

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

C.R. No. 2684 of 2017 (O & M)

Date of decision: 19.04.2017

Akshay Sunny

....Petitioner(s)

Versus

Gurmit Singh

...Respondent(s)

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

Present: Mr. Parveen K. Kataria, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed against the concurrent findings of the courts below whereby, eviction has been ordered by the Rent Controller, Jalandhar on 15.07.2014 on the ground of bona fide requirement. The said order has been upheld in appeal by the Appellate Authority on 15.02.2017

Counsel for the petitioner has vehemently submitted that an application for additional evidence was filed which has not been decided by the Appellate Authority. The site plan as such does not depict the correct position as on site and, therefore, the property cannot be identified. Thirdly, he submits that the bona fide requirement element is missing and the purpose and use as such of the shop in the area for the purpose of construction material is without any basis since the same is located in the Model House Jalandhar and, therefore, the area being fully developed, there is no scope for that kind of work.

A perusal of the paper book would go on to show that the

eviction petition was filed from the portion of House No. 151, situated at Model House, Jalandhar shown Red in the site plan, the boundaries of which were given in the head note. The rent agreement inter se parties is dated 18.08.1994 and as per the landlord, there was an enhancement clause of 5% per year. Resultantly, rent was claimed on account of non-payment from August, 2011 @ ₹2,475/- per month in a petition filed on 20.09.2011 apart from the bona fide requirement. The element of bona fide requirement was on the ground that the premises are required for the personal use and occupation as the petitioner was running the business of construction work and material at Tower Enclave, Phase-2, Khurla Kingra, Jalandhar and there was non-demand of construction work at the said place. He wanted to shift the business in the demised premises also on the ground that he was old person and had to travel more than 2-3 kms from the said house and the ground portion at the back of the tenanted portion was most suitable for the construction material and the main residence of the petitioner was on the first floor of the house and, therefore, ejectment was sought on the above said ground.

The claim was resisted by the petitioner-tenant on the ground that the landlord was 65 years of age and enjoying retired life and his need was not bona fide. The respondent was owner of so many properties at Khurla Kingra, Jalandhar and there were six tenants in the building where he was also a tenant. The rent note was admitted but the need was stated not to be bona fide and the size of the shop was very small for running the business of construction.

In evidence, both the tenant and the landlord appeared and only examined themselves. On the ground of non-payment of rent, the amount

having been tendered, the Rent Controller held that no ground for ejectment was made out. Regarding the incorrect site plan, the Rent Controller noticed that as far as the site plan filed at the time of filing the petition was concerned, it was admitted to be incorrect and the subsequent site plan submitted by the landlord was according to the site plan submitted by the tenant alongwith written reply and, therefore, the issue was decided in favour of the respondent.

Similarly, regarding the issue whether there was any material concealment of other properties, it was held that no evidence had been placed on record that the landlord possessed a number of properties in the said urban area. The cross-examination of the petitioner-tenant was also referred to that he was also not aware of the particulars of the properties and, therefore, the onus lay upon him and the issue was decided against the tenant. A detailed discussion was made on the issue of bona fide requirement as such to come to a conclusion that the landlord was an old aged person and running the business of construction. He had made out a case that where he was wanting to run his business, sufficient space was available as even the admission of the petitioner-tenant was there that there was open space behind the tenanted shop and the landlord was residing on the first floor. The shop being in the main market and it being the choice of the owner to get the eviction, the issue was decided in favour of the landlord. Maintainability as such was also decided in the favour of the landlord by holding that he had every right to get eviction on one ground or the other. The finding on the rate of rent was held at ₹2,405/- and not ₹2,457/- as claimed and accordingly, keeping in view that the amount had been tendered, ejectment was ordered.

The argument which has now been raised that an application for additional evidence was filed to which there is no specific reference is only to be noticed and rejected. A perusal of the application would go on to show that the averment was made that the size of the shop was too small to run the business and, therefore, a building expert was required to prove that whether the shop was suitable as such for running the business. This Court is not in a position to understand the relevance of a Building Expert as to how his opinion would be necessary as far as the suitability of the shop is concerned. It is for the landlord to choose and utilize his properties as per his own convenience. The settled principle is that the tenant is no one to dictate to the landlord as to how the property is to be utilized and whether it is suitable for a particular type of business. It is to be noticed that the landlord is residing at the first floor and is an aged person and has to travel 2-3 kilometers for the purpose of his business. It is for his own convenience he has sought the ejectment on the ground that the shop is situated on the ground floor and it would be easy for him to sit in the same and utilize it for the purpose concerned. Therefore, the argument that the application for additional evidence was not decided is without any basis and has no meaning as such and was only an effort to delay the proceeding as such which was filed on 12.09.2016 even though the appeal was filed on 12.08.2014 and obviously, at the fag end to further delay the pendency of the appeal. Resultantly, the reference to the judgments in ***Malayalam Plantations Limited vs. State of Kerala and another, 2011 AIR SC 559*** and ***Mahant Gauri Shanker vs. Surjit Kumar and another, 2011 (4) PLR 757*** would not be of much help to the counsel.

