

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

**Civil Revision No.8557 of 2016 (O&M)
Decided on : 06.04.2017**

Vikas Mahajan @ Sonu

... Petitioner

Versus

Raj Kumar

... Respondent

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

Present : Mr. Munish Puri, Advocate for the petitioner.

G.S. Sandhawalia, J.

The present revision petition is directed against the concurrent findings of the authorities below, whereby the ejectment has been ordered from the shop in question detailed in the head-note on the grounds of bonafide requirement of the son of the landlord, vide order dated 22.12.2015 by the Rent Controller, Pathankot, which has been upheld in appeal by the Appellate Authority on 22.08.2016.

The case was heard on 27.03.2017 and after hearing arguments in detail by counsel for the petitioner, the following order was passed:-

“The eviction has been ordered on the ground of bonafide requirement of son Deepak Kumar and both the Courts below have held in favour of the respondent/landlord. The argument which has been raised by the counsel for the petitioner that there was one co-owner, namely, Krishna Devi who was examined as RW-2 being one of the wives of Ishwar Dass to raise a dispute regarding co-owner.

A perusal of the pleadings would also go on to show that it was admitted that the rent was being paid to the respondent/landlord and therefore, relationship of landlord and tenant has been admitted. Therefore, orders passed by the Courts below do not suffer from any illegality.

Faced with this situation, counsel for the petitioner prays for time to seek instructions as to whether some time can be given to relocate and whether the petitioner is willing to file necessary undertaking by way of affidavit.

Adjourned to 6.4.2017.”

Thereafter, counsel for the petitioner submitted that the petitioner wanted to be heard again on merits and was not willing to relocate and take time. Resultantly, the present petition has been disposed of, after examining the records in question, which had also been summoned.

The case of the respondent-landlord was that the tenancy was for the last 4 years of the shop, which was detailed in the head-note. The rate of rent was ₹1,000/- per month and there was non-payment from 01.08.2010 as per petition instituted on 07.05.2011. The ground of personal requirement and the necessity was set up as the son of the landlord, namely, Deepak Kumar who was 27 years old and unemployed wanted to do the business of sale of mobiles in the shop in question, which was measuring 7x6 feet. For the adjoining shop also eviction proceedings had been filed against the tenant Roop Lal and Anil Kumar and the intervening wall was to be removed to consolidate the same into one shop.

The defence of the petitioner-tenant was that the premises had been let out about 12 years back by Kamla Devi, the mother of the respondent and the father was the original owner and the rate of rent was only ₹300/- per month. It was averred that there are other co-sharers of

the shop and the rate of rent was ₹550/- per month. Payment @ of ₹300/- has been made from 2011, but on account of raise not having been done, pressure was being put in the form of filing of the eviction petition. The first floor was a residential building and the intervening wall of two shops could not be removed as it was dangerous for the entire building. The landlord son had lucrative business at Damtal and they were not expected to run the business activity in the small street.

On account of rent being tendered, the issue of arrears of rent was disposed of as was not being pressed. The bonafide requirement was kept into mind by taking into consideration the statement of the landlord and his son for whom the requirement was there and the judgment of the Apex Court in '*Shiv Swaroop Gupta Vs. Dr. M.C. Gupta*' 1999 (2) RCR (Rent) 141 and '*M.L. Prabhakar Vs. Rajiv Singal*, 2001 (1) RCR (Rent) 91 (SC) was referred to, by the Rent Controller.

Apart from examining himself as RW-1, the petitioner tenant has also examined Krishna Devi, who is the second wife of the Ishwar Dass, who was the original owner of the demised shop. She had deposed that the landlord had no concern and she had been blessed with one son and two daughters and the petitioner-landlord has no right to claim to be the owner or landlord of the shop in dispute.

Resultantly, keeping in view the fact that she had never filed any complaint or separate civil suit challenging the title of Kamla Devi the wife of Iswar Dass, the Rent Controller rightly came to the conclusion that the consent as such of other co-owners was to be presumed and they

have never as such objected to the ejectment of the tenant. Accordingly, it was held that the co-owner is entitled to file the eviction petition and ejectment has, thus, been ordered on the ground that there is no such malafide intention which had been proved. Nothing had been brought on record to show that there was some other premises in possession of the respondent or his son and, therefore, the bonafide element was present.

The said order has also been upheld in appeal by the Appellate Authority on 22.08.2016 while toeing the same line by keeping the said principle in mind that wish of the landlord has to be taken into consideration and whether the premises are suitable or not is to be seen from his view point.

The Apex Court in '**Mohinder Prasad Jain Vs. Manohar Lal Jain**' 2006 (2) SCC 724 followed its view in '**India Umbrella Manufacturing Co. Vs. Bhagabandei Agarwalla (Dead) by LRs. Savitri Agarwalla (Smt.)**' (2004) 3 SCC 178 that if a co-owner objects to the eviction proceedings, it might be a relevant fact as such and the petition filed by the co-owner was held to be maintainable.

In the present case, as noticed above, it is the case of the petitioner-tenant himself that the mother of the respondent-landlord, Kamla Devi had rented out the premises to the petitioner 12 years back from the initiation of the proceedings and, therefore, the tenancy as such had never been denied. It was also admitted that the rent was being paid @ ₹550/- per month and, therefore, the relationship of landlord and tenant between the parties had never been not objected to. Merely

because one of the wives of the erstwhile owner of the shop had appeared as a witness, but never filed any application for impleadment and objected to the petition as such, the argument raised by the counsel for the petitioner that the petition by the co-owner as such without impleading the other legal representatives is without any basis. The rent was being tendered to the respondent for the last more than a decade without any objection, the tenant as such is not entitled to raise any objection to the title and the share as such of the landlord. The right of the co-owners if any would be settled by a separate set of proceedings between themselves and the tenant as such cannot raise any objection.

Once Deepak Kumar, son of the landlord has stepped into the witness box for whom the premises are bonafidely required and deposed that he is not doing any job and has denied that they had any shop and business in the Damtal Market or that the family members are running lucrative business of commission agent, the requirement as such has been duly proved for the need of the landlord.

The Supreme Court while while dilating on the issue of bonafide requirement of the landlord in *Sarla Ahuja Vs. United India Insurance Company Ltd. 1998(Sup2)) Supreme Court Reporter 390* held that the requirement of landlord for occupation of the tenanted premises must be bonafide and the Rent Controller shall not proceed on the assumption that requirement is not bonafide. The principle that tenant is not to dictate terms to the landlord as to how the property could be utilized and how the landlord had to adjust himself was kept in mind.

Similarly, Hon'ble Apex Court in ***Joginder Pal Vs. Naval Kishore Behal 2002 (2) PLR 625*** while taking into consideration the provisions of section 13 of the East Punjab Urban Rent Restriction Act, 1949 has held that a wider interpretation is to be given to the bonafide need of the landlord. The same reads as under:

“24. We are of the opinion that the expression 'for his own use' as occurring in Section 13(3)(a)(iii) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove we have found the pari materia provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependents and kith and kin in the requirement of landlord as "his" or "his own" requirement and user. Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the

requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire : (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close interrelation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act.”

In such circumstances, the findings which have been recorded regarding the bonafide requirement do not suffer from infirmity or any procedural irregularity, which would warrant interference in the revisional jurisdiction by this Court.

Accordingly, the present revision petition is dismissed in limine.

APRIL 06, 2017

Naveen

Whether speaking/reasoned:

Whether Reportable:

**(G.S. SANDHAWALIA)
JUDGE**

Yes/No

Yes/No