

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

**Civil Revision No.3348 of 2009 (O&M)
Date of Decision.05.10.2018**

Satya Devi

...Petitioner

Vs

Mohinder Singh and another

...Respondents

2. Civil Revision No.4981 of 2010 (O&M)

Mohinderpal Arora

...Petitioner

Vs

Satya Devi

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the petitioner in C.R. No.3348 of 2009 and
for the respondent in C.R. No.4981 of 2010.

Mr. Vikas Mohan Gupta, Advocate
for the petitioner in C.R. No.4981 of 2010 and
for the respondent No.2 in C.R. No.3348 of 2009.

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two revision petitions bearing Nos.3348 of 2009 and 4981 of 2010. C.R. No.3348 of 2009 has been preferred at the behest of the landlord against the orders passed by the Rent Controller and the Appellate Authority whereby rent petition seeking eviction of the tenant from the demised premises on the ground of personal necessity had been dismissed and C.R. No.4981 of 2010 at the instance of the tenant-Mohinderpal Arora challenging the judgment dated 31.03.2010 passed by the Appellate Authority setting aside the order of the Rent Controller, allowed the rent petition and ordered to be evicted from the demised premises.

C.R. No.3348 of 2009 has arisen out of Rent Application No.11 of 1998 wherein Satya Devi claimed herself to be the landlady/owner of the property/shop shown as red in the site plan attached with the petition adjoining the street of Adarsh Theatre, Lalheri/Chandigarh Road, Khanna, Ludhiana sought eviction of the tenants on the premise that her husband, who was working Engine Driver in Steel Rolling Mill situated at Village Saunti, District Fatehgarh Sahib died in an accident. Her only son namely Karam Singh was married at that time and the remaining five children i.e. three daughters and two sons were unmarried. In the year 1992, her daughter-in-law had also died and two sons and one daughter of her deceased/daughter-in-law had been residing with her.

Respondent No.1-Mohinder Singh had taken the premises on rent in the month of September, 1984 on a monthly rent of ₹300/- per month. In 1986, rent was increased to ₹600/- per month and from January, 1992 onwards to ₹1000/- per month. There was a relationship of landlord and tenant. The respondent had paid rent upto May, 1995 but thereafter was in arrears. Respondent No.1 also sublet the demised premises to respondent No.2. The petitioner required the demised premises for her grandson Sukhwinder Singh, who was residing with her and wanted to open computer centre in the demised premises.

The aforementioned rent petition was contested by respondent No.1. The factum of sub tenancy and arrears of rent was denied. It was averred that factum of the petitioner being the landlady and death of her husband was admitted, much less, death of

daughter-in-law but according to the tenant, she had committed suicide and not died of illness. The factum of grandchildren living with the petitioner was also denied. Her grandson Sukhwinder Singh was residing with his parents and not with the petitioner. However, sub-para 'c' with regard to necessity was not emphatically denied. It was averred that son of the petitioner was alive and therefore, she had no responsibility to settle the grandson.

Respondent No.2, Paramjit Singh filed separate written statement by taking objection that the rent petition was not maintainable as the rent tendered by him in the Court was accepted by the landlady. He had taken the premises on rent from the petitioner at monthly rent of ₹250/- per month, which was increased to ₹600/- per month and had been carrying on the business of selling milk under the name and style of Pammi Dairy. The petitioner used to take milk from respondent No.2 and rent was settled against the bills of milk.

Rejoinder was filed by the landlord to the written statement filed by respondent No.2 denying all the averments made in the written statement by making reiteration of the averments made in the rent petition and respondents No.1 and 2 were referred to as tenant and sub-tenant.

The Rent Controller rejected the rent petition while rejecting the grounds of subletting and personal necessity. The appeal preferred before the Appellate Authority also met with the same fate.

C.R. No.4981 of 2010 has arisen out of Rent Application No.10 of 1998 filed against one Mohinderpal Arora for eviction of

the shop as detailed in the head note of the petition on the grounds of personal necessity and arrears of rent.

