

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

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**CR No.1718 of 2005 (O&M)
Date of decision: 07.02.2017**

Jaswinder Singh

....Petitioner

Versus

Krishan Lal

...Respondent

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

Present: Mr.Gurnam Singh, Advocate, for the petitioner.

Mr.R.P.S.Ahluwalia, Advocate, for the respondent.

G.S. SANDHAWALIA, J.

The present revision petition has been preferred by the petitioner-landlord who is aggrieved against the concurrent findings of the Courts below, by the Rent Controller, Ambala dated 10.02.2004 and by the Appellate Authority, dated 09.06.2004, wherein it was held that the requirement of the landlord was not genuine and *bona fide* and resultantly, the eviction petition was dismissed.

The eviction petition was filed on 15.05.1999 for ejectment of the respondent-tenant from shop No.4, forming part of house No.1432-33, Block IV, Shakul Kund Road, Ambala City. It was pleaded by the landlord that the property was owned by Smt. Harbans Kaur, who transferred the same by way of Civil Court decree in favour of her son, Sukhdev Singh, to the extent of half share and grandson-Jaswinder Singh, petitioner, who is son of late Balwant Singh, to the extent of half share. A compromise had been entered for the distribution of the property and shops No.3 & 4 had fallen to the share of the landlord and shop No.5 had been kept joint. Shops No.1 & 2 had fallen to the share of Sukhdev Singh and the possession was with the respondent since May,

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1992 @ Rs.425/- per month, which was enhanced as per the rent deed, to Rs.470/- per month. In spite of the enhancement clause, which was due in May, 1998, the tenant had not increased the rent, as per the agreed terms. The landlord was an educated unemployed youth and was the only bread earner of his family along with his widowed mother and younger sister. He was wanting to do business of glass, photo-frames, plywood etc., for which he had been working in the local market and now, after getting experience, wanting to do business in his own premises which had fallen to his share, which was in possession of the tenant. Shop No.1 was a big shop having godown on the back side and is on rent with one Davinder Kumar for Rs.1870/- per month whereas the shop in question, i.e., shop No.4 was small shop measuring 9'x14', from where he wanted to earn his livelihood, which had been given on rent by his grandmother. His father had also died on 25.02.1989 and he had been requesting the respondent to vacate the shop. Accordingly, it was averred that he did not own any other shop or suitable accommodation and shop in his name within the municipal limit of Ambala City. Eviction was also sought on the ground of increase of rent, which had not been done as per the rent deed dated 23.05.1992 (Ex.P2) and the change of user of the shop had also taken place, by selling of school bags which had resulted in the impairment of the value and utility of the tenanted shop.

Respondent-tenant took the plea that 7-8 years back, he had filed a petition for eviction on the same ground and during the said period, he had given the shop including the adjacent shops to 2 other tenants, namely, Mr.Anil Kumar Gupta, watch repairer a week ago. He had put up a board of

to-let in front of his shop and therefore, he did not need any shop for his business and therefore, wanted to increase the rent many folds. The earlier decree for eviction had been compromised and the rent had been increased and no rent deed was executed. The respondent was paying the highest rent in the shops and he was compelling him to pay double the rent and no rent deed had ever been executed. The shop had been given to Mr.Gupta on 07/08.08.1999. A petition for eviction had earlier been filed and *ex parte* decree had been obtained by Smt. Harbans Kaur and lateron, the matter was compromised and the shop was given on fresh terms and rent @ Rs.470/- per month which had been regularly paid. The petitioner had recently given the shop to another tenant which shows that he had no intention to start a business and was earning a lot from his dairy business and therefore, he was not coming forth with clean hands. It was denied that there was any rent deed and that the tenant was doing the same business for which the shop had been let out and not a single brick had been changed.

In rejoinder filed by the petitioner, to the written statement, it was clarified that the details of the earlier petition had not been mentioned as he had not filed the petition in his own capacity. It was denied that he had given any shop to Mr.Gupta and that he had neither acquired nor vacated nor given on rent any shop in his own independent capacity prior to the filing of the present petition. It was wrong that the shop was given to Mr.Gupta after the institution of the petition on the date claimed. The earlier petition was instituted by his grandmother and she had taken pity on the tenant before compromising the matter.

The Rent Controller framed the following issues:

1. Whether respondent is liable to ejectment from the demised shop on the ground of change of user as alleged?
OPP
2. Whether respondent is liable to ejectment from the demised shop on the ground of bonafide personal necessity of petitioner? OPP
3. Whether respondent is liable to ejectment from the demised shop on the ground of material impairment of value and utility of demised shop? OPP
4. Whether petition is not maintainable in the present form?
OPR
5. Relief.

