

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2093 of 2014 (O&M)

Date of Order:14th August, 2018

Mohinder Kaur

..Petitioner

Versus

Amarpreet Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Dr. Amol Rattan Singh Sidhu, Sr. Advocate, with
Mr. Raghav Gulati, Advocate,
for the petitioner.

Mr. Puneet Jindal, Sr. Advocate, with
Ms. Neha Anand Jain, Advocate,
for the respondent.

ANIL KSHETARPAL, J.

Landlord-petitioner is in the revision petition against the judgment passed by the learned Appellate Authority, reversing the judgment of the learned Rent Controller.

Only ground which survives for consideration is bonafide requirement of the landlady.

Premises in question is front portion of the residential building abutting the road on which a commercial building has been constructed and let out. Landlady claims that after the death of her husband on 26.09.2005, she wants to open a restaurant in the aforesaid premises.

Whereas tenant contested the aforesaid petition on the ground that she is owner of various other commercial properties and she is reasonably placed and being old lady, the requirement as pleaded is not

bonafide.

In the written statement, it was controverted by asserting that the petitioner and her sons are running industry for manufacturing of mattresses and foams and they are also running many multi storied showrooms in Jalandhar and outside.

In replication, she pleaded that the said business was of her husband who unfortunately expired and after the death of the husband, the said business has been inherited by her two sons and the said business is now under the control and custody and gains of the two sons of the petitioner and she has no knowledge of the aforesaid concerns. She stated that she wants to have her own independent business and the present property is most suitable because it is part of the residential house where the petitioner resides.

Learned Rent Controller ordered eviction, whereas the learned Appellate Authority has reversed the judgment while giving the following reasons:-

- (i) a residential premises cannot be got evicted on the ground that need is commercial;
- (ii) she had sold her own property situated at 506, Model Town, Jalandhar during the pendency of the petition;
- (iii) a big show room measuring 20ft x 50ft has fallen vacant during the pendency of the eviction proceedings as a boutique which was being run by some other tenant has been closed down;
- (iv) landlady has concealed material facts from the courts.

As per income tax record she is partner to the extent of

33% in the business of manufacturing mattresses and foams and she has identified the commercial multi storied building belonging to the aforesaid firm.

This court has heard learned senior counsels for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

With regard to first reason given by the learned Appellate Authority, it is suffice to note that the property in question was let out for commercial purposes. This fact is not being disputed. The requirement being pleaded is also commercial. Hence, the distinction drawn by the learned Appellate Authority is erroneous. At present also an eating joint properly known as Head Quarter (Cafe Coffee day) is running from the premises in question.

As per definition of the “building” under Section 2(a) of the East Punjab Rent Restriction Act, 1949 (hereinafter referred to as 'the Act'), part of the building also falls within the definition of “building”. Section 2 (a) is extracted as under:-

2. Definitions

(a) "building" means any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, go-downs, out-houses, or furniture let therewith, but does not include a room in a hotel, hostel or boarding-house.

On careful reading of the aforesaid provision extracted above, it is apparent that a part of the building which was let out for commercial purpose, shall be treated as a building for the purposes of determining the nature of the property. In such circumstances, learned Appellate Authority committed an error in reversing the judgment on the ground that a

residential property cannot be got evicted on the ground of personal necessity.

Let's now deal with the second reason assigned by the learned Appellate Authority.

Landlady when she appeared in the evidence, she stated that she does not have any other commercial shop or commercial property in her name in the urban limits of Jalandhar, nor she has sold or occupied or rented out any property owned by her situated within urban limits of Jalandhar. In cross-examination, she was asked about property No.506, Model Town, Jalandhar, which according to the tenant had been sold. She expressed her ignorance by stating as under:-

“I do not know if myself along with my sons sold the property No.506, Model Town, Jalandhar, which is commercial property in the year 2007.”

Learned Appellate Authority merely on the basis of this statement, has held that she has sold commercial property No.506, Model Town, Jalandhar. Tenant did not produce any evidence to prove that property no.506, Model Town, Jalandhar, was owned and possessed by her. As per the requirement of the Act of 1949, ownership of other properties is not material for examining the bonafide requirement. What is required is that the landlord(landlady) is not occupying another building or has not vacated such building without sufficient cause after the commencement of this Act in the said urban area. Section 13(3)(a) is extracted as under:--

13. Eviction of tenants.

(1) XX XX XX

(2) XX XX XX

(3) (a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession-

(i) In the case of a residential building if -

(a) He requires it for his own occupation;

(b) He is not occupying another residential building, in the urban area concerned; and

(c) He has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area.

NOTE:- the word “residential” was struck down by the Hon'ble Supreme Court in the case of Harbilas Rai Bansal vs The State Of Punjab & Anr, 1996 SCC (1) 1. Hence, the statute as has been reproduced is to be read excluding the word residential.

