

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

Date of decision: 22.3.2018

1.

CR No.1515 of 2018(O&M)

Tilak Raj

.....Petitioner

VERSUS

Nemi Chand (since deceased) through his LRs

.....Respondent

2.

CR No.1516 of 2018(O&M)

Arjun Dass

.....Petitioner

VERSUS

Nemi Chand (since deceased) through his LRs

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Varun Sharma, Advocate for the petitioner.

REKHA MITTAL, J.

This order will dispose of CR Nos.1515 and 1516 of 2018 as identical questions of law and fact are involved for adjudication. For the sake of convenience, facts are taken from CR No.1515 of 2018.

Nemi Chand (since deceased) represented by his legal representatives (in short 'LRs') Devender Kumar and others filed petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short 'the Act') on the ground of non-payment of rent; the shop has become unsafe and unfit for human habitation; the petitioner/tenant has constructed a cupboard in the eastern wall of the shop without consent of

the landlord, raised the floor up to 4 feet and repaired walls of the shop that led to impairment in value and utility of the building and bona fide personal necessity of the shop for business and residence of Nitesh Aggarwal son of Devender.

The Rent Controller allowed the eviction only on the ground that the suit property is rendered unfit for human habitation by deciding issue No.(iv) in favour of the respondent-landlord and against the petitioner. The order passed by the Rent Controller led to filing of separate appeals, one by petitioner Tilak Raj and other by respondent Devender Kumar son of late Nemi Chand and the said appeals along with the appeals subject matter of CR No.1516 of 2018 were decided by a common judgment dated 06.12.2017 passed by the Appellate Authority, Rewari whereby appeal preferred by the petitioner was dismissed but appeal filed by Devender Kumar – landlord was partly allowed and the eviction of the petitioner was also ordered on the ground of personal necessity of the landlord.

Feeling aggrieved against judgments passed by the Courts, petitioner- tenant is in revision before this Court.

Before advertng to the submissions made by counsel for the petitioner, it is appropriate to state facts of the case in brief raising the questions with regard to shop being unsafe and unfit for human habitation and personal necessity of the respondent/landlord. As per order passed by the Rent Controller, it is averred in sub para (b) of first para to the following effect:-

“(b) The shop is hundreds years old and owing to the wear and tear over the years, the property in dispute has become

unsafe and unfit for human habitation. The petitioner has explained in detail how the lime mortar has lost its binding capacity and the “Kadies” have worn off. Deep cracks have developed in the suit property.

With regard to personal necessity sub-paras (d) and (e) read as follows:-

“(d) The petitioner is in need of the shop and the Ist floor of the building for personal necessity to set up a shop and live there as he has no other place to reside or set up his business in.

(e) Nitesh Aggarwal eldest son of petitioner No.1 Devender is unemployed since year 2009 it is intended by the petitioner to set him up in business in this shop.”

The Appellate Authority accepted appeal of the landlord qua personal necessity by relying upon judgments of Hon’ble the Supreme Court and this Court **Ram Das Vs. Ishwar Chander and others, 1988 (1) RCR 625, Raghunath G. Panhale Vs. M/s Chagan Lal Sundarji and Co., 1999(2) RCR (SC) 485, Dhannalal Vs. Kalawatibai and others, (2002) 6 Supreme Court Cases 16, Atma S. Berar Vs Mukhtiar Singh, (2003) 2 Supreme Court Cases 3, Joginder Pal Vs. Nayal Kishore Behal, AIR 2002 Supreme Court 2256, Balwant Singh Chaudhary and another Vs. Hindustan Petroleum Corpn. Ltd., 2004(1) RCR (Civil) 487.** Reference has also been made to certain other judgments of Hon’ble the Apex Court referred to in para 50 of the judgment. Eventually, the

Appellate Authority has recorded its findings in para 55 of the judgment, reproduced hereinbelow for ready reference:-

“55. Needless to say, the appellant-tenant has no right to challenge the factual aspect of the necessity as proved on record by the appellant-landlord Devender and his son Nitish Aggarwal. Then, it is a fact that the landlords are residing at Delhi at present and if it is presumed that they having their business there, they cannot be precluded from starting their near business at Rewari specially it is deposed by Devender that the business at Delhi is not enough to earn income for all family members and he wants to start separate business of his son, who wants to start his business at Rewari and for which he requires to demolish the demised premises and this stand of the landlord and his son being unrebutted and the appellant-tenants have no ground to challenge it and thus, it is proved that the necessity projected by the landlord is well founded and it is not mere wish and then, it is totally unfair on the part of the learned Rent Controller to deny the ejection on this ground simply mention two lines that he or she has not satisfied with the evidence on record without discussing the evidence and nature of the evidence and the reasons for not explaining and the learned Rent Controller has not clarified the topic but also a one line order which cannot be termed a judgment as required under the law and thus it results into miscarriage of justice and liable to be set aside. On the contrary, in view of the unrebutted evidence on record, the plea of the landlord is well founded and the appellant-tenants are required to be ejected on this ground also.”

