

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

C.R. No. 7252 of 2008 (O & M)

Date of decision: 26.05.2017

Naveen Kumar

....Petitioner(s)

Versus

Smt. Saroj and others

...Respondent(s)

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

Present: Mr. Tanmoy Gupta, Advocate,
for the petitioner.

Mr. Adarsh Jain, Advocate,
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The landlord is aggrieved against the reversal of the findings recorded by the Rent Controller, Gurugram on 21.09.2006 by the Appellate Authority on 30.08.2008 whereby, the appeal of the respondent-tenant was allowed and the ejectment petition was dismissed.

The reasoning which weighed with the Appellate Authority was that there was a concealment in approaching the Court and therefore, the need was not genuine, honest or conceived in good faith and resultantly, issue no. 2 was reversed whereby, ejectment had been ordered by the Rent Controller on the said ground. The reasoning which is given while reversing and coming to the said conclusion is that the stand of the petitioner in the eviction petition was that he was unemployed and neither in service nor doing any business. It was the specific contention that he was doing labour work and his children had grown up and they did not like him

to do so. Therefore, he wanted to do the *karyana* business in the shop in question. The cross examination of the petitioner was accordingly referred to wherein, he had admitted that he used to work as a Commission Agent at Vikas Chamber, Jawala Heri, Parshim Vihar, Delhi and he was idle for the last 2-3 months. However, admission had come forth that he was earning sometimes Rs.2,000/-, Rs.5,000/- or Rs.7,000/- as commission. Resultantly, it was held that he was never unemployed and, therefore, the need was not bona fide as such and there was concealment and resultantly, eviction petition had been dismissed.

Counsel for the petitioner has vehemently argued that the Commission Agent as such was not a regular employment and, therefore, the bona fides were wrongly doubted while reversing the well reasoned judgment of the Rent Controller.

A perusal of the pleadings of the petitioner in the eviction petition dated 16.10.2001 would go on to show that the bona fide requirement was sought on the following grounds:-

“(ii). That the applicant /land lord is unemployed and he is neither in service nor has any business, therefore, he bonafidely requires the shop in question for carrying on his own business in the shape of Kiryana etc for which the applicant has arranged the moneysuffient to run his business. In this context, it is worthwhile to mention here that formely the applicant was doing the labour work in order to meet the requirements of family, but since now the children of the applicant has grown up and they do not like that their father being upper class Hindu of 'Banya Caste' and a graduate should do such a low job not being appreciated in the relations and the society in the

matter of business and marriages and further education of the children. The applicant is also conscious to meet all these problems/requirements and to do his independent business. So he requires the shop in dispute for his own occupation and is not occupying another non-residential /building in the urban area of Sohna and has not vacated such building without sufficient cause after the commencement of 1949 Act in the said Urban Area.” (sic.)

The tenants had taken a specific stand pertaining to the background as such and the need of the petitioner-landlord wherein, the following plea has been taken:-

“(ii) Sub para (ii) of para No.5 of the application is totally wrong and is emphatically denied. It is wrong to allege that the applicant/ land lord is unemployed. It is further wrong to allege that he is not in service. It is submitted that applicant is serving at A-185 Pashchim Vihar, Delhi – 63 and is earning more than Rs.10,000/- per month. It is wrong to allege that the applicant bonafidely requires the shop in question for carrying on his business in the shape of Kiryana etc. It is further wrong to allege that the applicant has arranged the money sufficient to run his business. It is further wrong to allege that formely the applicant was doing the labour work in order to meet the requirements of family. It is further wrong to allege that the children of the applicant has grown up. It is further wrong to allege that they do not like that their father being upper class Hindu of Baniya Caste and a graduate should do such a job not being appreciated in the relations and the society in the matter of business and marriage and further education of the children. It is further wrong to allege that the applicant is also conscious to meet all

these problems/ requirements and to do his independent business. It is further wrong to allege that the applicant requires the shop in dispute for his own occupation and is not occupying another non-residential building in the urban area of Sohna and has not vacated such building without sufficient cause after the commencement of 1949 Act in the said Urban Area. The story put forth by the applicant in this para is totally fabricated and concocted and manipulated. The application has no right to eject the respondents from the shop in question.” (sic)

In the replication, it was never specified regarding the specific plea taken above that he was serving at A-185, Pashchim Vihar, Delhi-63 and earning more than ₹10,000/- per month and only a bald averment was made to the extent that para nos. 5(ii) of the written statement are denied as wrong. Thus, it was never the case of the landlord that the amount which he was allegedly earning, which had not been specifically pleaded, was not enough to sustain himself and that the necessity was genuine as he could earn more or the amount was not sufficient to keep the family going.

It is only in cross examination, counsel for the tenant has been able to elicit the exact details regarding the employment aspect which has been rightly noticed by the Appellate Authority. It is also pertinent to notice that the Rent Controller noticed that the witnesses of the tenant had stated that the petitioner was working in Delhi and had business and had also often gone abroad. In spite of the said stand, the Rent Controller had gone on to hold that even if it was working in Delhi, then also, he was entitled to evict the tenant if his bona fide need was established keeping in view the fact that the family of the petitioner was residing and he wanted to shift from Delhi and start the *karyana* store in premises.

The Rent Controller fell into a cardinal error by building a new case for the landlord regarding this aspect which has been rightly corrected by the Appellate Authority. It was never the case of the landlord to that extent. Rather, as noticed, there was concealment regarding his service aspect or even his work of the Commission Agent. It is in such circumstances the Appellate Authority has rightly stepped in and set aside the eviction order by placing reliance upon the judgment in ***Pratap Rai Tanwani vs. Uttam Chand, 2005 (1) HRR 142*** that eviction is not to be sought on mere pretext and on the whims of the landlord. The relevant para reads as under:-

“13. One of the grounds for eviction contemplated by all the rent control legislations, which otherwise generally lean heavily in favour of the tenants, is the need of the owner landlord to have his own premises, residential or non-residential, for his own use or his own occupation. The expressions employed by different legislations may vary such as “bonafide requirement”, “genuine need”, “requires reasonably and in good faith”, and so on. Whatever be the expression employed, the underlying legislative intent is one and that has been demonstrated in several judicial pronouncements of which we would like to refer to only three.”

Once the Court was being approached for the purpose of bona fide requirement, the petitioner-landlord had to approach the Court with clean hands and once it has come on record that his employment is in total contradiction to the stand which was pleaded, the Appellate Authority was well justified in reversing the findings.

Resultantly, no fault can be found in the order of the Appellate

Authority and the same is upheld and the revision petition is dismissed.

26.05.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No