IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

108 **CR No.3703 of 2017**
Date of decision: 24.05.2017

Kishori Lal ....Petitioner

Versus

Rajesh Goyal ...Respondent

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

Present: Mr.A.K.Chopra, Sr.Advocate
with Mr.Akshit Chaudhary, Advocate, for the petitioner.

G.S. SANDHAWALIA, J.

The petitioner-tenant questions the orders of eviction passed by the Courts below, on the ground of *bona fide* requirement from the tenanted premises, which are described as booth No.22 Sector 18-D, Chandigarh. The Rent Controller, Chandigarh allowed the eviction petition on 11.05.2015 and mesne profits were fixed by the Appellate Authority, Chandigarh, which were not paid within the prescribed period and resultantly, the tenant lost his possession and thereafter, his appeal has also been dismissed on 10.04.2017, which is also subject matter of challenge.

The tenanted premises, in which the petitioner was sitting, was purchased by the respondent on 25.08.2005 and measures 22.69 sq.yds. It had been leased out at a monthly rent of Rs.500/- and accordingly, the eviction petition was filed on the grounds of non-payment of rent w.e.f. 26.08.2005 and on account of the fact that the landlord required the premises since he was dealing with the business of electric spares, bulbs, switches etc. and was already running his business in plot No.60, Industrial Area, Phase-II, Panchkula, under the name and style of M/s Superlite Industries. It was alleged that he was also paying monthly rent of

Rs.3000/-. The need to set up his business in Sector 18, Chandigarh was on the ground that it was a known hub for such business and therefore, the landlord had purchased the property in question and the tenant had been delaying to vacate the premises. Industrial Area, Panchkula did not have similar kind of activity and therefore, the plea was set up.

The tenant took the plea that he was in occupation of the premises since 1974 from one Madan Mohan, at a monthly rent of Rs.170/- and then, one Balbir Singh used to collect the rent and he became a tenant under him upto November, 2004. The power of execution of the sale deed by Arundeep Walia was objected to and it was alleged that he was doing shoe repairing work in the booth in question and pressure was being put to increase the rent.

Keeping in view the documents on record and the fact that there was a transfer deed (Ex.P1) and a transfer letter issued by the Chandigarh Administration, it was held that the respondent was the owner of the premises, to the extent of 100%. Resultantly, on the grounds of *bona fide* need and requirement and keeping in view the binding precedents of the Apex Court, it was held that the landlord was the best judge of his needs and eviction was, accordingly, ordered, on the ground of *bona fide* requirement. The arrears of rent having been paid as set up by the tenant were accepted and therefore, the issue was decided against the landlord. As noticed, the mesne profits application filed before the Appellate Authority was decided on 26.10.2015 (Annexure P1) and a sum of Rs.10,000/- per month was fixed as mesne profits from the date of the eviction order, upheld on 18.02.2016 by the Appellate Authority.

A revision petition, filed earlier bearing CR-2178-2016, by the petitioner, was allowed on 28.03.2016 on the ground that since there was an application for additional evidence and for modification/ clarification of the mesne profits order which had not been decided by the Appellate Authority. Therefore, the matter was remanded to the Appellate Authority for decision, afresh.

Resultantly, the Appellate Authority has decided the matter afresh and has come to the finding that there was genuine need of the property by the landlord and it was not a mere wish and desire. The need of the landlord to start business was a determination and therefore, he dismissed the appeal. The application for additional evidence was also dismissed on the ground that it was not necessary for the pronouncement of the judgment. The only question raised was regarding the timing of tenancy of the landlord at plot No.60, Industrial Area, Panchkula, which had not been asked at the time of cross-examination and therefore, the mistake while cross-examining him could not be allowed to be overcome and therefore, the landlord could not be summoned afresh. The Appellate Authority felt that the same question could have been asked at that relevant point of time and there was no reason to allow the application for additional evidence.

The said reasoning, as such, cannot be faulted with, as it would mean recalling the landlord for an unnecessary process without the case falling in the parameters of the principles which have been laid down for additional evidence. The Appellate Authority had also decided the application for clarification of the order fixing mesne profits on 19.05.2016. Thus, CR-3652-2016, which had been preferred against the said order was also disposed of as infructuous by this Court on 02.05.2017 (Annexure P9), in view of the appeal having been dismissed on merits.

Resultantly, keeping in view the above, this Court is of the opinion that the landlord filed the petition after a period of 7 years from the date of the purchase and the tenant continued in the premises and it was only when the need was apparent, for setting up the business in the booth in question, which he was already running in another urban estate, the eviction was prayed for. The findings which have been recorded on the said aspect, do not suffer from any infirmity or procedural illegality which would warrant interference by this Court in the revisional jurisdiction and the present revision petition is, accordingly, dismissed in limine.

24.05.2017 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*