

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

CR No.5743 of 2016 (O&M)
Date of decision: 20.02.2017

Manmohan Devgan

....Petitioner

Versus

J.H.F. Sh. Bakshi Ram Aggarwal & others

...Respondents

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

Present: Mr.Inderjit Sharma, Advocate, for the petitioner.

G.S. SANDHAWALIA, J. (Oral)

The present revision petition, filed by the petitioner-tenant, is directed against the concurrent findings of the Courts below whereby ejectment has been ordered on 16.02.2013, by the Rent Controller, Batala, the ground of *bona fide* requirement and material alterations of the shop in question, which have been upheld by the Appellate Authority, Batala on 21.05.2016.

Counsel for the petitioner has vehemently argued that the landlord was in ownership of various properties at Batala and the said fact had been concealed and therefore, the eviction petition should not have been allowed. It is further argued that the shop in question was in a gali and not suitable whereas the properties in question including the one let out to one Vijay Kumar, was on the main road and therefore, the *bona fide* element was missing. Reliance has been placed upon the judgment of this Court in **Manmohan Lal Vs. Shanti Parkash Jain 2014 (5) RCR (Civil) 667**, to submit that the mandatory essential ingredients of Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act') have not been pleaded.

A perusal of the ejectment application would go on to show that the respondents sought eviction by holding that the property had been taken on rent

on 31.12.1993. At that point of time, the karta had no other family member who was carrying on business and the family had shifted to Amritsar. But now, due to the addition of spare hands and non-availability of sufficient accommodation and to augment the family income of the joint hindu family who were not in occupation of any other shop in the urban area, Batala nor had vacated any other shop without any sufficient cause after the commencement of the Act, resultantly, they required the said premises. It was also pleaded that the tenant had dismantled the existing position and changed the entire construction and raised a new construction. A Civil Suit had also been filed for injunction, restraining the petitioner from changing the nature of the building or from dismantling the construction.

In the written statement filed, the tenancy was admitted that it was let out by late Shri Bakshi Ram Aggarwal. The factum of the rent having been paid upto 31.12.2003, was pleaded. The factum of the suit filed was also pleaded and it was averred that the same was with a view to get a ground of ejectment. The factum of the landlords wanting to shift to Batala and that they had not vacated any other such premises, for sufficient cause, was denied. It was pleaded that the landlord had raised affluent business and had several immoveable property in the form of shops, godowns, factories, residential and commercial buildings at Amritsar. Regarding the plea of material alterations, it was submitted that in December, 2003, a request had been made on account of leakage of rain-water to the landlord that they could renovate and repair the shop which had an existing roof of galvanized sheets. On account of the reluctance by the landlord and that they could not spare

time and funds for the same, rather, they had advised the petitioner to get laid down a lintel roof with projection over the demised premises himself at his own cost. Thus, there was an admission, as such, that a lintel roof had been laid and the galvanized sheets had been removed. The roof work had been laid on 04.01.2004 and thereafter, the roof and the walls had been got plastered. Thereafter, after change of the roof, the landlord had been pressing to enhance the monthly rent and had also filed the ejectment application, on 27.04.2004.

The Rent Controller framed the following issues, which arose from the pleadings:

1. Whether the respondent is liable to be evicted from the tenanted premises on account of non payment of arrears of rent w.e.f. October 1996? OPA
2. Whether the respondent is liable to be evicted from the tenanted premises on the ground that applicant requires the same for bonafide necessity? OPA
3. Whether the respondent is liable to be evicted from the tenanted premises the respondent has materially impaired the value and utility of tenanted premises? OPA
4. Whether the incorrect description of property has been given? OPR
5. Relief.

