

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1839 of 2011 (O&M)

Date of Order: 24.09.2018

Ghanshyam Dass

..Petitioner

Versus

Raj Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Puneet Kansal, Advocate,
for the petitioner.

Mr. I.D.Singla, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Landlord-petitioner is in the revision petition against the order passed by the learned Rent Controller, affirmed by the learned Appellate Authority, dismissing petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 from the shop in question.

Although, eviction was sought on 4 different grounds, however, only two grounds have been pressed in the revision petition. First is bonafide necessity of the landlord and the second is tenant having ceased to occupy the premises without any sufficient cause for a continuous period of 4 months prior to filing of the petition.

As regard personal necessity, both the courts have misread the evidence of AW1, the landlord, while recording finding that one shop is lying vacant. If one reads the statement in entirety, it is apparent that the landlord has specifically stated that he has 4 shops, out of which 3 are on tenancy, whereas 4th shop was merged with the house/residence 4-5 years back. The courts below have picked up one line in isolation of the entire

statement of the witness and held that one shop is available. Once landlord has clarified that the shop has been merged with the residence, therefore, the findings of the courts below that one vacant shop is available with the landlord is clear misreading of the evidence.

Still further if the courts are to decide the case on the basis of admission in oral evidence, such admission has to be categoric, specific and unambiguous. It is not permissible for the courts to pick one line and read it in isolation of the entire statement.

Learned counsel for the respondent, although, made sincere attempt however, could not point out that there is any categoric admission of the landlord to the effect that one vacant shop is available with the landlord.

As regard ground of cease to occupy the premises without any sufficient cause, landlord in his petition has pleaded that tenant has ceased to occupy the premises from October, 2004, although the petition was filed on 29.11.2005. The courts below have held that since landlord has pleaded that the tenant has ceased to occupy the premises since October, 2004, therefore, landlord was required to prove that fact.

It is not disputed that the tenant had installed a lathe machine which consumes lot of electricity. Sub Divisional Officer from the Electricity Department has been examined as AW4, who has deposed that as per his record, shop was found locked in August, 2005, October 2005 and December 2005 when official visited the premises for noting down reading from the electricity meter. He further deposed that only 90 units were consumed in June, 2005.

Still further, tenant has not produced any evidence apart from

oral statement to prove that he is still occupying the premises. No invoice of either sale or purchase of any material has been produced nor any invoice of the job work being carried out, has been brought on file.

Still further, tenant has not produced accounts books to prove that he continuous to run the business. Courts below have further erred in again misreading the statement of the landlord. The landlord when appeared in evidence has only stated to the effect that tenant has installed/set up a lathe machine and he works thereon. There is no admission of the landlord that the tenant continues to work on the lathe machine even during the period when allegations are that tenant has ceased to occupy the premises. At the cost of repetition, it is well settled that admission in oral evidence can be used only if the admission is categoric, clear and specific.

On this account also, learned counsel for the respondent could not draw attention of the court to any evidence which proves that the tenant continue to occupy the premises for continuous period of 4 months before filing of the petition. Respondent-tenant claims that he is running his lathe machine from the shop in question. On lathe machine, one can fabricate various items. This can be used as a job work or for manufacturing/fabrication of certain items but no evidence has been produced by the tenant in this regard to prove such manufacturing or fabrication by items.

Keeping in view the aforesaid facts, the revision petition is allowed, orders passed by the authorities below are set aside.

September 24, 2018**(ANIL KSHETARPAL)
JUDGE****nt**

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No