

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.2793 of 2017 (O&M)

Date of decision: 05.05.2017

Kulwant Singh

....Petitioner

Versus

Raj Kumar (deceased) th. LRs

...Respondents

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

Present: Mr.Manuj Chadha, Advocate, for the petitioner.

G.S. SANDHAWALIA, J. (Oral)

CM-9308-CII-2017

Application for placing on record the ejectment order dated 01.04.2014, is allowed, in view of the averments made in the application, which are duly supported by an affidavit. Same is taken on record, subject to just exceptions. Office to tag the same at appropriate place.

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The present revision petition, filed by the petitioner-tenant, is directed against the order dated 27.03.2017 (Annexure P5), passed by the Executing Court, Ambala, whereby the application for framing of issues was dismissed on the ground that it is an attempt to frustrate the decree and merely because the decree-holder has got possession of the first floor of a big hall and the decree holder is extending his whole business, the prayer, as such, which has been made, was not to be allowed.

Counsel for the petitioner has vehemently argued that the Appellate Authority, vide order dated 18.01.2016 (Annexure P1), had directed that the petitioner-tenant be provided equivalent or suitable space to the tenant on the first floor of the building.

Relevant portion of the order reads as under:

“13. In view of forgoing discussion emanating from record,

Instant Rent Appeal stands dismissed with modification in relief that landlord shall take back vacant possession of tenancy premises only after providing equivalent or suitable space to the appellant-tenant on the first floor of this building and in case of non compliance by landlord or his representatives, instant petition shall deem to be dismissed on merit. Memo of costs be prepared. Copy of this judgment be sent to the learned Rent Controller for its compliance. LCR and appeal file be consigned to record-room, after due compliance.”

The appeal of the petitioner-tenant was, thus, allowed, since an eviction order was passed on 01.04.2014 and therefore, it was conditional, as such.

The argument, now, raised is that space which is to be provided on the first floor should be equivalent and suitable and therefore, evidence is to be led on this aspect and the order impugned is not justified as the issues have not been framed by the Executing Court.

The said argument cannot be accepted. It is to be noticed that the case of the landlord, who is now stated to have expired, was that he was running the business of selling Air Conditioners and other appliances. He was having a staff of 7-8 persons and occupying the first floor of the premises, bearing No.6201-03, Kidar Nath Building, Nicholson Road, Ambala Cantt. An adjoining portion had fallen to the share of the daughter of the landlord, Megha Jain and he wanted to expand his business. It is, in such circumstances, the eviction order was passed on the ground of *bona fide* requirement of the landlord.

The finding was reversed, as noticed, by the Appellate Authority, only to the extent that the tenant was to be adjusted, since the

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property in question was a three storey building and if he shifted the area of his office to the ground floor, the tenant could be easily adjusted to the area in the first floor. The interest of the old tenant was protected and it was noticed that the tenant was doing business of tailoring in the tenanted premises. Resultantly, it was found that the landlord had sufficient accommodation and suitable space to adjust the tenant on the first floor and as stated by the tenant during the proceedings before the Lok Adalat, as an alternative resort. The matter had already been put up before the Lok Adalat and the proposal, as such, was agreed to by the LRs of the erstwhile landlord. It was, in such circumstances, the appeal was allowed.

Thus, the argument which has now been raised that issues are yet to be framed and a finding is to be recorded by the Executing Court that the accommodation is exactly suitable as to the one in the ground floor, is, on the face of it, misconceived. It is settled principle that the landlord is not to squeeze himself at the convenience of the tenant. Reliance can be placed upon the judgment of the Apex Court in **Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta 1999(3) Supreme Court Reporter 1260**, wherein it has been held that it was not for the landlord to suffer while the tenant continues to enjoy the tenanted premises at the inconvenience of the landlord. Relevant observations read as under:-

“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 ejection 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.”

In the present case, the Appellate Authority has protected the interests of the tenant to the extent that where the landlord was on the first floor, option had been given to the tenant to shift to the said premises. If the landlord could, at some stage, work from the first floor and the same premises were being given to the tenant, it does not lie in his mouth to turn around and say that it is not suitable. It is to be noticed that the tailoring business is to be done and therefore, the demand, as such, for a frontage or access from the main road, in such circumstances, would be totally unjustified. A concession was granted as per the terms of the settlement in a Lok Adalat, which is now sought to be misconstrued and twisted. In such circumstances, this Court is of the opinion that the application, as such, has been rightly dismissed by the Executing Court.

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

05.05.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No