The relevancy as such of the evidence which was sought to be

produced is also to be seen as to whether it would help the Court to decide and adjudicate on the merits. Even otherwise, an application for additional evidence cannot be moved at the asking before the Appellate Court. It is to be on the basis that the oral evidence could not have been produced for some reason or subsequent event had taken place. No such averments have been made in the application which have now been agitated and, therefore, it would not fall within the parameters as such that it require consideration. As noticed, the main ground for allowing the application for additional evidence is that whether it would help the Court to adjudicate on the merits. This Court feels that the said application could not have been helpful to the Appellate Court also.

The findings have, thus, been further re-enforced by the Appellate Court are on the same principles which have been noticed above while upholding eviction. Accordingly, the issue of site plan has also been adequately addressed by the Rent Controller taking into consideration the site plan which has been subsequently placed on record and also to one which was placed on record by the petitioner. It is not the case of the petitioner that there was some additional area in occupation which he will be evicted from under the guise of the wrong site plan. It is not denied that he is a tenant in the premises in question.

The issue that there is a presumption as such regarding the bona fide requirement cannot be doubted. It is settled that it is not for the landlord to squeeze in the premises in question at the convenience of the tenant. The judgment of the Apex Court in ***Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta, 1999 (6) SCC 222*** can be taken into consideration for this aspect wherein it has been held so that the landlord cannot be inconvenienced at

the cost of the tenant. The relevant portion reads thus:-

“12. Chambers 20th Century Dictionary defines bonafide to mean 'in good faith : genuine'. The word 'genuine' means 'natural; not spurious; real: pure: sincere'. In Law Dictionary, Mozley and Whitley define bonafide to mean 'good faith, without fraud or deceit'. Thus the term bonafide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contra-distinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bonafides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for

getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

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21. *Reverting back to the case at hand, the landlord has been living on the ground floor of the Defence Colony house. It was conceded at the Bar that as on the day the family of the landlord consists of the landlord himself (a practising doctor), his son (again a practising doctor), the daughter-in-law and two grand children who are gradually growing in their age. Looking at the size of the family, availability of three bed rooms in the premises in which the landlord may live, is a requirement which is natural and consistent with the sense of decency - not to talk of comfort and convenience. There is nothing unreasonable in a family with two practising doctors as members thereof needing a room or two or a room with a veranda to be used as a*

residential clinic divided into a consultation room and a waiting place for the patients. A drawing room, a kitchen, a living room and a garage are bare necessities for a comfortable living. The landlord has been living in Defence Colony locality for more than 35 years. The first floor which was let out to the tenant in the year 1978 as being an accommodation surplus with the landlord has with the lapse of time become a necessity for occupation by the landlord and his family members. More than ten years by now have been lost in litigation. The death of the wife of the landlord, and the death of the landlord's mother-in-law, are events which have hardly any bearing on the case of felt need of the landlord. The need as pleaded and proved by the landlord is undoubtedly natural, sincere and honest and hence a bonafide need. There is no material available on record to doubt the genuineness of such need. It continues to subsist in spite of the two deaths. It is not the case of the tenant - appellant that while seeking eviction of the tenant the landlord is moved by any ulterior motive or is guided by some other thing in his mind. It will be most unreasonable to suggest that the landlord may continue to live on the ground floor of the Defence Colony house and some members of the family, may move to Sarvodaya Enclave House if the whole family cannot be conveniently and comfortably accommodated as one unit in the Defence Colony house. It would be equally unreasonable to suggest that the entire family must shift to Sarvodaya Enclave house which is admittedly situated at a distance of about 7-8 kilometers from Defence Colony. The landlord and his family are used to living in Defence Colony where they have developed friends and acquaintances, also familiarity with the neighbourhood and the

environment. The patients usually visiting or likely to visit the residential clinic know where their doctor would be available. Shri Arun Jaitley, learned senior counsel for the respondent, has very rightly submitted that it could not have been the intendment of the Rent Control Law to compel the landlord in such facts and circumstances to shift to a different house and locality so as to permit the tenant to continue to live in the tenanted premises. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself tightly into lesser premises protecting the tenant's occupancy. In addition, we find that on the date of the initiation of the proceedings, Sarvodaya Enclave property was belonging to the wife of the landlord or to one of his sons resident abroad and was in actual occupation of a tenant. On the death of the wife of the landlord if any one of the two wills (one which was in existence at the time of initiation of the proceedings or the one, which appears to have been subsequently executed by the landlords' wife and filed before the High Court) was to be given effect to then the ownership in the property has passed on to one son or jointly to four sons of the landlord. If the will itself is excluded from consideration as not proved then also the ownership in the property has passed on to the four sons jointly, Sarvodaya Enclave property does not belong to the landlord and is not available for his occupation as an owner. To these facts the applicability of law laid down in Prativa Devi's case (Supra) is squarely attracted. In our opinion, the availability of Sarvodaya Enclave property is not of any relevance or germane to determining the need and the bonafides of the need of the landlord. We are not therefore inclined to attach

any weight to the application for additional evidence filed by the landlord before the High Court though we agree with the learned Counsel for the tenant - appellant that the High Court was not justified in taking into consideration the contents of the will without formally admitting the same in evidence and affording the parties opportunity of adducing evidence in proof and disproof thereof. ”

Accordingly, finding no merit in the present revision, the same is dismissed in limine.

19.04.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No