

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

Civil Revision No.3500 of 2017(O&M)

Date of decision: 17.5.2017

Suresh Kumar

...Petitioner

Versus

Rekha Rani and others

...Respondents

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

Present: Mr. Manish Joshi, Advocate for the petitioner.

Mr. Sandeep S. Majithia, Advocate for the Caveator/respondent

G.S.SANDHAWALIA, J. (Oral)

The tenant challenges the eviction order passed by the Rent Controller, Amritsar dated 19.10.2015 whereby eviction had been ordered on the ground of bonafide requirement. Challenge has also been raised to the order dated 31.1.2017 passed by the Appellate Authority, Amritsar vide which findings recorded by the Rent Controller have been upheld.

Counsel for the petitioner has vehemently argued that issues no.3 to 5 which were pertaining to maintainability, locus standi and that the landlords had not come to the Court with clean hands and the onus of which have been placed upon him were not specifically dealt with. It is submitted that there was no specific finding regarding issues no.3 to 5 recorded by the Courts below and therefore, he submits that there is procedural infirmity and illegality which would require interference by this Court in revisional jurisdiction.

A perusal of the paper-book would go on to show that the dispute is regarding the shop situated on the ground floor which had been taken on rent from one Ravinder Kumar at the rate of ₹ 300/- per month as

per rent note dated 14.10.2006 (Ex. A/1). The relationship of landlord and tenant thus existed between Ravinder Kumar and respondent no.3 is sister of said Ravinder Kumar. After his death respondent no.1 and 2 stepped into shoes along with respondent no.3. On account of non payment of rent from April, 2008, a petition was filed on 22.2.2009 whereby even the ground of bonafide requirement on behalf of respondent no.2 was taken on the ground that he was unmarried and unemployed and wanted to set up a shop of computer hardware and repair. It was averred that he was earlier dependent upon his father but after the death of his father, he was not having any source of income. The landlords were residing on the first floor of the premises in question and therefore, the same was well suited. The necessary mandatory ingredients regarding not having vacated any similar premises or in possession of such premises were also made.

In defence, the petitioner-tenant took the plea that his father Baldev Raj had taken the shop in question on rent from Sham Sunder Bharny from whom Ravinder Kumar and Surinder Kumari being son and daughter had inherited the property and he had paid the rent during his life time. On account of death of Sham Sunder Bharny in 1994 and similarly on account of death of father of the petitioner in 2001, a rent note had been executed on 14.10.2006 interse the parties. It was alleged that the other legal heirs have not been impleaded namely, Laxmi and Nikki, who were daughters and after the execution of the said rent note payment had been made to the landlords. It was accordingly pleaded that in connivance with Sanjay son of Naval Kishore Bharny who were threatening them to vacate the premises and he had alleged himself to be the landlord and the respondents had nothing to do with the premises in question. He had also

filed an ejectment application which was being contested. The tenant was ready and willing to tender arrears of rent and said Sanjay had been claiming himself to be the landlord.

The following issues are framed by the Rent Controller, Amritsar:-

- “1. Whether the tender made is short and invalid and the respondent is liable to be ejected from the demised premises on this ground?OPP
2. Whether the applicant requires the demised premises bonafide for her use and occupation and for her son?OPP
3. Whether the application is not maintainable?OPR
4. Whether the applicants have no locus standi to file the present application?OPR
5. Whether the applicants have not come to the court with clean hands and suppressed the material facts from the Court?OPR
6. Relief.”

The respondent examined as many as six witnesses whereas the petitioner examined four witnesses in support of their case. On the issue of non payment, it was found that provisional rent had already been assessed and therefore, tender having been made issue has become infructuous. Similarly regarding issue of bonafide requirement for personal use and occupation under issue no.2, it was found that no such plea had been taken that Sanjay had been declared as owner of the property who had himself appeared as RW-3. Reliance was accordingly placed upon Section 2(c) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as “the Act”) to come to the conclusion that as per rent note Ex. A/1 rent was being paid by the petitioner to Ravinder Kumar during his life time. Thus, keeping in view the admission as such of the present petitioner and keeping

in mind the fact that the petitioner himself had been admitted that respondent no.2 was not having any source of income, the requirement of the premises in question was held to be bonafide. The objection that other legal heirs have not impleaded was very well dealt with by holding that ejectment petition could be filed by any of legal heirs of the deceased. In such circumstances, the admission having been made by the petitioner himself that there was a relationship of landlord and tenant and there was rent note executed have been adequately dealt with by the Rent Controller and the ejectment order has been rightly passed. Merely because there was no specific heading whereby issues no.3,4 and 5 as such have been considered would not be any illegality as such. It is settled principle that admission is the best form of evidence. Merely because another co-owner had been examined as such as a witness would not deprive the respondents of their right to seek ejectment on the strength of rent note in view of Section 2(c) of the Act which had been rightly relied upon by the Rent Controller, Amritsar. The Apex Court in ***K.D.Dewan Vs. Harbhajan S.Parihar 2002 (2) PLR 682*** has held that a person, other than the owner, can also be the landlord. Relevant observations read as under:

“A perusal of the provision, quoted above, shows that the following categories of persons fall within the meaning of landlord :

- (1) any person for the time being entitled to receive rent in respect of any building or rented land;
- (2) a trustee, guardian, receiver, executor or administrator for any other person;
- (3) a tenant who sublets any building or rented land in the manner authorised under the Act and
- (4) every person from time to time deriving title under a landlord.

Among these four categories of persons, brought within the

meaning of 'landlord', Mr. Sharma sought to derive support from the last category. Even so that category refers to a person who derives his title under a landlord and not under an owner of a premises. For purposes of the said category the transferor of the title referred to therein must fall under any of the categories (1) to (3). To be a landlord within the meaning of clause (c) of section 2 a person need not necessarily be the owner; in a vast majority of cases an owner will be a landlord but in many cases a person other than an owner may as well be a landlord. It may be that in a given case the landlord is also an owner but a landlord under the Act need not be the owner. It may be noted that for purposes of the act the legislature has made a distinction between an owner of a premises and a landlord. The Act deals with the rights and obligations of a landlord only as defined therein. Ownership of a premises is immaterial for purposes of the Act.”

The said issue was further thrashed out by the Lower Appellate Authority which has noticed the fact that the bonafide requirement is proved as certificates were brought on record to show that respondent no.2 was a student of Computer Science and wanted to open a shop of Computer parts and repair. The factum of his unemployment and fact that he had inherited the property after the death of his father and rent notes executed in the years 2001 and 2006 were duly taken into consideration. The Deed Writer namely Dinesh Anand had duly been examined as AW-1 who proved relevant entry he had made apart from respondent no.1 who stepped into witness box wherein she had deposed that she had received rent till the period dues came up. Merely because some compromise had been effected with Sanjay who was not signatory to the rent note as such would not deny the respondents of their right to seek eviction. It was always open to the petitioner to contest the proceedings qua Sanjay on the strength of the said rent note and therefore, once having admitted the relationship interse the

parties with regard to the rent note executed they could not as such deny the relationship.

Resultantly, keeping in view the above discussion, this Court is of the opinion that the findings which are recorded by the Courts below are well justified. It is settled principle that the landlord is the best judge of his requirement. Both the Courts below have taken that into account while ordering ejectment. In such circumstances no ground is made to interfere with the impugned orders and the same are upheld.

Accordingly, the present revision petition is dismissed in limine.

May 17, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No