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

Civil Revision No.928 of 2013(O&M)

Date of decision: 16.02.2017

Ramesh Chand Bhargava

...Petitioner

Versus

Anuraga Gandhi and others

...Respondents

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

Present: Mr. Vikas Kumar, Advocate for the petitioner.

Dr. Surya Parkash, Advocate for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed against the concurrent findings of the Courts below whereby eviction of the petitioner-tenant had been ordered on the ground of bonafide requirement from Shop No.12 situated at Bata Chowk, NIT Faridabad vide order dated 23.9.2011 passed by the Rent Controller, Faridabad which was upheld by the Appellate Authority, Faridabad vide order dated 14.12.2012.

The petition was instituted on 16.1.2008 by the two legal representatives of Pritam Lal Gandhi, namely, Ajay Gandhi and Vijay Gandhi. The ground for ejection was that the premises were required for bonafide requirement of Vijay Gandhi for running business of spare parts as differences had arisen between two brothers and the landlords have no other premises in the urban area of Faridabad. The property had been let out in March, 1977 at the rate of ₹ 1500/- per month by the father of the respondents-landlords, who had expired on 16.1.2004. Thereafter, rent had not been paid and therefore arrears were also claimed with effect from

1.11.2004 till December, 2007.

The stand of the petitioner-tenant was that there was no enhancement as such of rent and payment was being made till March, 2006. The respondents had threatened to dispossess the tenant forcibly and the premises were not required for personal need as alleged and the entire story was concocted.

The following issues were framed on 5.2.2009 by the Rent Controller, Faridabad:-

- “1. Whether the petitioners are landlord and respondent is tenant over the disputed site mentioned in para no.1 of the petition?OPP
2. If issue no.1 is proved, whether respondent is in arrears of rent?OPP
3. If issue no.2 is proved, whether petitioners are entitled for order of ejectment of the respondent from the site in dispute?OPP
4. Whether the petition is not maintainable in the present form?OPR
5. Whether the petitioner has no locus standi and cause of action to file the present suit?OPR
6. Whether petitioners are estopped by their own act and conduct from filing the present petition?OPR
7. Relief.”

Keeping in view the statement of the brothers who were examined as PW-1 and PW-2 and the statement of three witnesses on the part of the tenant who had examined himself as RW-1, issue no.2 regarding the arrears of rent was decided as not pressed since the rent had been tendered and therefore, the ground of eviction did not arise any more. On issue no.1, it was held that there was no dispute regarding relationship of landlord and tenant also since shop in question had been let out by the

father and the factum of tenancy had not been denied. Keeping in view the statement of RW-4 Likhi Ram, Inspector, Municipal Corporation, Faridabad, the Rent Controller, Faridabad took into account the fact that the other property which was recorded in the name of mother of brothers was industrial property and not the commercial property. Similarly the property bearing plot No.65/14 which was recorded in the name of both the brothers and Anu wife of Ajay Gandhi was not commercial property. It was not disputed that Ajay Gandhi has now expired and his legal representatives are on record. The said plot in question was 1020 sq. yards and it was noticed that the same was industrial one. Resultantly, it was held that there was nothing on record as such by which it could be proved that there were other premises in the name of petitioner no.2-Vijay Gandhi and the ejectment petition was allowed vide order dated 23.9.2011.

Counsel for the petitioner has vehemently submitted that from perusal of the statement of RW-4 Likhi Ram, Inspector, Municipal Corporation, Faridabad it would be clear that there was another shop bearing no.21 which was in the name of the father who had expired on 16.1.2004 and therefore, incorrect averment was made that the landlords had not owned any other shop and had neither vacated any such shop as per mandatory requirement. Thus, there was material concealment on the part of the landlords. Reliance has been placed upon the judgment in **Inderjit Sharma Vs. Moti Lal 2009(2) L.A.R. 408** to contend that on account of material concealment, eviction petition should have been dismissed.

A perusal of the order dated 14.12.2012 passed by the

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Chandigarh

Appellate Authority, Faridabad would go on to show that the matter was again thrashed out at length and the Appellate Authority noticed that the plot no.21 which was referred was in the name of father of the petitioners in the ejectment petition who had since died. The other plots were industrial plots which were different from the one which was subject matter of the present controversy and none of the plots were exclusively owned by either of the brothers. Therefore, keeping in view of the fact that the tenant was not to dictate terms to the landlord as to how the property could be utilized and how the landlord had to adjust himself and it was for the landlord to judge his own requirement, the argument was accordingly repelled.