In the absence of any evidence that property no.506, Model Town, Jalandhar, was ever occupied by the landlady, learned Appellate Authority committed an error in overlooking the fact that there is no evidence that landlady either occupied the aforesaid premises after the commencement of the Act or not.

Next reasons assigned by the learned Appellate Authority is with respect to availability of a big room measuring 20ft x 50ft during pendency of the eviction proceedings.

It is not in dispute that the aforesaid room is towards the rear side of the residential premises. The requirement of the landlady is to open a restaurant which would be more commercially viable if it is opened on the front and not on the rear side. The lay out plan which has been Ex. P1 clearly proves that towards the southern side of the property there is a road and the property in dispute is situated right on the road itself, having front of 19 ft. on the road. Remaining properties particularly the room which now has become available, is inside the residential building on the rear side.

Hence, even this reason assigned by the appellate authority is erroneous.

Last reason assigned by the learned Appellate Authority is with respect to income.

Petitioner-landlady is receiving income from the partnership business. Let's recapitulate that in the replication she has specifically stated that the aforesaid business earlier belong to her husband who has expired and now the business is under the control and custody of her two sons, who are managing the affairs and she has no control or custody of the aforesaid business and she has no knowledge of the same. When she appeared in the witness box, her attention was drawn to photographs Ex.R-1 to R-3 i.e. the commercial premises of Narula Foams. She was further asked whether she is a partner to the extent of 33% in Narula Foams along with Gurcharan Singh and Inderjit Singh, she admitted that fact.

It may be noted that Gurcharan Singh and Inderjit Singh are not her sons. Names of her sons are Harvinder Singh and Sharanpal Singh. In previous part of her statement, she has admitted that they have one factory and a showroom. However, she has explained that aforesaid property is owned by her sons as partners and the factory is also being run by her two sons. Once she had in the pleadings as well as in evidence clearly deposed that the aforesaid business or the premises was neither under her occupation nor she has any control over the same, it was for the tenant to rebut the aforesaid factual assertions. Tenant cannot just save himself and defeat the rights of eviction by pointing out from the income tax records wherein, landlady is depicted as a partner to the extent of 33%. Requirement of the Act is that another building shall be in occupation of the landlord. In the considered view of this court, such admission that she is partner in the partnership firm would not be sufficient to defeat the right available under

the Act. If a tenant wishes to defeat such right, which are already limited, tenant has to prove beyond any reasonable doubt that the landlord is in occupation of another suitable building or she has vacated without any sufficient cause such suitable building after the commencement of the Act. In the present case, landlady who was 61 years old at the time of filing of petition, has specifically pleaded that the aforesaid premises shall be suitable for her being abutting the residence.

Learned counsel appearing for the tenant has submitted that the petitioner had not pleaded necessary requirements of the Act as provided in Section 13(3)(a) of the Act while relying upon a Full Bench judgment of this court in the case of *Shri Banke Ram vs. Smt. Sarasti Devi, 1977 (79) PLR, 112* and therefore, petition itself was not maintainable.

In response thereto, learned counsel for the petitioner has pointed out that neither in the pleadings nor before the courts below, such objection was ever raised by the tenant-respondent. He submitted that for the first time in this court, tenant-respondent cannot be allowed to take a new objection. Learned counsel for the petitioner further while drawing attention of the court to the replication filed by the landlady wherein she specifically states that she is not in occupation of any other commercial suitable building and her statement in evidence to the effect that she is neither in possession of any commercial shop or property in her name nor she have sold, occupied, or rented out any property within the urban limits of Jalandhar, has submitted that requirement of the act have already been fulfilled.

No doubt, Hon'ble Full Bench has held that it is mandatory for the landlord to plead before the court necessary requirement of the Act.

However, it is also not in dispute that in the subsequent judgments, it has been laid down that if such requirements are fulfilled by leading evidence, a petition filed by the landlord would not be defeated merely on account of lack of pleadings.

In the present case, this court is not impressed with the argument of learned counsel for the respondent-tenant because admittedly respondent-tenant did not take objection at an appropriate time which would have enabled the petitioner-landlady to amend her pleadings. Secondly, before the courts below, such objection was admittedly never raised by the tenant-respondent. For the first time in the revision petition, tenant-respondent cannot be permitted to take landlady by surprise and defeat her right on a technical ground. Thirdly, in evidence these facts have been asserted by the landlady. Tenant has failed to prove that she is in occupation of any commercial premises suitable for her need or she has ever vacated such suitable accommodation after the commencement of this act. In absence thereof, this court is of the considered view that tenant cannot be permitted to defeat the right of the landlady only on technical ground.

Keeping in view the aforesaid discussion, the revision petition is allowed, the order passed by the learned appellate authority is set aside whereas the order passed by the learned rent controller is restored.

14th August, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No