Counsel for the petitioner by referring to averments raised in the application for personal necessity of the landlord and observations made by the Appellate Authority in para 55 reproduced hereinabove would argue that the Appellate Authority on its own has introduced a new case for the landlord and accepted his plea of personal necessity, therefore, judgment passed by the Appellate Authority in this regard cannot be allowed to sustain and liable to be set aside. It is argued with vehemence that the Appellate Authority has held that the landlord cannot be precluded from starting their new business at Rewari. It is deposed by Devender that

the business at Delhi is not enough to earn income for all family members and he wants to start separate business of his own at Rewari and for which he requires to demolish the demised premises. It is argued that it is none of the plea of the respondent in the application that business at Delhi is not enough to earn income for all family members and for that Devender wanted to start separate business at Rewari in the tenanted premises. It is further argued that as per settled position in law evidence beyond pleadings cannot be looked into much less to formulate basis for grant of eviction.

Another submission made by counsel is that need projected by the respondent is not bona fide and genuine rather the respondent is hell bent to seek eviction of the petitioner who earlier failed to get favourable order in proceedings initiated by Nemi Chand, father of Davinder Kumar in December 1999 on the ground of personal necessity and premises being unfit and unsafe that came to be dismissed by the Rent Controller, Rewari vide order dated 23.10.2001 and the appeal filed by Nemi Chand was dismissed by the Appellate Authority on 11.05.2004.

I have heard counsel for the petitioner, perused the paper-book and testimonies of Nitesh Aggarwal son of Devender Kumar Aggarwal AW-7 and Devender son of Late Sh. Nemi Chand AW-8, copies whereof were supplied by counsel for the petitioner during the course of hearing.

Perusal of averments raised in sub paras (d) and (e) noticed hereinbefore leaves no manner of doubt that as per the case set up by the respondent, the respondent is in need of the shop and the first floor of the building to set up a shop and live there. Nitesh Aggarwal, eldest son of Devender is stated to be unemployed since the year 2009 and it is intended

by the respondent to set him up in the business in the shop. As has been rightly argued by counsel for the petitioner that it is none of the plea of the respondent/landlord that business at Delhi is not enough to earn income for all family members and for that Devender wanted to start separate business at Rewari.

In order to appreciate challenge to findings of the Appellate Authority qua personal necessity of the respondent, this Court has to examine testimonies of Nitesh Aggarwal AW-7 and Devender Kumar AW-8. Counsel for the petitioner made a thorough reading of statements of the witnesses, both examination in chief and cross examination. He has failed to point out any such fact elicited in their cross examination to create a slightest doubt with regard to bona fide of the respondent that the shop in question is required for start of business of clothes and readymade by Nitesh Aggarwal who has passed his 10+2 in the year 2008 and since then he is unemployed. Merely because Devender Kumar and his family is residing in Delhi for the past about 22 years, it cannot be construed that Nitesh Aggarwal would not like to shift to Rewari for the purpose of doing his business in the shop in question. There is nothing on record suggestive of the fact that after completion of his education since 2008, Nitesh is involved in any commercial activity. Devender Kumar has three sons and Nitesh Aggarwal is eldest of them. Nitesh has explained as to how he entertained an idea of doing the business of readymade clothes as his Mama (mother's brother) namely Gopal Bansal runs the shop of readymade clothes and he goes there at the shop of Mama. Taking into consideration averments raised in the application for eviction when examined in the light of testimonies of Nitesh Aggarwal and Devender

Kumar, it is difficult to accept contention of the petitioner that merely because the Court in appeal has taken into consideration additional facts deposed by Devender Kumar which is otherwise beyond pleadings, findings recorded by the Appellate Authority accepting plea of the respondent qua personal necessity of the premises in question for business and residence of Nitesh Aggarwal is to be entertained with doubt. As a matter of fact, Nitesh Aggarwal and Devender Kumar were subject to cross examination at length but counsel for the petitioner failed to shatter evidential value of their statements much less to create a chink in the bona fide personal necessity projected by the respondent.

The Appellate Authority has made reference to series of judgments rendered by Hon'ble the Supreme Court while dealing with the question of bona fide need of the landlord. There cannot be any dispute about the settled position in law that words 'bona fide' certainly connotes that the need must be pure, genuine or in other words it should not be fanciful or unreasonable or a camouflage to recover vacant possession of the tenanted premises. In view of the above, intervention in the findings that the respondent has been able to prove bona fide personal necessity of the shop in question for business to be started by Nitesh Aggarwal son of Devender Kumar is not warranted, in exercise of limited revisional jurisdiction.

Counsel for the petitioner has not advanced any argument to challenge findings recorded by the Courts that the shop in question has become unfit and unsafe for human habitation. I would hasten to add that the respondent wants to use the shop in question for business of Nitesh Aggarwal after demolishing and raising fresh construction. In this view of

the matter, consistent findings recorded by the Courts with regard to the shop having become unfit and unsafe are liable to be affirmed and ordered accordingly.

To be fair to the petitioner, counsel raised a mercy plea that as the petitioner is doing his business in the shop for the past more than 40 years, it would be extremely difficult for him to resettle in business at an alternative place in case eviction order is affirmed. It may be true that the petitioner may find it difficult to move from the place used by him for the past several decades but that itself cannot be a ground to negate plea of the respondent either with regard to personal necessity of the landlord or the shop having become unfit and unsafe for human habitation.

For the foregoing reasons, the petitions fail and are accordingly dismissed in limine.

No order as to costs.

MARCH 22, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no