

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

CR No. 4912 of 2015 (O&M)

Date of decision: 18.09.2017.

Pawan Kumar

...Petitioner

versus

Ram Parkash (deceased) through LRs

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA.

Present : Mr. Aseem Kalia, Advocate for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

1. The landlord is in revision under Section 15 (5) of the East Punjab Urban Rent Restriction Act, 1949 (in short the 'Act'). The Rent Controller has dismissed the application for eviction of the respondent-tenant as the landlord failed to prove the grounds for eviction. The Appellate Authority affirmed the order on the short ground that landlord never pleaded in his petition under Section 13 of the Act that he had possession of another shop in which he and his son carried on business together and the shop was not occupied by them in the same urban area. This fact came to light later during the trial and finally non-suited him to recover possession of the demised shop. This concealment of fact was fatal to the action and the petitioner had disentitled himself to relief of vacation of tenant. In this view of the matter, the rent authorities held that the landlord had not proved bona fide need or that he personally required the demised shop for the use and occupation of his son Shiv Kumar to do business from out of the

premises in dispute. In para 2 (c) the following has been pleaded in the rent petition:

“That the shop in question is bonafide required by the applicant for his son namely Shiv Kumar as he wants to start business of Medical Store in the shop in question. The son of the applicant has completed diploma in pharmacy but he is still unemployed and dependent on the applicant. As such the applicant bona fide required the shop in question for his son. The applicant desire to settle his son in the shop in question. The applicant is not in possession of any other shop or vacated any other shop at Ajnala after the commencement of the Rent Act in Ajnala.”

2. That apart, there is another fundamental flaw and deficiency in the pleadings. So far as Section 13 (3) (a) (ii) of the Act is concerned it is settled position in law that where it is not pleaded that the landlord's son for whom he wants eviction of tenant, also does not own or possess or occupy for gain any other property in the urban area then the petition must fail. No doubt the bona fide need of the son is bona fide need of the father, but, it has to be pleaded and proved by evidence. Apart from bona fide need and personal use, the plaintiff claimed that the shop was unfit for human habitation and in a dilapidated condition but he was unable to produce cogent evidence in support of the plea and accordingly the plea has failed before the Rent Authorities. Earlier the non-payment of rent became a non-issue when the rent was paid by the tenant within the time allowed by the Rent Controller.

3. There is no evidence adduced on structural defects that because of them the building might crumble down. The shop is sandwiched between the other shops which have a common front and if the floor of the shop is lower, as asserted at the hearing, than the level of the road and plinth of the shop/s is certainly not an individual problem but of the entire row of conjoined shops. The complaint made by the learned counsel that during the monsoons and heavy rains, water seeps into the shop and causes damage is neither here nor there since no evidence has been produced confirming the fact nor any photographs have been placed on record or shown to me, to make Court think of considering the argument as valid one. This is not a case for interference to upset the findings against the landlord.

I have no reason to entertain this petition and order its dismissal.

(RAJIV NARAIN RAINA)
JUDGE

September 18, 2017

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Whether speaking/reasoned : *Yes*
Whether reportable : *No*