

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

CR No.1688 of 2015(O&M)

Date of decision: 18.5.2018

Magh Singh

.....Petitioner

VERSUS

Surjit Singh (since deceased) through LRs and another Respondents

Present: Mr. J.S. Lalli, Advocate for the petitioner.

Mr. K.S. Rekhi, Advocate for the respondents.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

Challenge in the present petition has been directed against order dated 02.09.2014 passed by the Rent Controller, Ludhiana whereby the petitioner and another have been ordered to be evicted from tenancy premises i.e. shop situated at Mandi Mullanpur, Ferozepur Road, Ludhiana detailed in head-note of the application for eviction on the ground of arrears of rent and bona fide personal requirement of Ravinder Singh son of Surjit Singh/landlord (since deceased) and order dated 21.02.2015 whereby the appeal preferred by petitioner and another against the eviction order came to be dismissed by the Appellate Court, Ludhiana.

In brief, Surjit Singh sought eviction of the petitioner on the premise that he is in arrears of rent at the rate of Rs.2500/- per month with annual increase of 10% w.e.f January 2002. Petitioner has violated terms and conditions of oral tenancy and without consent of landlord has parted with possession of the demised shop to Harnek Singh son of the petitioner.

The respondent requires the demised shop for his personal necessity for business of his son namely Ravinder Singh. It is averred that Surjit Singh has become old, infirm and is unable to earn livelihood for the whole family. Both sons of respondent are unable to pull together jointly in family business and they want to settle their own business. The respondent wants to open the shop of stationery and general store for his elder son namely Ravinder Singh. He has also sought eviction of the petitioner and another that they are a source of great nuisance. A passage in the form of stairs going to residential portion of the property of the respondent is adjacent to the tenancy premises/shop in question as shown in the site plan. The petitioner and his son with a view to harass the old and ailing respondent used to block and put hindrance in the said passage. They would intentionally throw wastage of dairy products and dirty water in front of the passage. They have made life of the respondent miserable and he (respondent) cannot allow the petitioner to continue as tenant in the shop.

The petitioner filed reply and in turn controverted the allegations with regard to his being in arrears of rent at the rate of Rs.2500/- per month w.e.f January 2002. It is averred that petitioner No.1 took the shop in question from the respondent in the month of December 1978 at a monthly rent of Rs.250/- but later the rent was increased from time to time and the present rent is Rs.600/- per month apart from electricity, water and sewerage charges. The rent upto December 2008 has been received by the respondent but he did not issue any receipt on the pretext that in case he issues any receipt he has to face some problems regarding house/income tax etc. The respondent started pressurizing the

petitioner to enhance the rent from Rs.600/- to Rs.5000/- or in the alternative to vacate the shop. He threatened to dispossess the petitioner forcibly and illegally which forced him to file a suit for permanent injunction against the respondent wherein the respondent made a statement not to dispossess the petitioner except in due course of law. The respondent refused to receive settled rent of Rs.600/- per month. Rent is due against the petitioner since January 2009.

To controvert plea of bona fide personal necessity, it is averred that the respondent was having four shops and one of the shops was given to Gill Medical Hall which is adjacent to the shop in question. In one shop, respondent was running a flour mill and another shop was being run by one son of the petitioner for doing toy business. Recently, the respondent demolished the shop in which his son was running a toy shop and thereafter the other shop wherein the respondent was running a flour mill. The respondent raised new construction and let out the same to State Bank of India. The respondent wants to give more portion/shop to State Bank of India by getting the same vacated from the existing tenant at higher rent. The respondent has also filed eviction petition against other tenant who is running shop under the name and style of Gill Medical Hall. The respondent is a big landlord and has various movable and immovable properties situated at Mandi Mullanpur and other areas. The alleged need to settle the son in the shop in question is mala fide, false and frivolous on its face. All other material averments of the eviction application have been denied with a prayer for dismissal of the same.

The respondent filed rejoinder and controverted the averments made in the written statement.

The controversy between the parties led to framing of following issues by the Rent Controller:-

1. Whether the respondent is liable to be ejected from the tenancy premises? OPP
2. Whether the respondent is in arrears of rent w.e.f. January 2002 till today? OPP
3. Whether the respondent has sublet the demised premises to respondent No.2? OPP
4. Whether the demised premises is required by the petitioner for his personal use and necessity? OPP
5. Whether the petition is not maintainable? OPR
6. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. After having heard counsel for the parties in the light of materials on record the Rent Controller passed the eviction order on the twin grounds noticed hereinbefore. With regard to arrears of rent, it has been held that the tenant has not paid rent w.e.f. 01.01.2002 to 01.12.2008 and petitioner No.1 is liable to pay rent to the respondent w.e.f 01.01.2002 to 01.12.2008 and the subsequent period after tendering the rent in the Court till his eviction. However, the Rent Controller held the rate of rent at Rs.600/- per month and rejected plea of the respondent with regard to rate of rent to be Rs.2500/- per month with provision of increase at the rate of 10% per annum. Issue No.3 with regard to sub-tenancy was answered against the respondent/landlord.