Respondent-Mohinderpal Arora had taken the premises on rent in the month of October, 1986 on a monthly rent of ₹500/- per month. In January, 1991, rent was increased to ₹800/- per month and from January, 1995 onwards to ₹1000/- per month. There was a relationship of landlord and tenant. The respondent had paid rent upto April, 1995 and thereafter was in arrears of rent. The petitioner required the demises premises for her grandson Gurpreet Singh, being 10+2 passed and wanted to start business for him, in the demised premises. It was stated that his father was living separately but Gurpreet Singh was residing with her.

The aforementioned rent petition was contested by the respondent-tenant, Mohinderpal Arora by raising objection that the petition was not maintainable as it was an outcome of counter blast. There was an attempt to forcible dispossession, which compelled him to file the civil suit. Arrears of rent was also denied on the premise that it was daughter of the landlady, who had been receiving rent and issued receipts dated 1.4.1986, 1.12.1986 and other receipts. The factum of the grandchildren living with the petitioner was denied. Her grandson namely Gurpreet Singh had got settled and was doing business at Aurangabad (Maharashtra) for the last about 7-8 years.

The Rent Controller on the basis of evidence brought on record dismissed the petition but the Appellate Authority noticing that as it was the grandson who had been receiving the rent on behalf of her grandmother, found the personal necessity to be genuine and

ordered eviction by granting two months time to deliver possession.

Mr. Amit Jain, learned counsel appearing on behalf of the petitioner-landlady in C.R. No.3348 of 2009 and for respondent in C.R. No.4498 of 2010 submitted that both the Rent Controller and the Appellate Authority did not examine the evidence brought on record which proved that the premises in question were required for grandson of the petitioner-landlady, who was residing with her and the abovesaid factum was not emphatically denied while refuting the specific pleading in the rent petition, thus, there is gross illegality and perversity in ignoring the material evidence.

In another petition i.e. C.R. No.4981 of 2010, he defended the order of the Appellate Authority on the premise that it was tenant's own admission that Gurpreet Singh, grandson of the landlady, was accepting the rent on her behalf, thus, plea of the tenant that the grandson was residing with his father in Aurangabad was falsified. The respondent-tenant himself admitted the rent receipts issued by the landlady, her daughter and grandchildren. The school record i.e. admission registers Ex.P6 for class 10th and Ex.P7 for Class 12th had also been brought on record but the same were not appreciated by the Rent Controller.

Mr. Vikas Mohan Gupta, learned counsel appearing on behalf of the petitioner-tenant in C.R. No.4981 of 2010 and for respondent in C.R. 3348 of 2009 supported the order of the Rent Controller and the Appellate Authority passed in Rent Application No.11 of 1998 which is subject matter of challenge in C.R. No.3348 of 2009 but challenged the order of the Appellate Authority arising

out of Rent Application No.10 of 1998 on the premise that the Appellate Authority abdicated in reversing the finding of the Rent Controller whereby the rent petition was dismissed. The statement of the petitioner-tenant was made in proceeding under Section 10 of the Code of Civil Procedure and not in the main rent petition. The landlady had failed to prove bona fide necessity for her grand son. In the absence of discharge, no occasion arose to rebut. The driving licence of the grandson was fake and fabricated document. The attendance register, voter card and other identity cards were required to be proved to establish that Gurpreet Singh was residing with her grandmother/landlady. The witness PW5 Gurmail Singh, Junior Assistant Officer, DTO Ludhiana, who appeared from DTO, Ludhiana stated that the original record did not mention about the address of Khanna. The rent receipts Ex.R1 to R15 were for the year 1992 to 1995 whereas the stand of the petitioner-tenant was that Gurdeep Singh was residing with her father at Aurangabad from 1996 onwards.

In another case i.e. C.R. No.3348 of 2009, it was submitted that concurrent finding of fact and law cannot be interfered with unless and until some irregularity and illegality is found.

I have heard learned counsel for the parties, appraised the paper book and of the view that C.R. No.3348 of 2009 arising out of decision rendered in Rent Petition No.11 of 1998 deserves to be allowed and C.R. No.4981 of 2010 arising out of decision rendered in Rent Petition No.10 of 1998 is liable to be dismissed.

