

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

C.R. No. 79 of 2017 (O & M)
Date of decision: 17.02.2017

Ramesh Kumar

....Petitioner(s)

Versus

Ravi Shanker

...Respondent(s)

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

Present: Mr. K.P. Singh, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 3571-CII of 2017

Application for placing on record Annexures P-1 to P-4 is
allowed, subject to all just exceptions.

The same are taken on record.

C.R. No. 79 of 2017

Both the Courts below have found that the requirement of the respondent-landlord is for personal necessity from the shop in question which is described in the eviction petition. The Rent Controller, Bhiwani, vide its order dated 20.05.2013, noticed that the father of the landlord, Om Parkash, was the owner in possession and had rented out the same to the petitioner and there was relationship of landlord-tenant as such. Even otherwise, the same could not be questioned in view of Section 116 of the Indian Evidence Act, 1872. It was held that the rate of rent was ₹2,000/- per month and, therefore, the ground of eviction of arrears of rent was decided against the landlord on account of the tender having been made. From the

statement of the landlord, it transpired that he required it for setting up an independent business of selling readymade garments and on account of the fact that earlier he was doing joint business with his brothers. It was noticed that the business was being run under the name of “Ghanshyam Garments” with his brothers and he had separated from them and, thus, he had filed the eviction petition on 11.04.2012. Resultantly, the eviction was ordered keeping in view the finding recorded that it was for bona fide necessity as such.

Counsel for the petitioner has vehemently submitted that the mandatory provisions as such had not been pleaded in the eviction petition and has referred to Annexure P-1, which is now placed on record, to contend that there was an averment made that there were no other shops in Bhiwani and nor the landlord has vacated any other shop after the commencement of the Act. Rather, in the ejectment application, it was specifically mentioned that other shops are under the tenancy of other tenants.

In the written statement, the plea taken by the petitioner-tenant was that the landlord had a huge shopping complex in Bhiwani and, therefore, was owner of number of shops which were given to other tenants.

The said plea is sought to be put forward on the ground that there was concealment as such regarding the fact of ownership of other properties. However, the said argument is not liable to be accepted since the provisions of the Haryana Urban (Control of Rent & Eviction) Act, 1973 provide that the averment is to be made of occupation of other building in the urban area concerned and the non-vacation of such building without sufficient cause. The landlord was, thus, clearly stating that the other shops

in occupation were in possession of tenants and, therefore, in such circumstances, he required the shop in question. The cross examination also of the landlord-PW1 has been examined by this Court, which has now been placed on record as Annexure P-3. The factual aspect which, thus, comes out is that though he was owner of as many as 10 shops but it could not be illustrated in the cross examination as to whether there was any vacant shop available with him which he could utilize. In such circumstances, once the evidence has been thrashed out in detail by the authorities below, this Court is of the opinion that merely because he was owner of other properties would not as such debar him from filing the application and neither it could be held against him to that extent that the mandatory provisions have not been specifically complied with. In ***Gurbaj Singh vs. Parshotam Singh and others, 2011 (3) PLR 653*** it has been held that once the matter has been thrashed out and the evidence has been examined of both the parties and the authorities are satisfied that the mandatory provisions as such have been complied with, there would be no scope for interference on the ground that the material ingredients had not been pleaded.

The Appellate Authority in its order dated 18.07.2016, Bhiwani, while examining the evidence, also has noticed that the landlord was sitting with Sushil the son of his uncle in the said shop and he was having no share as such and a quarrel had also taken place inter se the family. Merely because there were 10 other shops which were under the tenancy of other tenants, the right, as such, of eviction on the ground of personal requirement could not be denied to him. The findings, thus, are recorded on the basis of the evidence which has been properly appreciated by both the Courts.

In such circumstances, this Court is of the opinion that in revisional jurisdiction, this Court is not sitting as a Court of appeal and accordingly, no interference is called for in the orders passed by the authorities below and the present revision petition is dismissed in limine.

17.02.2017
shivani/sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No