Feeling aggrieved against the eviction order passed by the Rent Controller, the petitioner and his son (alleged sub-tenant) filed an appeal before the Appellate Authority at Ludhiana but challenge to the eviction order remained unsuccessful.

Feeling dis-satisfied, the instant petition has been filed in 2015.

Counsel for the petitioner would argue that plea of the respondent that the shop in question is required for bona fide personal need of Ravinder Singh is liable to be rejected for failure of respondent/landlord to plead and prove the essential ingredients of Section 13 (3) (a) (ii) of the East Punjab Urban Rent Restriction Act, 1949 (in short '1949 Act'). To bring home his contention, it is argued that Surjit Singh sought eviction of petitioner on the premise that shop in question is required for use by his son Ravinder Singh as Ravinder Singh wanted to open the shop of stationery and general store in the demised shop. In para 6 of the petition (Annexure P-1), it has been averred to the following effect:-

“the petitioner does not own or possess any other property within the limits of Municipal Committee of Mandi Mullanpur and has also not got vacated any other property within the limits of Municipal Committee of Mandi Mullanpur without sufficient cause after the commencement of 1949 Act.”

It is argued with vehemence that Ravinder Singh appeared in the witness box to establish plea of the respondent/landlord with regard to bona fide personal requirement of shop in question for Ravinder Singh. Neither in the petition nor in his statement on oath recorded by Ravinder

Singh by way of affidavit tendered in examination in chief (Annexure P-4), it has been averred that Ravinder Singh does not possess any other non-residential property in the urban area concerned nor had vacated any such building without sufficient cause after commencement of 1949 Act, therefore, eviction application on the ground of personal necessity is liable to be dismissed on this core alone. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Ajit Singh and another vs. Jit Ram and another, 2008(4) RCR (Civil) 390**. Further reference has been made to judgments of this Court **Shankar Lal Vs. Madan Lal and others, 2011(1) RCR (Rent) 139** and **Manmohan Lal Vs. Shanti Parkash Jain, 2014(2) RCR (Rent) 222**.

Another submission made by counsel is that plea of the respondent raised in para 6 of the eviction application also gets falsified and belied in the light of facts averred in rejoinder filed by the respondent wherein he has admitted that recently he demolished two shops and let out the same to State Bank of India by raising new construction. It is argued that as the respondent is guilty of concealing material facts, it negates his plea that need projected by him is bona fide, true and free from malice.

Counsel for the respondent, on the contrary, has supported the eviction order passed by the Rent Controller. It is argued that besides eviction on the ground of bona fide personal necessity of Ravinder Singh, the Rent Controller ordered eviction on the ground of arrears of rent w.e.f January 2002 till filing of the eviction application but petitioner did not challenge that ground of eviction before the Appellate Court nor offered to pay arrears of rent for the aforesaid period either during pendency of appeal before the Appellate Court from October 2014 to February 2015 nor

gave any proposal for clearing arrears of rent before this Court since March 2015 till date. It is further argued that as a matter of fact, petitioner neither challenged findings of the Rent Controller upholding plea of the respondent that he is in arrears of rent w.e.f. 01.01.2002 nor asserted his entitlement to be given time by the Rent Controller for tendering outstanding arrears of rent in the light of judgment of Hon'ble the Supreme Court **Rakesh Wadhawan v. Jagadamba Industrial Corporation, (2000-2)131 P.L.R. 370.**

Counsel for the petitioner, in reply, would urge that in the grounds of appeal, the petitioners have challenged findings of the Rent Controller on issues No.1, 2, 4, 5 and 6, specifically mentioned in para 2 of the grounds of appeal. Further argued that even in para 12 of the grounds of appeal, there is a reference that eviction application is the result of counter blast to suit for permanent injunction as if any rent was due as alleged by the respondent or nuisance was created, why the respondent did not take any action and kept mum since 1995 and filed the eviction application after the suit for permanent injunction was filed by Magh Singh. In addition, it is argued that the Appellate Authority both in para 9 and opening lines of para 21 of the judgment has mentioned that the Rent Controller allowed the ejectment petition on the ground of bona fide necessity and dismissed it on other grounds, sufficient to show that the Appellate Authority has not adverted to the issue of eviction on the ground of arrears of rent. He would pray that petitioner -may be allowed an opportunity to tender the outstanding arrears in terms of order of the Rent Controller.

