

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

**Civil Revision No.1803 of 2017 (O&M)**

**Date of Decision: 03.08.2017**

**Wasakhi Ram @ Surinder Kumar and ors.**

**.....Petitioners**

**Vs**

**Kundan Lal through his LRs**

**....Respondents**

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Vipin Mahajan, Advocate  
for the petitioners.

Mr. Aditya Dassaur, Advocate  
for the respondents.

\*\*\*\*

**RAJ MOHAN SINGH, J.**

[1]. The present revision petition has been filed by the legal representatives of tenant Jai Pal against the ejectment orders passed by the Courts below.

[2]. Brief facts are that father of the respondents namely Kundal Lal inducted Jai Pal as tenant in the demised premises on rent @ Rs.125/- per month. Jai Pal died in March 2004 and since then the demised premises was in possession of the petitioners. The ejectment was sought on number of grounds including the ground of personal necessity for the use and occupation of respondent's son Subhash Chander, who was to start his independent business of gun house. After filing of the

ejectment petition, the son of the landlord namely Subhash Chander had taken a shop on rent @Rs.80,000/- per year from one Rajiv Mahajan. After the demise of Rajiv Mahajan, his wife had filed an application for ejectment against Subhash Chander regarding the said rented shop on the ground of her *bona fide* requirement. The said petition was pending in the Court.

[3]. The Rent Controller, Gurdaspur vide order dated 11.03.2016 ordered the ejectment of the petitioners. Directions were issued to vacate the premises within a period of two months and to deliver the vacant possession to the landlord, failing which liberty was given to the respondents to take recourse to law. The said order was upheld in appeal by the Appellate Authority vide order dated 18.01.2017.

[4]. Learned counsel for the petitioners vehemently submitted that the *bona fide* requirement of Subhash Chander has not been proved on record as the purpose for which the premises was required stood vitiated as no licence was issued to him. By relying upon statement of Subhash Chander as AW-1, learned counsel submitted that his sons were settled. The shop was mortgaged and later on the same was redeemed, but he could not give the particulars with regard to the date on which the same was redeemed. He even admitted that he was not in possession of any order granting him licence to open a

gun house.

[5]. Learned counsel by relying upon **Narender Kumar vs. Mulkh Raj, 1991(1) R.C.R. (Rent) 320** contended that personal necessity cannot be pressed into service on contingent factors. Since the *bona fide* of the landlord and need for opening the shop for gun house could not be proved, therefore, the landlord was not entitled to seek ejectment of the tenant/petitioners.

[6]. On the other hand, learned counsel for the respondents contended that *bona fide* requirement of the landlord was to be seen at the time of filing of the ejectment petition. At the relevant time, there was no such order declining the licence for opening the gun house. A presumption was attached that the requirement was *bona fide*.

[7]. Learned counsel further submitted that the tenant cannot dictate terms to the landlord as to how else, he can adjust himself without getting possession of the tenanted premises. The personal necessity has to be viewed from the view point of the landlord.

[8]. I have considered the submissions made by learned counsel for the parties.

[9]. The *bona fide* of the landlord is relatable to the personal need at the time of filing of the ejectment petition. The *bona fide* need of the landlord has to be presumed as correct

and genuine at the time of filing of the ejection petition. Merely because at a subsequent stage, the permission to have a licence was rejected by the authority, the same cannot dilute the bona fide requirement of the landlord. The concept of bona fide requirement has to be viewed on the date of filing of the petition. The view expressed in **Gaya Prasad vs. Pradeep Srivastava, 2001(1) R.C.R. (Rent) 221** can be relied on the aforesaid proposition. In the cited case, the bona fide requirement was projected for the son, who was a medical graduate and the premises was required for his medical practice. Subsequent, joining of the son in government service was not considered to face out the need of the landlord. The crucial date for deciding *bona fide* requirement of the landlord was the date on which the ejectment petition was filed.

[10]. In the light of aforesaid, I find that there is no substance in the plea of the petitioners. The bona fide requirement of the landlord has to be seen from the view point of the landlord and the tenant cannot dictate the terms to rebut the presumption regarding *bona fide*. It was not the requirement that the landlord must indicate the precise nature of business, which he intended to start. Even if, it was disclosed at the time of filing of the ejectment petition and subsequently it was found to be lacking on some parameters, the same cannot be credited to the benefit

of the tenant as the *bona fide* existed at the time of filing of the petition itself.

[11]. In view of law laid down in **Sarla Ahuja vs. United India Insurance Company Ltd., 1998(2) R.C.R. (Rent) 533; M/s Satpal Vijay Kumar vs. Sushil Kumar, 2011(2) R.C.R. (Civil) 82** and **Raghunath G. Panhale vs. M/s Chaganlal Sundarji and Co., 1992(2) R.C.R. (Rent) 485**, the presumption in respect of *bona fide* of the landlord has to be considered in the context of bona fide necessity of the landlord at the time of filing of ejectment petition.

[12]. *Bona fide* requirement of a landlord depends upon facts and circumstances of each case. There cannot be a straightjacket formula. The reasonableness of *bona fide* requirement has to be tested between a mere desire and the desire based on absolute necessity. The language of the provision cannot be stretched to make it impossible for the landlord to get possession of the demised premises. The Court cannot proceed on mere assumptions that the requirement of the landlord was not *bona fide* and the tenant cannot dictate to the landlord as to how, he could adjust without getting possession of the tenanted premises.

[13]. In **Raj Kumar Khaitan vs. Bibi Zubaida Khatun, 1995 (1) R.C.R. (Rent) 495**, the Hon'ble Apex Court considered the

*bona fide* requirement of the landlord having no means of livelihood and his setting up of business in the premises. The landlord was not required to indicate the precise nature of the business, which he intended to start at the time of seeking ejectment of the tenant. It was not necessary for the landlord to indicate the precise nature of business. Even if, the nature of business would have been indicated, nobody else could bind the landlord to start the same business in the premises in question after the property is vacated. There is no such requirement under the law to state as to what business the landlord wants to carry out in the demised premises because a person can think of starting business only when the premises is made available to him. The intention of the landlord to supplement his or his son's business prospects cannot be doubted on the mere ground of non-disclosure of business at the relevant time or finding the business prospects to be non-existent at a subsequent stage.

[14]. In the light of aforesaid, the present revision petition is found to be totally bereft of merits and the same is accordingly dismissed.

August 03, 2017

Atik

**(RAJ MOHAN SINGH)**  
**JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No