

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 1223 of 2018 (O&M)

Date of Decision: 22.02.2018

Dhanwant Singh Sandhu

....Petitioner

VERSUS

Harinder Singh Chahal

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. H.S. Vinaik, Advocate, Advocate
for Mr. Gurpreet Singh, Advocate
for the petitioner.

SURINDER GUPTA, J.

This is revision against order dated 03.10.2017 passed by Appellate Authority, Amritsar whereby order passed by learned Rent Controller ejecting the revision-petitioner from the demised premises and directing him to hand over vacant possession of the premises in dispute to landlord-respondent, was upheld.

2. The case of landlord-respondent, in brief, is that house in question was let out to revision-petitioner in April 2002 at monthly rent of ₹12500/-. After his retirement landlord-respondent made several requests to revision-petitioner to vacate the house but in vain. Ejectment of the revision-petitioner was sought on the ground of non-payment of rent from 01.04.2006; personal *bona fide* necessity of landlord-respondent as he wants to settle permanently at Amritsar after his retirement in February, 2008 from Air Force. Lease deed of the property in his possession at Pune had expired on 30.04.2009, which was extended for another one year, as revision-petitioner required the premises for marriage of his son. When landlord-

respondent came to Amritsar with all his belongings in April, 2010, revision-petitioner refused to hand over possession of the demised premises, compelling landlord-respondent to temporarily live in his sister's house. The revision-petitioner has also changed the user of the property from residential to commercial as he is running a boutique in this premises.

3. Learned Rent Controller allowed the ejectment on the sole ground that the premises is required by the landlord-respondent for his personal *bona fide* necessity.

4. The plea was raised before learned Rent Controller that the landlord-respondent is residing in Canada and does not require the demised premises.

5. Learned counsel for the revision-petitioner has argued that judgment of learned Rent Controller and the Appellate Authority are perverse as they have shifted the burden on the revision-petitioner to prove that the demised premises is not required by the respondent-landlord for his personal *bona fide* need. The onus is always on the landlord to prove this fact. In order to prove that landlord-respondent is permanent resident of Canada and never visited India, an application was filed under Order XLI Rule 27 CPC before the Appellate Authority to prove and produce on file passport of the landlord-respondent, which was wrongly declined. In case passport had been allowed to be produced, revision-petitioner could prove that landlord-respondent has never visited India after his retirement and does not require the demised premises.

6. The above plea raised by learned counsel for the revision-petitioner was also raised before Courts below and the Appellate Authority while discarding this plea has observed as follows:-

*“It is a well settled law that the landlord is the best judge of his need and it is for him and his choice as to where he wants to live. The tenant cannot dictate him the terms and premises can be got vacated by a landlord for his need as well as need of the family members. Reference in this regard can be made to the case law laid down in 1970 RCR (Rent) page 85 titled as **Shrimati Chandra Wati-petitioner Versus Shri Narain Dass-Respondent, 2013 (4) PLR 387 titled as M/s.Sant Footwear Pvt.Ltd. And Anr.-Petitioners Versus Daya Bindra-Respondent.** Moreover, if sons of the petitioner has gone out of country, then it does not mean that landlord and his wife should be compelled to live in a tenanted premises. The moving out of India of the sons of a landlord does not wipe out the need of the landlord. So in the present case even though the sons of the petitioner-respondent has gone out of India and doing job and studying in Canada, it does not mean that need of the landlord has come to an end and they should reside in the tenanted premises as per wish of the tenant. So from the above discussion and evidence on file the need of the petitioner-respondent is found to be bonafide. Thus I do not find any illegality in the findings recorded by the trial Court on issue number 2. So I concur with the findings of trial Court on issue no.2.”*

7. It is not disputed that the landlord-respondent has retired from Air Force and his sons are living in Canada. This mere fact gives no reason to draw a presumption that landlord-respondent is permanently staying there

and disbelieve his plea that he wants to settle permanently at Amritsar in the demised premises. As per landlord-respondent he had brought his belongings to Amritsar in April, 2010 on the undertaking of revision-petitioner that he will vacate the demised premises. When landlord-respondent reached Amritsar, revision-petitioner refused to deliver possession of the demised premises, compelling landlord-respondent to temporarily shift to his sister's house. Learned Rent Controller on the basis of evidence has observed that need of the respondent for the demised premises is *bona fide*. After making above observation, it was observed that once *bona fide* need is proved, the onus is shifted on the revision-petitioner to prove that it was not *bona fide*. While making above observation, learned Rent Controller never intended or has shifted the onus on revision-petitioner to prove in affirmative that the property is not *bonafidely* required by landlord-respondent.

8. The petitioner had moved an application under Order XLI Rule 27 CPC to produce additional evidence regarding the passport of landlord-respondent and that he owns other properties. About ownership of landlord-respondent regarding other properties neither any details were mentioned in that application, copy of which has been placed on file, nor additional evidence to this effect appears to have been pressed. So far as passport of landlord-respondent is concerned, production of the same was not sought when landlord-respondent appeared as witness or during pendency of the petition before learned Rent Controller. Even otherwise, passport is not a document to prove that landlord-respondent is a permanent resident of Canada. This plea of learned counsel for revision-petitioner that landlord-respondent has never visited India has no basis as he has appeared and

deposed in this case as witness. He intends to settle at Amritsar and had brought his belongings there, which reflects his intention to live there.

9. On perusal of judgments of Courts below, I find no legal or factual infirmity therein calling for any interference in this revision petition, which has no merit.

Dismissed.

February 22, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No