Counsel for the respondent is not in a position to counter submissions made by counsel for the petitioner that the respondent (since deceased) and his son Ravinder Singh failed to comply with requirements of Section 13(3) (a) (ii) of the 1949 Act as it has neither been pleaded nor proved that Ravinder Singh is not occupying in the urban area concerned any other such building and nor he has vacated such a building without sufficient cause after commencement of 1949 Act, in the urban area concerned. The Rent Controller and the Appellate Authority failed to appreciate this vital aspect and case of the respondent/landlord suffers from a serious infirmity in this regard and application for eviction on the ground of bona fide personal need of Ravinder Singh is liable to be rejected on this ground alone. The contention raised by the petitioner is squarely covered in his favour by judgment of Hon'ble the Supreme Court in **Ajit Singh and another's case** (supra) and judgments passed by this Court cited at bar. This apart, plea raised by the respondent in para 6 of the eviction application reproduced hereinbefore gets falsified and belied in view of the averments raised in the rejoinder, admitting contents of written statement that the respondent recently demolished two shops and let out to State Bank of India after raising new construction. If the respondent had bona fide need of a shop for the business of Ravinder Singh, there was no reason for him to demolish two shops and let out the same to State Bank of India. The matter would have been different had the respondent disclosed these facts in the eviction application and explained his position and circumstances under which he demolished those shops and let out the same to State Bank of India. Examined from any angle, plea of the respondent with regard to bona fide personal necessity cannot be allowed to sustain

and eviction qua this ground is set aside for the reason that the Courts committed a serious error rather illegality for their failure to appreciate the aforesaid vital facts in the light of necessary requirements of Section 13(3)(a)(ii) of the 1949 Act.

This brings the Court to eviction of petitioner on the ground of arrears of rent. Perusal of the grounds of appeal would reveal that in para 2, it is mentioned that findings of the lower Court on issue No.1, 2, 4, 5 and 6 are against record of the case. Paras 3 to 5 relates to eviction on the ground of personal necessity. In para 6, there is reference to eviction on the ground of nuisance though the Rent Controller has not passed an order of eviction on the ground of nuisance. In para 12, there is reference to petition being filed as a counter-blast to the suit for permanent injunction titled Magh Singh Vs. Surjit Singh and the respondent would not have kept mum since 1995 if any rent was due or petitioner created nuisance. However, there is no specific challenge to findings of the Rent Controller holding the petitioner to be in arrears of rent since January 2002 to 01.12.2008. The Appellate Authority in para 9 of the judgment has mentioned that the trial Court allowed the ejectment petition on the ground of bona fide necessity and dismissed it on other grounds. Again in para 21, a similar reference has been made. It appears that as the petitioner did not make any submission to challenge findings of the Rent Controller allowing eviction on the ground of arrears of rent, under a bona fide mistaken impression, it was recorded by the Appellate Court that eviction has been allowed only on the ground of personal necessity. I stand fortified in my observations from the fact that in the petition filed before this Court, no such averment has been raised that the petitioners challenged findings of

the Rent Controller qua arrears of rent or made any submissions in this regard before the Appellate Authority but the said authority neither dealt with their contentions nor decided the same. So far as averments raised in para 2 of the grounds of appeal, a single line in the said para is not sufficient to accept contention of the petitioner that any specific challenge was raised against findings of the Rent Controller qua arrears of rent. In the given scenario, even if the petitioner was entitled to an opportunity to pay outstanding arrears of rent found outstanding by the Rent Controller, petitioner could assert such a right before the Appellate Authority by referring to judgment of Hon'ble the Supreme Court in **Rakesh Wadhawan's case** (supra). As petitioner neither pressed his right to an opportunity to tender outstanding arrears of rent in terms of order passed by the Rent Controller before the Appellate Authority nor raised any such plea before this Court since filing of petition in 2015 till it was finally argued by the parties, the petitioner has waived his right to seek opportunity for tendering outstanding arrears of rent by relying upon judgment in **Rakesh Wadhawan's case** (supra). In this view of the matter, I am of the considered opinion that eviction order on the ground of arrears of rent is liable to be affirmed and ordered accordingly.

For the foregoing reasons, the petition is partly allowed. Eviction of petitioner on the ground of personal necessity is ordered to be rejected. However, eviction on the ground of arrears of rent is affirmed. No order as to costs.

MAY 18, 2018

'D. Gulati'

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no