Keeping in view the rent deed dated 23.05.1992 (Ex.P2) and after taking into account the oral evidence of the petitioner, who appeared as PW1, the Rent Controller, on issue No.1, came to the conclusion that apart from his statement and keeping in view the fact that the onus of proof was upon the landlord, it could not be held that the shop had been let out for selling of shoes and that it was used for selling of school bags later. Resultantly, it was held that the purpose for which the shop had been let out had not been mentioned and therefore, it could not be held that the business had been changed.

The finding given on issue No.2 regarding *bona fide* personal necessity was present, was decided against the petitioner, on account of the fact that the adjoining shop had earlier been occupied by firm called M/s Arora Footwears, which was proved by producing RW4, from the office of the Excise and Taxation Officer. That the said firm had closed its business w.e.f. 31.03.1999 and the registration certification was cancelled from the

said date. The statement of the tenant of the adjoining shop, who had appeared as RW2 was taken into account, who deposed on oath that he had been inducted as tenant and even invitation cards had been printed on 24.02.2002. Accordingly, it was held that the petitioner had let out the shop adjacent to the disputed shop during the pendency of the petition. Keeping in mind the statement on oath of the said tenant-Anil Kumar and the photographer, who deposed that the said shop was adjacent to the disputed shop and that it had been painted on the shutter of the said shop that the same was available for the purposes of letting out and as per the photographs appended as Ex.RW5/A, it was held that the requirement was not *bona fide*. The contention that the landlord required the smaller shop which was suitable for his business, was, thus, held as nothing but an eye-wash, to seek the ejectment of the respondent-tenant.

On the issue of material impairment and value, the same was also decided against the landlord on account of absence of any evidence and resultantly, finding no argument raised on the maintainability of the petition, the said issue was decided against the tenant.

Counsel for the petitioner has vehemently argued that the shop had been let out by the earlier tenant directly to Anil Kumar Gupta and therefore, he had never conducted himself in such a manner which would disentitle him for getting eviction on the ground of *bona fide* requirement and therefore, the findings were not justified.

The said argument is liable not to be accepted, keeping in view the fact that it is a matter of settled principle of law that evidence beyond the

pleadings is not liable to be accepted. As noticed, specific plea was raised by the respondent-tenant that the conduct of the petitioner-landlord was not *bona fide* and he had let out the shop adjoining the shop in dispute, during the pendency of the eviction petition. In the rejoinder filed, no such plea had been taken that the shop had not been let out to Anil Kumar Gupta, rather it was denied that the landlord had given the shop to the said tenant. Thus, in the absence of any such plea having been taken that the earlier tenant had handed-over possession directly to the present tenant, the said argument is not acceptable.

The Appellate Authority had also examined the pleadings in detail in the same lines and noticed that the stand of the petitioner in his rejoinder was being denied. Therefore, the Appellate Authority came to the conclusion that the petitioner-landlord had concealed the material facts. Once Anil Kumar Gupta himself had appeared as RW2 and admitted having been let out the shop and the fact that the earlier shop's certification had been cancelled on 31.03.1999, it was, thus, noticed that at the time of filing the written statement in October, 1999, the shop had already been let out in August, 1999, which would prove the fact that the necessity was not genuine and that it was a mere desire and accordingly, the findings were affirmed.

The said findings are factual findings recorded and do not suffer from any infirmity. As noticed, it is apparent that on an earlier occasion, as would be clear from the pleadings, the grandmother had filed a petition and the matter had been resolved *inter se* the parties. Thereafter, the second petition had been filed, taking the plea that the petitioner was unemployed

and required the premises, but having let out the adjoining shop before the filing of the written statement, would just go on to show that it was not required for his personal use and necessity, as it had been pleaded. In such circumstances, the findings recorded by the Courts below do not suffer from any legal infirmity which would warrant interference.

Even otherwise, while exercising its revisional powers, this Court is not sitting as a Court of Appeal and is only to examine the factor that whether the authorities below have acted within the ambit of jurisdiction and whether they have erred grossly and if the orders suffer from any infirmity or error or law. Reliance can be placed upon the observations of the Constitutional Bench of the Apex Court in **Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh, 2014 (9) SCC 78**. The same read thus:-

“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 reappraisal 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 reappreciate or reassess 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.”

Accordingly, in the absence of any infirmity in the orders under challenge, the present revision petition stands dismissed.

February 7th, 2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes