

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

CR No. 2166 of 2016(O&M)
Date of Decision: October 25, 2018

Jagjit Publishing Company Ltd. ---Petitioner

Versus

Mrs. Maninder Jaspal Singh ---Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Paramjit Batta, Advocate for the petitioner

Mr. Salil Sagar, Senior Advocate with
Mr. Sankalp Sagar, Advocate and
Mr. Sunil Kumar, Advocate for the respondent.

HARINDER SINGH SIDHU, J.

The tenant has filed this revision petition impugning the order dated 11.08.2014 of the Ld. Rent Controller, Chandigarh, whereby, the eviction-petition filed by the land-lady has been allowed. Also impugned is the order dated 15.02.2016 of the Appellate Authority, Chandigarh whereby its appeal has been dismissed.

For facility of reference, the parties will be referred to as per their status in the eviction petition. The land-lady would be referred to as the 'petitioner' and the tenant as the 'respondent'.

The petitioner filed the eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 seeking eviction of the respondent from House No.3037, Sector 19-D, Chandigarh. It was pleaded that the said house was earlier owned by the late husband of the petitioner.

It was let out to the respondent through lease-deed for a period of three years commencing from 01.05.2002 on a monthly rent of Rs.15,000/- excluding water and electricity charges. In the lease-deed there was a provision for increase of the rent by 5% every year. After the death of her husband, the petitioner had succeeded to his estate and had become the owner and landlord of the premises. The respondent company had been paying rent to her through cheques. She had received rent upto 30.04.2005. Though, the lease-deed was not renewed but the respondent continued to occupy the said premises. The petitioner served a notice to the respondent dated 08.09.2005 terminating the tenancy. The petitioner required the demised premises for her own use and occupation. She was not in possession of any residential premises in the urban area of the Chandigarh nor had she vacated any such premises after the enforcement of the Act.

In the written statement filed by the respondent, a preliminary objection was raised that the petition was not maintainable being barred by the provisions of Order 2 Rule 2 CPC. The petitioner had earlier filed an ejectment petition against the respondent on the ground of non-payment of rent. It was dismissed as withdrawn without liberty to file a fresh petition. It was also pleaded that the petitioner was well settled in a business in Delhi and did not require the demised premises for her personal need. The petition had been filed with mala fide intention of extracting a more favourable deal by selling the house after getting it vacated on false pretext of personal need. It was pleaded that the husband of the petitioner while renting out the premises w.e.f. 01.05.2005 had agreed to sell the same to the respondent for Rs. 50 lacs. It was for this reason that the lease-deed was not

got registered. He had promised to return within three months for execution of the sale deed and had asked the respondent to get the resolution passed and also take other steps as may be necessary for the sale. Unfortunately, he expired before the three month period. After his death, the petitioner also had made a firm commitment to the respondent to honour the agreement made by her husband.

The following issues were framed by the Rent Controller:

- “1. Whether the respondent is liable to be evicted from the premises in question i.e. H. No. 3037, Sector 19-D, Chandigarh on the ground of personal necessity?OPP*
- 2. Whether the petitioner is not maintainable being barred by provision of Order 2 Rule 2 CPC?*
- 3. Whether the petitioner has concealed the material facts from the Court at the time of filing of petition? OPP*
- 4. Relief.”*

In order to prove her case, the petitioner examined herself as PW-1. Her son Harpreet Singh appeared as PW-2. Major B.M. Singh, a relation of the petitioner (the petitioner is his wife's cousin) and a resident of Chandigarh appeared as PW-3. Various documents were also produced.

On behalf of the respondent, Joginder Singh, Ex- Managing Director of the respondent Company, appeared as RW-1; Jagjit Kaur, the Managing Director of the respondent Company appeared as RW-2; Surender Singh Engineer who had signed the lease deed between the petitioner and the respondent appeared as RW-3; B.S. Walia General Manager of the respondent Company appeared as RW-4. Various documents were also produced.

The Ld. Rent Controller allowed the petition. Regarding the

plea of bona fide necessity it was held that nothing had come on record to disprove the plea of the petitioner regarding her personal necessity for the use and occupation of the demised premises. Regarding the promise of the husband to sell the premises to the respondent company for which the respondent-company had placed reliance on correspondence between the respondent and the petitioner and resolution of the company, the Ld. Rent Controller, held that there was no written agreement to sell between the husband of the petitioner and the respondent. Moreover, no suit for specific performance had been filed by the respondent against the petitioner. The plea that the petition was barred by Order 2 Rule 2 CPC was also negated by holding that the earlier petition on the ground of non-payment of rent was withdrawn as the respondent paid the arrears of rent upto January, 2007, which were received by the petitioner. It was observed that the ground of personal necessity constituted a different cause of action than the ground of non-payment of rent. Hence, Order 2 Rule 2 CPC was not attracted.

Ld. Appellate Authority affirmed the finding of the Ld. Rent Controller.

Mr. Paramjit Batta Learned counsel for the respondent-tenant has assailed the findings of the of the Rent Controller and the Appellate Authority while Mr. Salil Sagar Sr. Advocate has defended the findings and contended that there is no merit in the revision and it deserves to be dismissed.

Mr. Batta strenuously urged that it had been wrongly held that the bona fide necessity of the petitioner has been proved. He contended that the evidence of the witnesses of the petitioner had not been appreciated in

the correct perspective. The petitioner appearing as PW-1 and her son Harpreet Singh appearing as PW-2 had admitted that they had never resided in Chandigarh. They had also admitted that they had no relatives or friends living in Chandigarh. Even the dimensions of the premises was not known to PW 2. The petitioner in her cross-examination had stated that she had only two children. A son who was working as Project Manager in Bangalore and a married daughter, who was settled in USA. She admitted that during the entire twenty year service of her husband from 1970 he stayed in Delhi. He had never remained posted in Chandigarh. The house had been constructed by her husband's father. PW-2 son of the petitioner had also admitted that he had no personal necessity to stay in the demised premises in Chandigarh. He admitted that he had been working in Bangalore for over nine years and was residing there with his in- laws. He had never tried to get himself transferred from Bangalore to Chandigarh or Delhi. He also admitted there is no branch of the Company in Chandigarh.

Ld. Counsel for the petitioner pointed out that other than Delhi, the petitioner also had a house in Hyderabad. Besides, she had a flourishing business in Delhi and there was no reason for her to shift to Chandigarh. He, thus contended that the projected personal need of the petitioner was not bona fide.

The aforesaid contentions have already been considered by the Rent Controller as well as the Appellate Authority. It has been noticed that the petitioner only had a DDA flat in Vasant Kunj, Delhi which comprised of two rooms and one study room. She was staying all alone in Delhi. She categorically stated that she wanted to shift to Chandigarh. PW 2 had also

stated that his mother wanted to shift to Chandigarh and they did not want to sell the property. He stated that the house in Chandigarh was more spacious than the one in Delhi. Living in Chandigarh was more comfortable than in Delhi. Even the cost of living in Delhi is more than in Chandigarh. PW3 stated that the petitioner and her husband had been telling him, that after retirement they would settle in Chandigarh. In the face of all this, the mere fact that the petitioner had not stayed in Chandigarh earlier and that she had no friends circle was not a ground to doubt her bona fide need. It was for the petitioner to decide where she wanted to reside in her old age. The tenant could not dictate his terms to the petitioner.

Ld. Counsel for the petitioner as well as the respondents have referred to a number of decisions where the need was accepted as bona fide or not. These decisions need not be referred to, as in the present case, on the basis of the evidence the need of the petitioner has been found to be bona fide by the Rent Controller and the Appellate Authority. There is no perversity in the appreciation of evidence. This finding of fact cannot be reopened.

The other contention of the Ld. Counsel was that the husband of the petitioner had agreed to sell the house to the respondent for a sum of Rs. 50 lakhs, but he unfortunately died before the sale could be effected. The respondent had passed a resolution in that regard. Initially, the petitioner had also affirmed that she would honour the commitment of her husband. Reference was made to a letter dated 26.08.2003 Ex.RW 4/4 wherein the petitioner had asked the respondent to verify the market rate of the property and that if she gets a good offer she would like to sell the

house. In this regard both the Rent Controller and the Appellate Authority have held that, firstly there is no written agreement to sell. Secondly, even if the petitioner or her late husband initially desired to sell the house, there could always be a change of mind. If the petitioner, after earlier contemplating its sale, thereafter, decided to reside and settle in the house, the need could not be held to be not bona fide.

Mr. Sagar relied on various decisions of the Supreme Court where also after having evinced a desire to sell the house to the tenant, the landlord later changed his mind. The Supreme Court held that this fact, of itself, would not cast a cloud on the bona fide need of the landlord.

