

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

**Civil Revision No.1820 of 2014 (O&M)
Reserved on: 13.01.2017
Decided on : 02.02.2017**

M/s Naveen Store and another

... Petitioners

Versus

Devender Kaur and others

... Respondents

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

Present : Mr. Mani Ram Verma, Advocate
for the petitioners.

Mr. APS Sandhu, Advocate
for the respondents.

G.S. Sandhawalia, J.

The present revision petition has been preferred by the petitioner-tenants against the concurrent findings of ejectment by the authorities below from the eviction which was found part of the building as described in the head-note of the ejectment application.

The tenancy in question was created vide rent note dated 25.08.2005 and the shop was already on rent between the petitioner and the previous landlord who had sold the same in 1996. The claim petition was filed on 04.08.2009 on the ground of non-payment of rent from 08.06.2009 @ ₹325/- per month. Apart from that bonafide requirement of the landlord was pleaded for both his daughter and son-in-law for their personal use. The petitioner himself was stated to be doing a business under the ownership of one Davinder Kaur landlord @ ₹40/- per month and the shop was in a precarious condition. The requirement was for his

daughter namely, Twinkle, who was residing in Green Avenue, Amritsar and she wanted to do business alongwith her father, as she had shifted from Bombay where their business had shut down and the shop being in commercial area, both daughter, son-in-law and petitioner could do the business.

In the reply the rent note was admitted and the payment had been made upto June, 2009. It was denied that the shop in question was bonafide required by the landlord or for his daughter and son-in-law. It was alleged that the landlord owned another building situated at Swank Mandi, where there was another shop on the ground floor, he was owner thereto. The factum of the son-in-law doing business at Amritsar was not denied and rather the detail was given regarding various businesses, he was running and therefore the personal need was objected to. The following issues were framed by the Rent Controller.

- “1. Whether the demised premises required by the petitioner for his bonafide personal necessity as claimed? OPP*
- 2. Whether only one rent note dated 25.08.2005 executed by respondent in favour of petitioner? OPP*
- 3. Relief.”*

The respondent-landlord examined as many as four witnesses, whereas the tenant examined three witnesses. The Rent Controller took into account the fact that the landlord was doing business in a shop part of which had collapsed and noticed that his father was the owner of the property No.1236, which was alleged to be the ownership of the landlord and therefore there was no concealment regarding the ownership of other properties. It was noticed that the petitioner-tenant

himself in his cross-examination has admitted that his daughter has shifted from Bombay to Amritsar and, therefore, keeping in view the frail health of the landlord, who had examined his medical record also, it was held that the premises were required for his bonafide personal need.

The Appellate Authority took into the fact that the petitioner-tenant was in possession since 1973 and the purchase had been made only in 1996. The rent note had been executed thereafter on 25.08.2005 and therefore the relationship of landlord and tenant was not disputed as such *inter se*. It was, accordingly, held that he was suffering from various health problems and the premises would be suitable for him to run the business and in view of the fact that his daughter has shifted from Bombay to Amritsar, the requirement was held to be bonafide.

Counsel for the petitioners has vehemently argued that the daughter was not examined and she had flourishing business alongwith her husband and she was not dependent upon the landlord, who had now expired during the pendency of the appeal before the Appellate Authority and, therefore, the requirement as such no longer exists.

Counsel for the respondents on the other hand has submitted that in view of the fact that there was an admission that the daughter has shifted from Bombay to Amritsar for doing business in the shop, the findings recorded by the Courts below were justified. It is, accordingly, argued that the need of the landlord at the time of filing of the petition for eviction is to be seen.

After hearing counsel for the parties, this Court is of the

opinion that there is no error or irregularity in the judgments passed by the authorities below, which allowed the eviction petition on the ground of bonafide requirement of the married daughter as such.

As noticed it was the specific case that Twinkle had shifted from Bombay for doing business. In cross-examination the admission by the tenant to the said fact reads as under:-

“The applicant has got two daughters and both are married. Both have got children. Dimple is residing at Taran Tarn and Twinkle is residing in Green Avenue, Amritsar. It is correct that Twinkle has shifted from Bombay to Amritsar for doing the business in the shop in question. Vol. She had gone to Bombay.”

The Apex Court in '***Shakuntala Bai and others Vs. Narayan Dass and others'*** 2004 (1) RCR (Rent) 580 held that the need of the landlord is to be seen on the date of the institution and that the act of the Court will not prejudice any person, keeping in view the principle of '*actus curiae neminem gravabit*'. The requirement as such was to be seen on the date when the eviction petition was filed and merely on account of the delay in the finalization of the proceedings would not take away the right for eviction. The relevant observations read as under:-

“In Shantilal Thakordas v. Chimanlal Maganlal Telwala, 1976(4) SCC 417, a larger Bench overruled the decision rendered in Phool Rani v. Naubat Rai Ahluwalia (supra) in so far it held that the requirement of the occupation of the members of the family of the original landlord was his personal requirement and ceased to be the requirement of the members of his family on his death. The court took the view that after the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and occupation of the other members of the family. Thus, this decision held that the

*substituted heirs of the deceased landlord were entitled to maintain the suit for eviction of the tenant. The ratio of this decision by larger Bench does not in any manner affect the view expressed in Phool Rani (supra) that where the death of the landlord occurs after a decree for possession has been passed in his favour, his legal representatives are entitled to defend further proceedings like an appeal and the benefit accrued to them under the decree. In fact, the ratio of Shantilal Thakordas (supra) would reinforce the aforesaid view. There are several decisions of this Court on the same line. In **Kamleshwar Prasad v. Pradumanju Agarwal, 1997(1) RCR(Rent) 591 (SC) : 1997(4) SCC 413** it was held that the need of the landlord for premises in question must exist on the date of application for eviction, which is the crucial date and it is on the said date the tenant incurred the liability of being evicted therefrom. Even if the landlord died during the pendency of the writ petition in the High Court, the bonafide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son. In **Gaya Prasad v. Pradeep Srivastava, 2001(1) RCR(Rent) 221 (SC) : 2001(2) SCC 604** it was held that the crucial date for deciding as to the bonafides of requirement of landlord is the date of his application for eviction. Here the landlord had instituted eviction proceedings for the bonafide requirement of his son who wanted to start a clinic. The litigation continued for a long period and during this period the son joined Provincial Medical Service and was posted at different places. The subsequent event i.e. the joining of the service by the son was not taken into consideration on the ground that the crucial date was the date of filing of the eviction petition. Similar view has been taken in **G.C. Kapoor v. and Kumar Bhasin, 2002(1) RCR(Rent) 407 (SC) : 2002(1) SCC 610**. Therefore, the legal position is well settled that the bonafide need of the landlord has to be examined as on the date of institution of proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as his heirs are fully entitled to defend the estate.”*

As noticed in the present case the need was only on behalf of

the landlord, but also on account of the fact that his married daughter required the premises. In such circumstances, the argument as such which was raised by the counsel for the petitioner does not merit acceptance. Accordingly, the present revision petition is dismissed.

However, keeping in view the fact that the petitioner is a tenant, since 1973, the alternative plea of the counsel for the petitioner is accepted. The respondents will not execute the order till 31.12.2017. However, the arrears of rent will be cleared by 28.02.2017 and the rent will be deposited by 7th of each month before the Rent Controller. In case of any default of the said condition, it will be open to the respondent to execute the order of eviction.

FEBRUARY 02, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No