The case culled out in para 1 and 3 (c) of the amended

rent petition and that of the stand taken in the written statement needs to be extracted. The same reads as under:-

“1. That the petitioner is a widow lady and is owner/landlord of the property shown as red in the site-plan attached with the petitioner and detailed and described in the head note of the petition. The husband of the petitioner was Engine Driver and was doing service at Village Saunti, Tehsil Amloh, District Fatehgarh Sahib in Steel Rolling Mill and the husband of the petitioner died in an accident due to the gas tank blast in the year 1978. The petitioner has no source of income at the time of the death of her husband Late Labh Singh. Her only one son was married name Karam Singh. All the other five children were unmarried, three daughters and two sons. That in the year 1992 her daughter-in-law has been died after illness. The two sons and one daughter of her deceased daughter-in-law has been resided with the petitioner. Her three sons are residing separately at different places.

3 (c). That the petitioner requires the shop in dispute for her personal necessity as the grandson of the petitioner has passed the Computer Course and now he is unemployed. His mother has been died in the year 1992. His father is residing separately in another city. The petitioner is residing with her grandson Sukhwinder

Singh son of Karam Singh. The grandson of the petitioner wants to start the business of Computer Centre or any other business he likes and as such the shop in question is required by the petitioner for her grand son for personal necessity. It is pertinent to mention here that the petitioner has no other property except the residential house and shops

Written statement (reply on merits).

“1. That para No.1 of the amended petition is correct to the extent that the petitioner is a widow lady and her husband has died. The daughter-in-law of the petitioner has not been died due to illness, but she committed a suicide. The grand children of the petitioner are residing with their parents and not with the petitioner as alleged. The complete false and concocted story has been put forward in this petition.

3 (c). That sub-para 'c' of the petitioner is totally wrong and hence denied.”

On cumulative reading of the aforementioned averments, it is discernible that the factum of grandson living with the grandmother has not emphatically been denied by the tenant. This fact has totally escaped notice of the Rent Controller and that of the Appellate Authority. Ample evidence had been brought on record to establish that the grandson was living with the landlady-Satya Devi. It is settled law that the tenant cannot dictate terms to the landlord as the Courts, while deciding the *lis*, dealing with the question of

personal necessity has to sit in the armchair of the landlord. A specific question was put to Satya Devi in cross-examination and the answer was that she had let out the shop to Mohinder Singh and not Paramjit Singh-respondent No.2. Respondent No.2 had been sitting in the shop in dispute alone from the last 20 years. This piece of evidence also escaped notice of both the Authorities that it was respondent No.2, who was carrying on the business since 1986. In my view, the respondents had demolished their own case by getting the answer from the questions put to the landlady.

Be that as it may, the fact remains that personal necessity of landlady had been proved on record as her grandson had been proved to be staying with her, for, the father of the unemployed grandson was living in different city. The need cannot be said to be mala fide or whimsical but actually bona fide.

Submission of Mr. Vikas Mohan Gupta has not been able to cut ice to enable this Court to form a different opinion as not only receipts but other documentary evidence viz; voter card and identity cards established on record that grandson was living with the grandmother. A tenant cannot assume the role of owner and object to the necessity on receipt of request to vacate. It has been seen in the past that such rent petitions were contested tooth and nail when there was no need in the family to carry out the business and premises were often let out but cause of action arises in eventuality of carrying on the business at their own level. It would be totally immaterial and insignificant if one line in the cross-examination of the witnesses of the landlord is found here and there but the fact of

the matter is that driving licence of Khanna and other voter/identity cards have not been emphatically rebutted by the tenant.

As an upshot of my finding, the orders passed by the Rent Controller and Appellate Authority which are subject matter of challenge in C.R. No.3348 of 2009 are set aside and the order passed by the Appellate Authority which is subject matter of challenge in C.R. No.4981 of 2010 is upheld. Resultantly, C.R. No.3348 of 2009 preferred by the landlord is allowed and C.R. No.4981 of 2010 preferred by the tenant is dismissed. Respondent-tenant(s) are granted two months time to vacate the premises.

(AMIT RAWAL)
JUDGE

October 05, 2018
Pankaj*

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No