (2) RCR (Rent) 333 and '**Kharaiti Lal Chopra Vs. Inder Mohan Bhatia**' 2001 (1) RCR (Rent) 178 are prior in time to judgments of the Constitutional Bench and, therefore, have no relevance and not liable to be taken into consideration.

In such circumstances, the findings which have been recorded by the Courts below do not warrant any interference by this Court suffering from any procedural infirmity. Accordingly, the present revision petition is dismissed in limine.

FEBRUARY 28, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No