In ***Shashi Kapila v. R.P. Ashwin, (2002) 1 SCC 583*** the Supreme Court rejected similar contention of the tenant by observing as under:

“13. The second limb of the contention is that when the landlord himself had agreed to transfer his rights to others, such a stance is nugatory to his claim that he genuinely needs the building for his own occupation. At the first blush the argument appeared forceful because the bona fides of the landlord’s need could possibly get eclipsed when the landlord himself wanted his rights in the building to be alienated to other persons. But when we delved into the matter we found that genuineness of the landlord’s need remains unimpaired despite his earlier inclination to sell the building. We shall now state the reasons.

14. We pointed out above that the agreement to sell was executed on 17-4-1986. It has been stipulated therein that the sale deed should be executed and registered within three months from the said date. It is the admitted case that the sale deed was not executed within that time. The landlord filed a petition for eviction only 6 years thereafter. In the petition for eviction he has stated that he was residing at Mysore and he shifted his residence to Bangalore and has been staying in a temporary accommodation as the building belonging to another person was given for his occupation. He further said that he is unable to continue in the said building for various reasons. It is not disputed that the landlord is now residing in the building belonging to somebody else.”

In ***Atma S. Berar v. Mukhtiar Singh, (2003) 2 SCC 3***, it was observed as under:

“12. Let us revert back to the facts of the case. Can it be said that the desire of the landlord to be in his own house and live comfortably in his

own castle — every home is a castle to the inmate — restricting his movements so as to adjust with an ailing physique and weakening faculties is unnatural, illusory, a pretext or mere pretence for getting rid of the tenant? What is there to demonstrate that the need is divorced of reality, sincerity and honesty? Fed up by the litigation and alarmed by the delays which eviction matters unfortunately take in law courts, having acquired a proverbial notoriety, brought down the landlord on his knees and he offered the tenant to sell his house so that he could settle himself by utilizing the sale proceeds in some other house but in the heart of Moga tehsil which he loves, for, he was born there and remained attached to it in spite of moving to places. There is no evidence adduced nor any material brought on record to hold that the landlord had ever tried to sell the house to anyone other than the tenant himself or at any time before and after the month of January and February 1990. We must give weight to the factor that the landlord has not felt shy of admitting having written the two letters — rather having negotiated the sale with the tenant — but then he assigns a reason which sounds reasonable and probable and explains his conduct. His determination to live in his own house is emboldened by the attitude of the tenant. We find nothing unnatural about it. The learned Appellate Authority took into consideration the entries contained in the passport showing the landlord's frequent movements between India and Canada wherefrom the Appellate Authority inferred that the appellant's links with Moga were still alive. The learned Senior Counsel for the respondent criticized this finding submitting that the passport entries show the landlord's entry into India but not necessarily his stay at Moga. Suffice it to observe, where else and for what the landlord, having reached India, would have gone excepting visiting his own place which is the natural urge of any son of the soil to do while visiting the country or returning to the motherland”

Thus, there is no merit in this contention of the Mr. Batta.

Mr. Batta then urged that the petitioner had earlier filed a petition seeking eviction on the ground of non payment of rent which had been withdrawn without seeking permission of the Court to file another petition. The instant petition filed soon thereafter on the ground of personal need was barred in terms of Order 2 Rule 2 of the Code of Civil Procedure.

There is no merit in this contention as well.

Mr. Sagar has referred to a Full Bench decision of this Court in ***Harnam Singh v. Surjit Singh, ILR (1984) 1 P&H 430.*** In that case the question for consideration of the Full Bench was :

“Is the requirement of personal use and occupation by the landlord under sub-section 3(a)(i) a distinct and separate cause of action from that of non-payment of rent under sub-section 2(i) for the eviction of the tenant as prescribed by section 13 of the East Punjab Urban Rent Restriction

Act, 1949”

The Full Bench concluded that the requirement of personal use and occupation by the landlord is a distinct and separate cause of action from that of non-payment of rent by the tenant.

It was observed thus:

“17. To finally conclude it must be held that on the larger scheme of Section 13 of the Act; the specific language of the respective provisions; on principle; and precedent, the requirement of personal use and occupation by the landlord is a distinct and separate cause of action from that of non-payment of rent by the tenant. The answer to the question posed at the very outset is, therefore, rendered in the affirmative.”

The two causes of action i.e., non-payment of rent and requirement for personal use and occupation, being different, the bar of Order 2 Rule 2 of CPC would not be attracted.

Thus, there is no merit in this petition and the same is dismissed.

October 25, 2018

(HARINDER SINGH SIDHU)
JUDGE

gian

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No