

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

**Civil Revision No.1896 of 2017 (O&M)
Decided on : 07.04.2017**

Ashwani Kumar

... Petitioner

Versus

Ramesh Kumar (deceased) through his L.Rs.

... Respondents

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

Present : Mr. Sahil Soi, Advocate
for the petitioner.

Mr. Animesh Sharma, Advocate
for the caveator/respondents.

G.S. Sandhawalia, J.

The present revision petition filed under Section 15 (5) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act') is directed against the ejectment order dated 30.09.2013 (Annexure P-1) passed by the Rent Controller, Patiala on the ground of bonafide requirement of the deceased landlord, namely, Ramesh Kumar. The said order has been upheld in appeal by the Appellate Authority on 30.01.2017 (Annexure P-2).

Counsel for the petitioner on 16.03.2017 had argued that the landlord had expired in the year 2013 and, therefore, the requirement as such no longer subsisted and, therefore, the orders of eviction were not justified.

Counsel for the caveator-respondent on the other hand had submitted and it would not be a relevant fact. Accordingly, keeping in view the same, following order was passed on 16.03.2017:-

“After arguing for some time, it transpires that eviction has been ordered on the ground of bona fide requirement and the petition was filed by the landlord, who expired in the year 2013 after deposing in the Court. The need was for him and his son who has been brought on record as legal representative. Counsel for the petitioner has submitted that the matter would, thus, require re-examination as his son has not been examined.

Counsel for the caveator, on the other hand, submitted that the date of institution of the petition would be the relevant date and the need is for both the father and son and, therefore, even if the father has expired, it would not be a relevant factor.

Faced with this situation, Mr. Soi has sought instructions from the petitioner, who is present in Court, whether he is willing to give an undertaking to vacate the premises within a reasonable period. Mr. Sharma is not averse to the said suggestion.

Accordingly, after seeking instructions, Mr. Soi submits that in case time is granted till 31.03.2018, he will file necessary affidavit whereby, he will state that he will vacate the premises in question and hand over the vacant possession to the respondent. He shall also clear all the arrears within a period of one month and also keep on depositing the rent by the 7th of each month.

Adjourned to 07.04.2017, for filing of the said affidavit.”

Thereafter, on 07.04.2017, counsel for the petitioner submitted that he is not willing to vacate and argued the matter on merits. This court is not inclined to interfere with the findings recorded by the authorities below, keeping in view the following factors.

The petition had been filed on 30.09.2005 on the ground that

the tenancy was vide rent note dated 04.11.1982. A small room at the back of the shop in dispute was in possession of the landlord and his house hold articles were lying there. There were two Chobaras over the shop in dispute which was approachable by narrow stair case of about 2 feet in width, from where the business of wholesale of medicines was being run by the landlord under the name & style of M/s Patiala Medical Hall which had been got vacated from earlier tenant, namely, M/s Televista Electronics. The customers were facing difficulty in approaching the place of business and landlord was suffering from diabetes and inconvenience to the health problems. There were disputes regarding the approach to the back room and the water supply to the Choboras from the water connection and, therefore, there was a nuisance also to the landlord. The requirement of the shop being for the purpose of running the business and for his son. Specific averments had been made that the petitioner was not occupying any other non-residential building within the municipal limits of Patiala nor had vacated any such building as per the mandatory requirements. The shop had been rented out in the year 1982 when the landlord was working at Udampur (J&K) as site incharge for the construction work with M/s Radhe Ram & Sons. Due to disturbed law and order situation, he shifted to Patiala to start residing with his father. He had started running the business of sale of medicines at Sangrur and worked there till 1999. He had shifted his business, thereafter, to the Chobaras after getting the premises vacated from M/s Televista Electronics Pvt. Ltd. The rent had not been paid since

May, 2003 @ ₹650/- per month and eviction was also sought on that ground.

The petitioner-tenant accepted the fact that there is a small room at the back of the shop and there was a Chobara on the shop. It was denied that the earlier tenants had vacated on account of the need of the landlord, but on account of the fact that they did not need the premises. The shop was sought to be vacated on one pretext or the other. A hole had been kept in the roof of the back portion of the shop in dispute for sun light at the time of creating of the tenancy, but the landlord had put lintel on the said opening and damage had been caused to the lintel and even a report had been lodged by the tenant to the police. The rent had been paid upto October, 2006 in the Court.

The landlord in order to prove the bonafide requirement stepped into the witness box as AW-2 at that point of time and brought on record the rent note Ex.A-2 and photocopy of the licenses as Mark A and B, apart from the certificate issued under the Punjab VAT Act, 2005 as Ex.A-4 and the statement of the account as Ex.A6. The Bank Manager of the Union Bank of India Shri Manwinder Singh Saini was also examined as AW-1 to prove the statement of accounts as Ex.AW1/A.

Resultantly, respondent-landlord deposed as per his pleadings and also regarding the need of his son Ankush Singla who had attained majority and was working with the petitioner, since 2004, just before the filing of the petition. The cash credit limits of the landlords

were brought on record to show that there was business was being run.

Effort was made to dispel the evidence brought on record by the landlord by examining the tenant himself and one Deepak Malhotra as RW-2.

