

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

Civil Revision No.1874 of 2018 (O&M)

Date of Decision: July 13, 2018

Raj Kumar

...Petitioner

Versus

Dinesh Kumar

...Respondent

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

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

Mr.Namit Gautam, Advocate for
the respondent.

HARINDER SINGH SIDHU, J.

This revision petition has been filed by the tenant challenging the order dated 30.10.2017 passed by Ld.Rent Controller, Jalandhar, whereby, the eviction petition of the respondent-landlord has been allowed as also the order dated 22.02.2018 of the Ld. Appellate Authority, Jalandhar, whereby, his appeal against the order of the Rent Controller has been dismissed.

Respondent filed a petition under Section 13 of the East Urban Rent Restriction Act, 1949 for ejectment of the petitioner from two shops in property No.NK 208, Charanjitpura, Jalandhar. It was pleaded that property No.NK 208 was previously owned by Joginder Pal Chopra. After his death it devolved on his legal heirs, who sold the same vide two sale-deeds dated 31.3.2004 and 5.4.2004. Vide sale deed dated 31.3.2004, area measuring 3

Marlas was purchased by Satish Kumar- father of the respondent - landlord. The respondent- landlord purchased two shops constructed over an area measuring $\frac{1}{2}$ marla vide sale dated 5.4.2004. These two shops were in the possession of the petitioner as tenant who was earlier a tenant under Joginder Pal Chopra. After the latter's death the ownership rights in the property No.NK 208 including the two shops devolved on his legal heirs. After the purchase of two shops by the respondent – landlord, the petitioner became his tenant. It was further pleaded that the respondent- landlord is co-sharer in property No.NK 166, Charanjitpura, Jalandhar along with his brother Mani Gupta on the basis of sale-deeds. After demolishing the existing structure on this property, a new building was constructed. In the said building, there is residential accommodation of the joint family namely Satish Kumar father of respondent and his sons i.e., the petitioner and his brother Mani Gupta. It was pleaded that on the front side of this property there are six shops, which are being used as a store by the respondent-landlord and his brother Mani Gupta for stocking the material relating to their catering business, which is being run in the name and style of 'Bansal Taste Maker'. It was also pleaded that the respondent was co-owner to the extent of $15 \frac{1}{2}$ Marlas in property No.NK 209. The other co-owners being his father Satish Kumar and his brother Mani Gupta. The said property was purchased jointly by them vide various sale-deeds. After demolishing the old construction, a triple storey building was constructed thereon with joint family funds. The father of the respondent Satish Kumar is running a sweet shop as its proprietor under the name and style of 'Lally Sweet Shop' on the ground floor of this property No.NK 209. First and Second floor thereof are

used for preparation of sweets. It was also pleaded that respondent had earlier filed an ejectment petition on the ground that he required the shops for carrying on the business of packaging material. However it was dismissed vide order dated 30.4.2009 of the Rent Controller, Jalandhar. Appeal preferred by the respondent was also dismissed by the Appellate Authority, Jalandhar on 17.1.2011.

Ejectment was now sought on the ground that the petitioner was in arrears of rent and that the respondent required the premises in order to set up office for his catering business. It was stated that he intended to remove the intervening wall between the two shops and after amalgamating them, office of catering business would be set up there. It was pleaded that the respondent and his brother did not possess any shop to be used as their office for the catering business, which has expanded in recent years.

The petitioner- tenant contested the petition by contending that the landlord already possessed two offices for carrying on the business of catering. Hence, his need was not bona fide. He had earlier filed an ejectment petition claiming personal necessity for running the business of packaging material, which was dismissed by the Rent controller vide order dated 30.4.2009 on the ground that he was already running business under the name of 'Lally Sweet Shop' and hence the shops were not required for the business of packaging material. It was argued that the matter could not be re-agitated again. It was further contended that there were eight shops in property No.NK 166 and not six as claimed by the landlord. Hence, there was concealment of material facts. It was further pleaded that on the board

specifically mentioned that head office of 'Bansal Taste Maker' was in 'Lally Sweet Shop'. It was, thus, pleaded that there existed two offices of the business of catering and the shops in dispute were not required for running the business of catering.

