

**IN THE HIGH COURT OF PUJAB & HARYANA AT
CHANDIGARH.**

C.R. No.5693 of 2014(O&M)

Date of Decision:-18.07.2017

Harbans Singh Walia.

.....Petitioner.

Versus

Bikram Singh & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. R.S. Bains, Advocate for the Petitioner.

Mr. Mehtab Singh Khaira, Advocate for the respondents.

JASWANT SINGH, J.(ORAL)

Petitioner (tenant) Harbans Singh Walia has filed the present revision petition against the concurrent findings recorded by the Authorities below, whereby, his ejectment has been ordered by the learned Rent Controller, Kapurthala vide order dated 03.05.2012 from a shop situated at Masjid Chowk, Shastri Market, Kapurthala and the findings thereof have been affirmed by the learned Appellate Authority, Kapurthala, vide its order dated 23.05.2014 on the ground of personal necessity of the respondent (landlord) for starting a business of readymade garments.

Learned Counsel for the petitioner has argued that the averment of personal necessity, as pleaded by the respondent (landlord) is completely belied from the fact that he had purchased six shops from Kanchan Bala wife of Kamal Narayan, out of which he has already sold off five shops after

getting them vacated from the tenants and thus, he is not having bonafide personal necessity as he would also get the demised premises vacated and sell out the same. In order to substantiate the argument qua owning six shops, he has relied upon document Ex.R-12 (P-2/T) dated 21.04.2003 whereby, the respondent landlord) has himself admitted the factum of owning six shops, out of which five tenants have vacated and only the present petitioner is not vacating the shop. He has further relied upon the statements of RW-3 Naresh Kumar and RW-5 Purshottam Lal who originally were the tenants of the shops and subsequently when the said tenants did not accede to the request of respondent no.1 to vacate the shops, the same were sold out to them by respondent no.1-landlord.

It is next argued that respondent no.1 landlord is having four shops on the ground floor and same have been let out on rent, where the tenants are already doing the business of readymade garments. To substantiate his arguments counsel for the petitioner has relied upon photographs attached as Annexure **P-18**.

Finally, it has been argued that the averment of the respondent no.1 (landlord) to the effect that he is unemployed and intends to start his business of readymade garments from the demised premises is completely falsified from the income tax returns as well as documents Annexure P-6 to P-12 which shows that respondent no.1 as well as respondent no.2 are commission agents and also having income from agricultural land.

Thus, prayer has been made for setting aside the orders passed by the Authorities below by allowing the present revision petition.

On the other hand, learned Counsel for the respondents has argued that the respondents have been conclusively able to prove their

personal bonafide necessity to start the business of readymade garments. He has further argued that merely selling of the previous properties to the tenants does not mean that the landlord cannot have personal bonafide necessity subsequently and thus all the arguments raised by the petitioner are without any merit, and, therefore, the present petition is liable to be dismissed.

After hearing learned Counsel for the parties and perusing the paper book with their able assistance, this Court is of the considered view that the present petition is devoid of any merit and same deserves to be dismissed.

First of all in order to appreciate the arguments raised by the learned Counsel for the petitioner, it would be necessary to reproduce Section 13(3)(a) of the East Punjab Urban Rent Restriction Act, 1949:-

“(3) (a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession-

(i) In the case of a residential building if -

(a) He requires it for his own occupation;

(b) He is not occupying another residential building, in the urban area concerned; and

(c) He has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area ”

Thus, a bare perusal of the aforementioned provisions would reveal that in order to seek ejectment on the ground of personal bonafide necessity, a landlord is required to prove the following three ingredients:-

“(i) plead his bonafide necessity;

- (ii) *not occupying any other building in the urban area concerned; &*
- (iii) *has not vacated any such building without sufficient cause after the commencement of the Act 1949.* ”

The aforesaid provision has been subject to interpretation in numerous judgments passed by this Court as well as the Hon'ble Supreme Court and the crux that comes out is that in case the landlord is able to establish his need for the property by reasonably proving his bonafides, then ejectment order must follow. As far as the remaining ingredients are concerned, the Courts have time and again held that until and unless it is shown by the tenant that any prejudice has been caused to him due to concealment of material facts that goes to the root of the matter, the ejectment application cannot be permitted to fail on ground of non pleading of the aforementioned remaining ingredients, especially when there is substantial compliance of the aforesaid ingredients in the evidence led by the landlord.

Now considering the arguments of the learned Counsel for the petitioner in the backdrop of what has been discussed above, it comes out that the said arguments are without any merit and liable to be rejected. Merely because respondent landlord had previously sold his shops to the sitting tenants does not *ipso facto* leads to presumption that he would sell off the demised premises after getting the same vacated. In fact, the argument is counter productive because if the landlord was keen to sell off the demised premises then, he would not have gone into such a long drawn litigation to get the demised premises vacated, especially in view of the fact that previously he sold off the shops owned by him when the tenants refused to vacate the same.

The testimonies of RW-3 Naresh Kumar and RW-5 Parshottam would show that they are referring to the previous conduct of the respondent (landlord) i.e. before filing of the ejectment application and does not in any manner talk about the conduct of respondent no.1(landlord) after institution of the ejectment application. It cannot be presumed as a matter of fact that the respondent (landlord) would definitely sell off the property after getting the same vacated. The framers of the statute have safeguarded the interest of the tenants in such a situation by inserting Section 13(4) of the Act.

Furthermore, the reliance of the petitioner upon Ex.R-12 i.e. complaint made by the respondent no.1(landlord) to SSP, Kapurthala does not lead us either here or there, because again it only talks about the fact that petitioner herein is not ready to vacate the shop and has infact threatened the respondent no.1(landlord) to kill as well as the fact that respondent no.1 landlord owned six shops as on 21.04.2003. Thus, the arguments of the learned Counsel for the petitioner, although seems attractive at the first blush, pales into insignificance in view of the discussion made hereinabove.

As far as the argument of the learned Counsel for the petitioner that respondent no.1(landlord) owns other shops which are in possession of tenants, it is evident from the admissions made by the petitioner in his cross examination while appearing as RW-1 that respondent no.1 (landlord) does not own or possess any other shops in the municipal limits of Kapurthala. Apart from this, there is nothing available on the record to fortify the plea of the petitioner (tenant) that the respondent (landlord) owns any other shop or possesses the same. Mere photographs cannot suffice as a proof.

Lastly, the argument of the learned Counsel for the petitioner

that the averment of respondent (landlord) qua the fact that he is unemployed has been disproved on record, does not lead to a conclusion that the necessity of respondent (landlord) is not bonafide. It can at the most be held that in his overzealousness to get the demised premises vacated, respondent no.1 has unnecessarily stated the said facts without any reason. However, it is not a big flaw that would disentitle him from getting the demised premises evicted.

In view of the above, finding no merit in the present revision petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

July 18, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>