

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3955 of 2017 (O&M)

Date of decision:31.05.2017

Durga Devi

....Petitioner

Versus

Shanti Devi & others

...Respondents

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

Present: Mr.V.K.Jain, Sr.Advocate
with Mr.Ravi Kadian, Advocate, for the petitioner.

G.S. SANDHAWALIA, J.

CM-12311-CII-2017

Application for condoning the delay of 44 days in filing the present revision petition is allowed, in view of the averments made in the application, duly supported by an affidavit and the delay is hereby condoned.

CM stands disposed of.

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The petitioner-tenant is in revision under Section 15(6) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short, the 'Rent Act') against the concurrent findings of the Courts below ordering eviction, passed on 30.05.2015, by the Rent Controller, Bhiwani, which has been upheld on 10.01.2017 by the Appellate Authority. Eviction has been ordered on the grounds of *bona fide* requirement due to the need of the husband of the respondent-landlady from the rented premises, which is a shop.

The Courts below have found that the landlady had purchased the premises on 26.06.1982 and let out the same to the husband of the present petitioner, namely, Bajrang Lal, who expired in the year 2001. Eviction has been sought on the ground of non-payment of rent from 01.04.2008 in the petition filed on 31.03.2012. It was further averred that earlier, her husband

used to work in the tenanted premises but he shifted to Bombay in connection with his work and thereafter, the family shifted to Delhi. The sons of the landlady had expired and the daughters were married. The family had shifted to their native place, Bhiwani in the month of November, 2006 and the family of both her sons were residing at Delhi and the landlady had no source of income. Accordingly, her husband wanted to run the business of sarafa in the rented premises, as he had good experience and was idle.

The defence of the petitioner along with the other legal heirs of Bajrang Lal Saraf was that there was no intention to start the business and they wanted to sell the property in question.

The Rent Controller, vide the impugned judgment, found that merely because the husband was aged would not, as such, mean that he was not in a position to run the business and he had appeared in the witness-box to depose that he was not in occupation of any such premises and accordingly, it was held that there was personal *bona fide* necessity for the rented premises and the onus had been duly discharged. Resultantly, eviction was ordered.

The Appellate Authority, vide a detailed judgment, took into consideration all the aspects, inspite of the fact that counsel for the tenant had chosen not to put in appearance and argue the matter. It was held that there was no denial that there was relationship of landlord-tenant between the parties and the sons of the landlady had died and they were residing in Bhiwani since 2007. The husband had done the business of sarafa with his

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own father and he had experience in the said field of jewellery business. Resultantly, reliance was place upon the judgment of the Apex Court in Smt. Prativa Devi Vs. T.V.Krishna 1987 (2) RCR 580, Meenal Eknath Kshirsagar (Mrs.) Vs. Traders & Agencies & another (1996) 5 SCC 344 and Joginder Pal Vs. Naval Kishore Behal 2002 (5) SCC 397, to hold that there was no material irregularity or illegality in the order of eviction passed by the Rent Controller.

Senior Counsel for the petitioner has tried to make a dent in the judgment of the Appellate Authority on the ground that the non-appearance of the counsel, as such, should have led to the dismissal of the appeal in default rather than decide the matter on merits and placed reliance upon the judgments of the Apex Court in Abdur Rahman & others Vs. Athifa Begum & others (1996) 6 SCC 62 and Ghanshyam Dass Gupta Vs. Makhan Lal (2012) 8 SCC 745, wherein reliance has been placed upon the provisions of Order 41 Rule 17 of the Code of Civil Procedure, 1908.

In the opinion of this Court, the said judgments would not be applicable as the cases do not pertain to any precedent, as such, under the Rent Act. The matter pertains to the procedure prescribed under the Code of Civil Procedure and it is settled principle that the authorities set up under the Rent Act are bound only by the principles of CPC and not by its strict provisions, as such. Accordingly, in view of the law laid down by the Apex Court in Joginder Pal (supra), restrictive meaning of *bona fide* requirement is not to be given and a wide, liberal and practical approach is

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to be adopted. The need of the husband of the landlady is well justified and eviction has been sought after a long period of tenancy, which further goes on to show that it was a genuine requirement, as such and the tenancy was never sought to be disturbed till the landlady actually required the premises after shifting from Bombay and Delhi. In such circumstances, this Court is of the opinion that the concurrent orders of eviction are not liable to be interfered with, as such and the present revision petition is, accordingly, dismissed. However, the petitioner shall not be evicted till 31.07.2017.

31.05.2017

(G.S. SANDHAWALIA)
JUDGE

Sailesh

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*