The Ld. Rent Controller upheld the ground of bona fide need of the respondent based on the pleading that there were six shops in property No.NK 166 (site plan Ex.P7), which were being used as store for stocking the material of catering, that the building in property No.209 (site plan Ex.P8) was being used by Satish Kumar, father of the landlord for running 'Lally Sweet Shop' and two shops falling in property No.NK 208 (site plan Ex.P2) were the ownership of the father of the respondent. Hence, it was held that it had been established that the respondent was not having any space for opening his office for running the business of catering under the name and style of 'Bansal Taste Maker' and the shops under the tenancy of the petitioner were required by the respondent for opening his office. It was held that the petitioner-tenant has not been able to establish that the respondent landlord has any other property, which had not been disclosed by him, where he could open his office. Regarding the contention that there were eight shops in property No.NK 166, it was held that the petitioner has failed to prove this. The photographs Ex.R9 to R11, in fact, indicated that there were only six shops. Further, it was held that the dismissal of the earlier ejectment petition, would not constitute res judicata as it had been filed on a different ground and for a different need.

The Ld. Appellate Authority affirmed the finding of the Ld. Rent Controller and dismissed the appeal of the petitioner.

Ld. Counsel for the petitioner primarily argued that the courts below have erred in concluding that in property No.NK 166, there were only six shops. With reference to photographs Ex.R9 to R11, he stated that it is clear from these photographs that there are eight shutters, thereby indicating that in fact, there were eight shops and not six. He further argued that the site plan Ex.P8 of property No.NK 209 showed three shops as having been sold and one office space, which was in addition to the space used for 'Lally Sweet Shop'. He further referred to the cross-examination of the respondent and contended that the respondent had admitted that Ex.P8 (the site plan of property No.NK 209) disclosed three shops and one office. No doubt he had explained that the three shops had been sold, but he admitted that in the site plan, it had not been indicated as to whom the three shops had been sold. Nor was any document regarding the sale placed on record in the court file. Ld. Counsel contended that it was for the respondent- landlord to explain to whom the shops had been sold and when. Further, the existence of the office space in Ex.P8 which was being used for 'Bansal Taste Maker' had been concealed in the petition. The landlord had also not explained why the office existing in NK 209 was not or could not be used as office of catering business.

Ld. Counsel for the respondent, on the other hand argued that the ejectment was sought in respect of two shops in NK 208. In the eviction petition there was full disclosure of the entire property owned by the landlord whether individually or jointly. With regard to the contention of the Ld. Counsel for the tenant that the photographs showed eight shutters and

hence there are eight shops in property NK 166 he explained that one of the

shops was a corner shop which had three shutters two in the front and one on the side. He stated that in the eviction petition it had been specifically mentioned that NK 209 was jointly owned by the respondent-landlord, his father and his brother. With regard to the argument that the landlord had not disclosed as to whom the three shops had been sold he referred to his replication where he had stated that the shops were owned by his brother and he had sold them. With regard to an office space mentioned in Ex P-8 he stated that catering business is separate from the sweet shop and the small office in Ex P8 does not satisfy the requirements of the catering business. He further argued that the tenant had himself admitted that only the branch office of 'Bansal Taste Maker' was in Lally Sweet Shop.

Having heard Ld. Counsel for the parties, I am of the view that there is no merit in the petition. The main contention of the Ld. Counsel for the petitioner was that in the property NK 166 there were eight shops and not six as had been mentioned in the petition. He asserted so only on the basis that the photographs of the shops showed eight shutters. It has been explained by the Ld. Counsel for the respondent that the corner shop has three shutters, two in the front and one on the side. This explanation is credible. The number of shutters do not determine the number of shops. A single shop may have two or more shutters. Apart from his bald assertion on the basis of the number of shutters, the petitioner has not been able to establish that in fact there existed eight shops and not six. Hence there is no merit in this contention of the Ld. Counsel for the petitioner. Regarding his argument that there is already an office of 'Bansal Taste Maker', in property

NK 209, it need only be said that the petitioner himself admitted that it was

the branch office of 'Bansal Taste Maker'. Further as is clear from the site plan Ex P8, the office space is a small space almost integrated with `Lally Sweet Shop'. In the light of the expansion of their business the need of the respondent to have a proper office space in NK 208 by amalgamating the two shops into one cannot be held to be not bona fide. The argument of the Ld. Counsel for the petitioner that the respondent ought to have stated to whom the three shops mentioned in site plan Ex P 8 were sold is also without merit in the light of the respondent's stand in the replication that the shops belonged to his brother who had sold them.

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

July 13, 2018

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(HARINDER SINGH SIDHU)

JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No