Thereafter, keeping in mind the statement of Vikesh Goel who had appeared as AW1, Manjit Singh as RW1 and Surinder Gupta as RW2 and also of the tenant-Manmohan Devgan as RW3, who had also examined the Draftsman Ashish Sharma as RW4, noticed that Rs.250/- per month was the rate of rent. It was noticed that rent was being paid to one Pawan Kumar and

there was no direction by the original landlord, as such, brought on record that it was liable to be paid to Pawan Kumar and a sum of Rs.24,312/- was judged as due. On the issue of *bona fide* requirement, it was noticed that though the family was settled at Amritsar, but keeping in view the fact that the landlord had a right to extend business and open new factories and is the best judge of his requirement and after discussing the case law on the subject, it was held that it was not for the tenant, as such, to dictate terms of the business and whether the requirement was *bona fide* as such, or not. Batala being at a distance of 35 kms. from Amritsar, as such, it was noticed that even the tenant himself was coming from Amritsar to run his business at Batala. On the issue of the material alterations, it was held that by dismantling the roof of the shop and by way of constructing the lintel, material alterations had been done of the premises in question. Keeping in view the fact that the issue is to be examined from the view of the landlord and the owners of the property, it was held that in the absence of any written consent, as such, it resulted in the impairment of value and utility of the premises. Resultantly, vide order dated 16.02.2013, eviction was ordered.

The Appellate Authority also found that as per the terms of Clause 4 of the rent deed, a condition was mentioned that the tenant is not to make any alteration in the shop without the written consent of the landlord and therefore, in view of the admitted fact that the lintel had been laid, the finding recorded by the Rent Controller was approved. Similarly, the requirement of *bona fide* necessity was proved on the ground that the landlord is the best judge with regard to his requirement and therefore,

merely because he was having more premises, he could not be denied his right to get evicted the tenanted premises because other premises had been let out at the same point.

A perusal of the above facts would go on to show that the authorities below have applied their mind duly to all the pleadings and on the evidence on record. The argument, as such, which has been raised that the mandatory ingredients were not pleaded, is not the correct picture, as a perusal of the ejectment application would go on to show that the requirement is for the occupation of the landlord. Merely because other properties in adjoining area had been leased out on the main road, would not, as such, divest the right of eviction, as has now been contended.

The judgment which has been relied upon by counsel for the petitioner, are, thus, not applicable to the facts and circumstances of the present case. It was not the case that there was any concealment of having in possession of any premises, as such, with the landlord and therefore, the said judgment would not have any applicability.

The argument raised that the shop was not on the main road and therefore, preference should be given to get vacated those premises which had been rented out, does not also cut much ice, in the considered opinion of this Court. It is for the landlord to see where he has to do his business. From the cross-examination of the landlord, it has also come out on record that the requirement is for setting up a hardware shop and the family of landlord was doing the same work, i.e., manufacturing of hardware goods at Amritsar. In such circumstances, it is not an alien business which they propose to start as

the same is closely connected with the business the family already is in. Therefore, the argument raised by counsel for the petitioner, does not accept any positive consideration.

Keeping in view the above cumulative facts and the findings recorded by the Courts below, would not warrant interference by this Court, under revisional jurisdiction, as held by the Apex Court in **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh (2014) 9 SCC 78** that powers of revision are to exercise only in case of procedural infirmity and this Court is not to sit as a Court of second appeal. The said view is reiterated in **M/s Boorugu Mahadev & Sons & another Vs. Sirigiri Narasing Rao & others (2016) 3 SCC 343** wherein interference by the High Court in the factual matrix was not approved off. The observations read as under:

“21. Likewise, when we peruse the impugned order, we find, as rightly urged by the learned counsel for the appellants, that the High Court did not keep in mind the aforesaid principle of law laid down by the Constitution Bench in the case of Hindustan Petroleum Corporation Ltd. (supra) while deciding the revision petition and proceeded to decide the revision petition like the first appellate Court. The High Court as is clear from the judgment probed in all the factual aspects of the case, undertook the appreciation of whole evidence and then reversed all the factual findings of the appellate Court and restored the order of the Rent Controller. This, in our view, was a jurisdictional error, which the High Court committed while deciding the revision petition and hence it deserves to be corrected in this appeal. In other words, the High Court should have confined its inquiry to examine as to whether any jurisdictional error was committed by the first appellate Court

while deciding the first appeal. It was, however, not done and hence interference in this appeal is called for.”

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

February 20th, 2017

Sailesh

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

(G.S. SANDHAWALIA)
JUDGE