As noticed, the landlord had died on 02.02.2013 before the rent petition could be decided and Ankush Singla and Anu Singla, his son and daughter, respectively were brought on record vide order dated 05.09.2013. Resultantly the arguments were raised as such that the need of the landlord had eclipsed on account of his death and subsequently the eviction was not liable to be ordered.

The Rent Controller noticed that business was being run alongwith his son and the requirement was for settling the son in his business, as the landlord was not keeping good health and suffering from diabetes. Resultantly, it was held that even on account of the death of the landlord, as the requirement was for his son, the application could be continued by his legal representatives and the relevant date would be the date of the filing of the petition. Resultantly, eviction was rightly ordered.

The Appellate Authority keeping in view the principles laid down by the Apex Court in '**Joginder Pal Vs. Naval Kishore Behal**' **2002 (3) SCR 1078** came to the conclusion that a practical and wider meaning has to be given and not a restrictive meaning and, therefore, the requirement as such was bonafide. The shop had been required for the

need of the son and, therefore, the death of the landlord as such could not deprive the legal representatives of the fruits of the litigation. Enough evidence were brought on record that there is inconvenience made out to reach the said Chobaras and, therefore, the requirement as such could not be held to be not bonafide.

The said finding cannot be faulted on any account as particularly in the present case it was noticed that the approach to other room is not possible with ease and secondly the Chobaras were on the first floor. The requirement is categorical that the customers were facing difficulty to approach the premises in occupation of the landlord.

It is settled principle that as it has been laid down by the Apex Court in '*Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*' **1999(3) Supreme Court Reporter 1260**, that the landlord is not to squeeze himself in the premises at the cost of the tenant, who can continue to stay at his convenience, whereas the landlord is required to shift to other accommodation. The said principle would be squarely applicable to the facts and circumstances of the present case.

Counsel for the petitioner has relied upon the judgment in '*Kizhakkayil Suhara Vs. Manhantavida Aboobacker (D) by L.Rs*' **2001 (8) SCC 19**. In the said matter the case had been remanded back by the Apex Court under the Kerala Buildings (Lease and Rent Control) Act, 1965 that it was for the authorities to see whether the daughter and son-in-law of the landlord who were living separate with three children could be said to be dependent upon the landlord. It was in such circumstances,

the matter was remanded. In the present case as noticed, the son had only started working a year before the filing of the petition and it was the case of the landlord specifically that he was not keeping good health and his son had to be settled. The landlord, thereafter, also has expired and, therefore, it cannot be said the need is not bonafide in any manner. Accordingly, the abovesaid judgment is not applicable to the facts and circumstances of the present case.

Similarly, reliance has been placed upon the '**Prabha Arora and another Vs. Brij Mohini Anand and others'** 2007 (11) SCR 721 and the same would also be of no help. In the said case, the requirement was of the landlady for setting up a tuition centre for augmenting her income as it was difficult for her to survive on the meager pension. However, during the pendency of the proceedings, a Trust had been created vide trust deed, which had been put up in appeal, whereby the premises belonging to the Trust had been transferred. It was in such circumstances, it was held that the need in the petition mentioned had disappeared and the order was set aside. Therefore, the said judgment would not be applicable in the facts and circumstances of the present case.

Similarly, '**Mohd Ismail Vs. Dinkar Vinayakrao Dorlikar'** 2009 (10) SCC 193 is a case wherein repeated remand orders had been passed by the High Court and it was brought to the notice of the Apex Court that the landlord had constructed two shops and the need pleaded

was for starting business for one of his sons and another son was absconding. Possession had also been taken from another tenant in the meantime and the other son was running Leatho Machine business. In such circumstances, the matter was remanded to the High Court with a direction to take subsequent events into consideration.

In '**M/s Gagan Traders and another Vs. Jaspreet Singh and another**' 2010 (4) PLR 38, it has been held that the issue of bonafide requirement is to be seen from the date of the application and the subsequent development during the pendency of the eviction petition due to slow process of litigation cannot be allowed to be misused by the tenant.

Similar view has been taken by this Court in '**Darshna Devi Vs. Kewal Krishan**' 2015 (2) RCR (Rent) 285, after placing reliance upon the judgment of the Apex Court in '**Shakuntala Bai and others v. Narayan Dass and others**' 2004(1) R.C.R. (Rent) 580 and in '**Usha P. Kuvelkar and others v. Ravindra Subrai Dalvi**' 2008(1) Civil Court Cases 291.

Keeping in view the above cumulative facts, this Court is of the opinion that thus the need was as such not personal to the deceased landlord and was on account of the son also. In such circumstances, even if the original landlord has died, the need as such would not eclipse and the son being the legal representative, who had been brought on record alongwith his sister are entitled for the fruits of the litigation, which in this case had taken 12 long years to culminate in the decision

making process. The principle of “*actus curiae neminem gravabit*” has thus come into play that the act of the Court will not harm anyone.

Resultantly, the findings as such recorded by the authorities below do not suffer from any infirmity or procedural irregularity, which would warrant interference by this Court under the revisional jurisdiction.

Accordingly, the present revision petition is dismissed in limine.

APRIL 07, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No