It was also noticed that one of the brothers namely Ajay had died. Therefore argument raised by the tenant that the bonafide requirement of the premises was for separating the business did not exist as other brother could run his business from the premises from which their joint business was being operated, was also held to be misconceived. It was accordingly rightly held that in present case the landlords wanted to expand their business especially when the joint family was branching out in view of the division and the tenant could not stand in the way. Resultantly, it was held that there was no concealment on the part of the landlords and there was no evidence to show that they owned any other shop or that they had vacated any such shop.

Counsel for the respondents/landlords has rightly drawn attention of the Court to the cross-examination of the tenant himself who had appeared as RW-1 to point out that shop no.21 was in occupation of

one Sh.K.C.Gupta. As noticed, the requirement as such was to show as to whether the landlords had possession of any other shop or had vacated any such shop. Admittedly the shop in question was in the name of the father of the landlords who had died on 16.1.2004 leaving behind other legal heirs. It was not the case of the tenant that the property devolved exclusively upon any brother. It was admitted that another industrial plot was in the name of the mother. In such circumstances, there is sufficient material on record to hold that there was no material concealment as duly held by the Courts below.

This aspect has been considered in Gurbaj Singh VS. Parshotam Singh and others 2011(3) PLR 653 after considering the judgments of the Apex Court in Ajit Singh and another Vs. Jit Ram and another, 2008(4) Civil Court Cases 528 and that of Full Bench in Banke Ram Vs. Shrimati Sarasvati Devi 1977 PLR 112. Two issues were considered that (i) whether the tenant can raise the question of non-compliance of mandatory provisions of Section 13(3)(a) (i) of the Act even if he did not question it in his reply nor ask for any issue in this regard for the purpose of trial and (ii) whether the son of the landlord, for whose benefit the non-residential premises is sought to be got vacated, if not the landlord or the owner himself, is also required to plead the ingredients of Section 13(3)(a)(i) of the Act. In the said case, the *bona fide* necessity of the son of the landlord had been put up. Resultantly, the argument raised was that in the absence of any specific pleadings regarding the necessary ingredients qua the son, no eviction order could be passed under the Act. Resultantly, after discussing Ajit Singh (supra) threadbare, it was held that

the person who maintains an eviction petition on the ground of *bona fide* necessity, has to lead and plead all the necessary mandatory ingredients regarding the premises required by the landlord for the use and occupation of his son. The son is not required to plead all the ingredients as he himself is not the landlord of the premises and the question was answered against the tenant. Similarly, it was noticed that the son had appeared in the witness-box and deposed in oath that he does not own and possess another non-residential building in the urban area and resultantly, it was held that non-pleading of the ingredients would not be fatal and warrant dismissal of the application for ejectment. It was further held that once the tenant did not challenge the averments made in the eviction petition nor ask for any issue in this regard and did not take any objection for the non-pleading of the mandatory ingredients, the lack of denial specifically would be taken as an admission, except as against a person under disability. Resultantly, the question was also answered against the tenant.

Keeping in view the above discussion and keeping in view the settled principle that it is not for the tenant to dictate terms to the landlord as to how the property could be utilized and how the landlord had to adjust himself, this Court is of the opinion that availability of shop no.21 as such was not with the landlords and was rented out which would not curtail them from seeking their right as such of eviction. It was noticed that during course of the proceedings, one brother, namely, Ajay Gandhi had passed away which would not take away the right of seeking eviction since material date to be taken into consideration is the date of filing the petition.

In such circumstances, the argument that due to passing away of one of the

brothers, the bonafide requirement does not exist cannot be accepted. The judgment in **Inderjit Sharma's case (supra)** which was relied upon would not be applicable in the facts and circumstances of the present case as concealment as such of having owned or vacated the shop has not been proved. In the said case during the eviction proceedings the landlord had been able to secure possession of the adjacent tenanted portion but not put it to any use.

In such circumstances, this Court is of the opinion that findings recorded by the Courts below are not suffering from any procedural infirmity or illegality which would warrant interference under revisional jurisdiction of this Court.

Accordingly, the present revision petition is dismissed.

At this stage, when the order was dictated, counsel for the petitioner-tenant submits that since he is running his business in the premises in question since 1977, therefore, he may be granted some time to vacate the shop in question.

Accordingly, in case within a period of two weeks from today an undertaking by way of affidavit is filed by the petitioner-tenant that he shall vacate and hand over actual physical possession of the premises in question on or before 31.12.2017 before the Rent Controller, Faridabad, the Executing Court shall not order to deliver the possession before the said date.

The arrears of rent shall be tendered by the petitioner-tenant by 31.3.2017 and he shall continue to deposit rent/mesne profits for the coming months by 7th of each month in the Court of Rent Controller,

Faridabad. In case the petitioner-tenant does not comply with the undertaking, it will be open to the respondent-landlord to take the possession of the premises in question forthwith and the Executing Court concerned shall ensure that possession is delivered to the respondents-landlords even if police help is required.

February 16, 2017
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(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No