

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

**Civil Revision No.8587 of 2016 (O&M)
Decided on : 30.01.2017**

Surinder Kumar

... Petitioner

Versus

Sunil Kumar

... Respondents

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

Present : Mr. Sudhir Mittal, Advocate
for the petitioner/tenant.

G.S. Sandhawalia, J.

The present revision petition has been filed by the petitioner-tenant against the judgment of the Appellate Authority dated 08.11.2016, whereby the appeal of the landlord has been allowed on the ground that the premises are bonafide required by the landlord for his son who is a patient of 'Thalassemia Major'.

The defence of the tenant is that on an earlier occasion respondent-landlord had lost out in a similar set of litigation for his own requirement for the shop in question.

Counsel for the petitioner has vehemently submitted that there were sufficient material to show that the bonafide requirement was missing in the present case and the petition filed in the year 2003 had been dismissed on 24.05.2008, which had been placed on record as Ex.P-3. The Appellate Authority had upheld the order on 26.05.2010 (Ex.P-4). He resultantly submitted that in such circumstances the Appellate Authority was not justified in reversing the well founded observations of the Rent Controller dated 02.11.2015.

The present revision petition initially came up for hearing on 20.12.2016 before a Coordinate Bench. The matter had been adjourned on account of the fact that counsel for the petitioner was seeking time on the ground that there is a likelihood of compromise, when the Court was not agreeing with the arguments raised. The said order reads as under:-

“I have heard counsel for the petitioner but when the Court was not agreeing with the counsel, he had sought instructions from the petitioner, who states that there is a likelihood of a compromise between the parties, for which an adjournment of four weeks is sought. Adjourned to 30.01.2017.”

Today, Mr. Sudhir Mittal counsel for the petitioner submits that the compromise has not been effected and, therefore, sought to re-argue the matter.

It is not disputed that on an earlier occasion, as noticed above, the petition was dismissed on the plea that he required the property for himself in the year 2003. It is to be noticed that the sale deed in favour of the respondent-landlord is dated 10.04.1996 and on the basis of the same, he preferred the first petition after a period of 7 years. Thereafter, he filed the present petition in December, 2010 on the ground that his son requires the shop in question, apart from arrears of rent and since his son required the property and was not working. The plea was taken that he neither occupied nor vacated any such building within the urban area of Municipal Corporation, Yamuna Nagar which was rebutted by taking the plea that his son is mentally and physically unfit for doing business. Reliance was placed upon the finding arrived at earlier that the

landlord possessed many other properties and also some buildings of the respondent-landlord were advertised for sale and letting. No specific averment as such has been made in the written statement that which of properties were owned by the landlord, though it is mentioned that the father of the landlord had died and his property had also been inherited by the landlord.

As noticed the Rent Controller came to the conclusion that the petition was not bonafide on the ground that there was no mention that his son was not occupying any other building and, therefore, mandatory provisions as such had not been pleaded.

The Appellate Authority has rightly held that solely because on an earlier occasion the issue of bonafide requirement for the landlord has been held against him, it could not bar the second petition on the ground of settling the son. It is settled principle that a second petition for bonafide requirement as such would lie as a fresh cause of action can arise due to change of circumstances.

In the present case as noticed above the bonafide requirement was for his son who is suffering from a major disease, which fact has been brought on record as per Ex.A-3 and A-4 which would go on to show that the requirement is bonafide. The Appellate Authority was thus well justified, in such circumstances to set aside the findings of the Rent Controller who was unnecessarily biased by the fact that on an earlier occasion also the petition had been dismissed on account of the fact that the landlord's need was not bonafide.

The Appellate Authority has also noticed that in case the landlord does not occupy the premises, there is a safeguard as such in the Act to put back the tenant in possession. Merely because the second petition was instituted at a subsequent point of time for the requirement of the son would not as such bar the landlord from filing the same only on the ground that on an earlier occasion the issue had been decided against him for his personal requirement.

The son Sahil has been examined as AW-1 and in the cross-examination the Appellate Authority has noticed that nothing could be brought on record as to whether he owned any other property which could be used as such for his employment and business. The petitioner-Surinder Kumar appeared as RW-2 and in his cross-examination could not tell about the details of any property which were exclusively owned by the landlord and only went on to say that all properties were purchased by the brothers. The Appellate Authority has also noticed that the said properties were joint and, therefore, the landlord had chosen the demised shop for the requirement of his son. Thus, there is nothing as such wrong in the findings recorded which would warrant interference in revisional jurisdiction.

It is settled principle that the tenants are not to dictate the landlord as to how the properties are to be utilized. The findings, thus, which have been recorded by the Appellate Authority are that the properties in question which are allegedly in ownership of the landlord are not in his exclusive ownership and, therefore, the claim as such of

bonafide requirement has been rightly upheld while allowing the appeal.

Accordingly, keeping in view the above discussion, this Court is of the opinion that the findings which have been recorded by the Appellate Authority would not warrant any interference as such under the revisional jurisdiction of this Court under Section 15 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, in view of the law laid down by 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.

Resultantly, the present revision petition is dismissed.

JANUARY 30, 2017

Naveen

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

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No