

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1376 of 2011 (O&M)
Date of Order: 01.10.2018

Jatin @ Jani @ Johni

..Petitioner

Versus

Harish Malik

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Advocate and
Mr. Arvind Bansal, Advocate,
for the petitioner.

Mr. Rajinder Goyal, Advocate,
for the respondent.

ANIL KSHETARPAL, J (Oral)

Landlord-petitioner is in the revision petition against the order passed by the learned Appellate Authority reversing the judgment of eviction passed by the learned Rent Controller.

Landlord claimed that for the last one year, he is unemployed and wants to start his own business of spare parts. He further pleaded that he is not occupying any other shop/building in the urban area of Kaithal and has not vacated any such building without sufficient cause after the commencement of the Act.

In the written statement, tenant pointed out that the landlord is owner of various other shops and have sold shop No.MCK-44/9 to Satish Kumar and Sarwan Kumar sons of Arjan Dass, vide sale deed dated 10.06.2004. It was further pleaded that another shop i.e MCK-41/9 has been sold to one Sunil Kumar on 09.01.2002.

Learned Rent Controller, after noticing that shop No.MCK 44/9 was under tenancy and hence, in possession of Arjan Dass and the property has been sold to his two sons of the tenant in possession, held that the landlord never came in possession of the shop.

With regard to shop No.MCK 41/9, it is admitted fact that Jagan Nath was sitting tenant on the shop. It is the case of the landlord that the shop was sold with tenant Jagan Nath in possession whereas it is the case of the tenant that the aforesaid Jagan Nath, the tenant, had vacated and thereafter it has been sold to Sunil Kumar.

Learned counsel for the petitioner while drawing attention of the court to the sale deed has submitted that it has been mentioned in the aforesaid sale deed that the possession of the shop has already been delivered to the purchaser.

It may be noted that this assertion in the sale deed is to be read in conjunction with the evidence lead by the parties. When the landlord appeared in evidence, he was confronted with the aforesaid sale deed and he explained that Sunil Kumar had taken possession from Jagan Nath directly.

Tenant has not lead any evidence to prove that the possession of shop No.MCK-41/9 ever came in possession of the landlord.

Learned counsel for the respondent-tenant submitted that as per Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973, landlord was required to plead that he is owner of the various properties and since he has failed to disclose, therefore, the rent petition was liable to be dismissed.

If one carefully reads Section 13(3)(a) of the Act, it is apparent

that a landlord is required to plead or prove three factors:-

- (i) he required it for his own occupation;
- (ii) not occupying any other building in the urban area concerned;
- (iii) has not vacated such building without sufficient cause after commencement of the Act 1949 in the said urban area.

In the present case, these three factors have been pleaded by the landlord in para 4(b) of the Act. Tenant has not lead any evidence to prove that the landlord ever came in possession of the shops/buildings which were owned or sold by him.

Learned counsel for the respondent-landlord further submitted that it was incumbent on the landlord to plead that these two shops which have been sold, never came in possession of the landlord.

It may be noted that once landlord has pleaded that both the shops are in possession of the tenant, there was sufficient compliance of the provisions of the Act. Thereafter, onus shifted on the tenant to prove that these shops ever came in possession of the landlord. Still further, in the present case, landlord has claimed that he was previously working with his father in the firm M/s Kisan Seeds. Thereafter, he tried his luck in the business of property broker but failed. It is his pleaded case that he is unemployed for the last one year and wants to start his business. Petition is dated 06.11.2006, which was presented on 07.11.2006. Once it is not proved on file that the landlord stands disqualified from seeking eviction, the limited right given to the landlord to seek eviction cannot be defeated only on the basis of clear and categoric evidence to that effect.

In view thereof, the judgment passed by the learned Appellate Authority is set aside and that of the trial court is restored.

The revision petition is allowed.

October 01, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No