

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.2275 of 2017 (O&M)

Date of decision: 02.05.2017

Satbir Verma

....Petitioner

Versus

Hukam Chand (deceased) th. his LRs

...Respondents

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

Present: Mr.Ashwani Gaur, Advocate, for the petitioner.

G.S. SANDHAWALIA, J. (Oral)

CM-7078-CII-2017

Application has been filed under Order 22 Rule 4 CPC for bringing on record the legal representatives of respondent-Hukam Chand, who died on 27.12.2015. Legal representatives have been mentioned in para No.2 of the application. In view of the averments made in the application, duly supported by an affidavit, the legal representatives of Hukam Chand are allowed to be brought on record. Office to made necessary correction in the memo of parties.

Application stands disposed of.

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The petitioner-tenant challenges the order dated 21.07.2015 (Annexure P3), passed by the Rent Controller, Ganaur, whereby eviction was ordered on the grounds of *bona fide* requirement, cease to occupy and also for non-payment of rent, during the pendency of the proceedings. The said order had been upheld in appeal by the Appellate Authority, Sonapat on 01.02.2017 (Annexure P5).

On 29.03.2017, the following order was passed:

“After arguing for some time and keeping in view the fact that the eviction has been ordered on the ground of bona fide requirement and cease to occupy and there is an admission as such to the fact which has been noticed by the

Rent Controller in detail from the admission on part of the witnesses of the tenant, this Court is of the opinion that prima facie no case as such is made out to interfere with the concurrent findings of the Courts below.

Faced with this situation, counsel prays for time to seek instructions whether the tenant can relocate from the premises.

Let necessary affidavit be filed that the premises in question will be vacated and handed over to the landlord by 31.03.2018. The affidavit shall also mention that all the arrears of rent will be cleared by 30.04.2017 and the tenant will continue paying the rent/mesne profits by 7th of each month.

To come up for the said purpose on 17.04.2017.”

Thereafter, another opportunity was taken to comply with the said order on 17.04.2017 and the matter was adjourned to today. Today, Mr.Gaur submits that the petitioner is not in touch with him and resultantly, he is not in a position to comply with the orders dated 29.03.2017 and submits that the matter may be decided on merits.

The orders passed by the Courts below are liable to be upheld, as a perusal of the paperbook would go on to show that the claim of the landlord was that the rate of rent was Rs.800/- per month and arrears were claimed from June, 2008 onwards, in a petition filed on 16.01.2013. The tenant, on the other hand, set up the case that the rate of rent was Rs.400/- per month but the rent receipts had not been issued.

Keeping in view the fact that the rent had been fixed at Rs.600/- per month, vide order dated 07.05.2013 and payment had only been made from 01.04.2010 to 01.04.2013, which was deposited under protest, it was

noticed that the rent was to be tendered from 16.01.2010, i.e., 3 years back from the filing of the petition, but the same had not been done. It was further held that the tenant was also in arrears of rent during the pendency of the proceedings and could not be allowed to say that he had been regularly paying the rent.

Similarly, on the issue of ceasing to occupy, it was found that the petitioner-tenant had shifted to B.S.T.Road, Ganaur, as per the photograph (Ex.P6). The tenanted premises are, admittedly, located in Ward No.13 in Kashmiri Market, Ganaur Mandi. The statements of the witnesses of the landlord were examined by the Rent Controller, to come to the conclusion that the tenant had shifted his premises and the shop was not being occupied and he had duly advertised regarding his occupation of the new premises in the town in question which was kept in mind while coming to this finding.

On the issue of the *bona fide* requirement, it was noticed that the landlord had a big family having 41 members and the premises were required mainly for the use of grandsons, namely, Rohit and Vinay and the list of the family members was taken into consideration along with the site-plan.

The Appellate Authority relied upon various judgments to hold that for the need of the landlord, for sons, daughters, daughter-in-law, ejectment could be ordered and the landlord was the best judge as to how he wanted to use his property. It was held that being the karta, it was his duty to discharge the responsibility and merely because alternate accommodation was available, it was not for the tenant to dictate, as such, the method as to how the property is to be used.

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Thus, a factual finding has been recorded by the Courts below, regarding the fact that the petitioner has ceased to occupy the premises and is in possession of the other premises at a different location and due to the non-payment of rent from the date of filing of the petition and thereafter also, which is to be kept in mind, keeping in view the judgment of the Apex Court in **Rakesh Wadhawan Vs. M/s. Jagdamba Industrial Corporation, 2002 (1) RCR (Rent) 514**, eviction has been ordered.

Resultantly, this Court is of the opinion that the findings, as such, which have been recorded by the Courts below, do not suffer from any procedural infirmity or illegality which would warrant interference by this Court, in revisional jurisdiction. Accordingly, finding no merit in the present writ petition, the same is, hereby, dismissed in limine.

02.05.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No