

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

**Civil Revision No.806 of 2017 (O&M)
Decided on : 21.02.2017**

Sukhwinder Singh

... Petitioner

Versus

Jasbir Singh

... Respondent

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

Present : Mr. S.S. Rangi, Advocate for the petitioner.

Mr. M.S. Kohli, Advocate for the respondent.

G.S. Sandhawalia, J. (Oral)

The present revision petition is directed against the concurrent findings of the Courts below, whereby eviction has been ordered from the shop in question by the Rent Controller, Fatehgarh Sahib on 09.03.2016 and by the Appellate Authority, Fatehgarh Sahib on 21.09.2016 on the ground of bonafide requirement.

Counsel for the petitioner has vehemently submitted that the mandatory requirements under the East Punjab Urban Rent Restriction Act, 1949 had not been pleaded and, therefore, the petition was liable to be dismissed. He has submitted that there was sufficient property as such available with the landlord, since one property with Kulwant Singh had been got vacated.

However, a perusal of the ejectment petition would go on to show that a specific averment was made by the landlord that there was a property mortgaged with Kulwant Singh son of Sewa Singh, which was got vacated and possession was handed over, because the petitioner wanted the

same for his bonafide necessity. It is the case of the landlord that he wants to open the business of retail and wholesale of karyana goods at a large scale in the shop in question and other adjoining shops for himself as well as for his sons who are presently residing abroad.

The stance of the tenant-petitioner in the reply to the paragraph was denial to the vacation by Kulwant Singh. It was not the case of the tenant that the area was insufficient as such.

A perusal of the eviction petition also would go on to show that after clarifying this aspect, the other mandatory ingredients were duly pleaded that the applicant did not possess any other shop or property in the area administered by the Municipal Council, Sirhind, District Fatehgarh Sahib.

Thus, it is apparently clear that there is no concealment on the part of the landlord at any point of time. He specifically mentioned that there was other property available with him, which he had got vacated and he required a larger premises for setting up of the business.

The site plan Ex.A1 has also been examined by this Court. The property of Kulwant Singh is at back, whereas the shops are facing the Sirhind-Fatehgarh Sahib Road. It is not disputed that the other two tenants in the shops adjoining the premises, which were occupied by one Gurinder Singh and Rohit Kumar have also been ordered to be evicted. The said orders have been upheld in ***Civil Revision Nos.8478 and 8494 of 2016 decided on 16.12.2016*** by a Coordinate Bench.

The whole purpose of getting a frontage as such would be

frustrated, if the present revision petition is allowed at the instance of the tenant. The landlord would not be able to use the front portion to get access in a unified manner to the portion at the back. It is settled principle that the bonafide requirement is to be seen from the angle of the landlord and not from the tenant.

The argument as such raised that the other ground had also been pleaded, but not accepted would not as such curtail the right of the landlord. A perusal of issue No.2 and 4 would go on to show that apart from the ground of non-payment of rent, which has been been decided in favour of the tenant, no other evidence had been led by the landlord regarding the material alteration and modification and in such instance the issue was decided against the landlord.

Thus, the findings which have been recorded are factual findings, which would not warrant interference by the revisional Court, in view of the judgment of the Apex Court in ***Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh 2014 (9) SCC 78***. In the said judgment the Apex Court has held that this Court is not sitting as a Court of appeal. The relevant observations read as under:-

“45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A

finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

The argument raised that the son was not examined is without any basis, since the grounds for eviction for usage of the property are for the landlord alongwith his sons. Therefore, reference to the judgment in '**Brij Bhushan and another Vs. Sanjay Harjai and another**' **2015 (2) RCR (Civil) 68** is not applicable, since in that case the requirement of personal necessity was for the son of the landlord who was not examined.

In such circumstances, this Court is of the opinion that the findings which have been recorded by the Courts below are well justified,

keeping in view the fact that the landlord has himself stepped into the witness box.

The revision petition is, accordingly, dismissed in limine.

FEBRUARY 21, 2017

Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No