

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.3070 of 2011 (O&M)

Date of Decision:14.03.2018

Pritam Singh

.....Petitioner

Vs.

Dr.Parshotam Lal

.....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Satbir Rathore, Advocate, for the applicant/respondent.

Mr.Tarundeep Kumar, Advocate, for the appellant.

RITU BAHRI, J. (ORAL)

The tenant/petitioner has come up in revision against the judgment of the Appellate Authority dated 18.03.2011, wherein, appeal filed by Dr.Parshotam Lal against the order dated 22.08.2008 has been accepted and he has been evicted from the premises on the ground of bonafide necessity pleaded by the landlord.

The landlord has filed an ejectment petition against the tenant on the ground that the building is required by him for his personal use and occupation i.e. for son and daughter-in-law who are running a hospital under the name and style of Sanjivni Hospital at Urmar and require a separate place for clinical laboratory. Besides that, there was no place to consult the patients, to advice the lady patients and that there was no separate space to conduct ECG and scanning etc.

The Tenant/respondent had made objection by filing his written statement pleaded that shop in dispute is not required by the land lord for his personal use and occupation and his son and daughter-in-law are already running the hospital, which could be used for his personal use by his son and daughter-in-law.

On the pleadings of the parties, following issues were framed by learned Rent Controller:-

1. Whether the respondent is liable to be ejected from the

shop in dispute fully detailed in the head note of the petition on the ground of non-payment of arrears of rent from 01.11.2005 till date? OPA.

2. Whether the shop in dispute is required from personal use and occupation of the petitioner/s son and daughter-in-law? OPA.
3. Whether the petition is not maintainable? OPR.
4. Whether the petitioner has no cause of action to file the present petition? OPR.
5. Whether the petitioner has no locus standi to file the present petition? OPR.
6. Relief.

The learned Rent Controller after hearing both the parties, dismissed the rent application by holding that it was not required for personal and occupation of the landlord.

In appeal, the appellate Court has reversed the aforesaid findings on the basis of statements made by PW-1-Parshotam Lal, PW-3 daughter-in-law of Parshotam Lal, PW-4 son of Parshotam Lal. It is reported that demised premises was required by them for running the hospital smoothly as there was no separate place for clinical laboratory, to consult the lady patients separately and no separate place to conduct ECG and scanning etc. As per statement PW-1 Parshotam Lal, shop has become unfit and unsafe. The tenant-Pritam Singh has appeared as DW-1 and stated that earlier the petitioner was doing medical practice in a shop adjoining the hospital and that shop was vacant as he was running the medical store of his son. From the statement of the landlord, it was made out there were two shops adjoining the hospital in which his son Vipin Kumar was running medical store and one another shop in which he himself was doing practice and his statement that shop in which he doing practice has become unfit and unsafe was no doubt by the appellate authority keeping in view the judgment passed by this Court in the case of Parikshit Suri and others Vs. Ashok Kohli and Anr. 2010 (Suppl.)CCC-649 (P&H) in which it has been held that fallowing the guidelines laid down by the High Court that bonafide requirement of the landlord cannot dictate terms or question by the tenant

and even Rent Controller cannot begin with the presumption that there was lack of bona fides of the requirement of the landlord and landlord would have complete freedom to decide nature of business which he would carry on. Keeping in view that the landlord had clarified that the position of his shops in the rent application and keeping in view that one shop is unsafe and unfit, the petition of the landlord has been ordered on the basis of bonafide necessity. Moreover, daughter and son of the petitioner have appeared and rightly given their versions which fulfill the criteria laid down by the High Court for eviction of a tenant on the ground personal necessity.

In view of the above, the present revision is being dismissed.

CM No.22364-CII of 2015

CM No.22,366-CII of 2015 has been filed in this case for fixing market rate of rent i.e. mesne profits for the use and occupation of the demised premises w.e.f. 18.03.2011. The present revision petition was admitted on 27.07.2011 and vide order dated 15.02.2012, dispossession of the petitioners was stayed subject to depositing all the arrears of rent along with interest @ 6% per annum within three weeks. The respondent-landlord has filed the application for fixing market rate of rent i.e. mesne profits for the use and occupation of the demised premises w.e.f. 18.03.2011 keeping in view the judgment of Hon'ble Supreme Court in the case of M/s Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd. 2005(1) RCR 1, State of Maharashtra Vs. M/s Super Max International Pvt. Ltd. 2009(2) RCR (Rent) 246 where, it has been held that the tenancy stands terminated with the passing of the decree of eviction and with effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises. Learned counsel for the applicant/landlord placed on record Annexure A-1 dated 11.06.2014 whereby rent of the other premises of exactly the same area in the same location is under the occupation of some other tenant at the monthly rent of Rs.9500/- per month. However, the said rent agreement was executed in the year 2014 and therein a specific clause that the rate of rent is to be increased every year @ 5%. Thus applicant/respondent is seeking payment of misne profit of Rs.10,000/- per month. In reply to this specific application, counsel for the petitioner has stated that rent note Ex.A1 on the record placed by the Respondent Landlord

is related to one Ketan Bali. This person has not occupied any shop at present nor this person is known to the petitioner nor any shop number has been given, whereas the shop of the petitioner is under the tenancy that has been shown in the site plan which is at serial No.8 at the spot Annexure P/1. This market is the old one whereas the extra modern market which was got prepared by Lakhwinder Singh is spacious with all modern facilities therein and thus the flooring as well as roof of the shop made by Lakhwinder Singh alleged landlord is made of wooden work in every shop and there is open space in front of the shop whereas on the other hand the shop in which shop No.8 in question is situated in the old one and the rent of all the shops is around Rs.400 and the landlord of these adjoining shop is the Municipal Committee Tanda and the rent of those shops is increased by 5% per annum and even the rent note attached by the respondent it has been mentioned that the rent of the shop shall be increased to the tune of 5% per annum and the rent fixed/settled by the parties and thus the respondent cannot claim the rent/damages on the basis of parity of the so called tenant.

After hearing counsel for the parties, even a perusal of the rent deed Annexure A-1/T placed on record by the landlord shows that petitioner/tenant has been bound to vacate the shop and owner will have right to evict him and recover the due rent with other expenses or cost from him through Court and keeping in view that owner Lakhwinder Singh who had executed the rent deed Annexure A-1/T, the mesne profit will be paid by the petitioner @ Rs.2000/- per month w.e.f. 18.03.2011. The petitioner-tenant is directed to make payment of mesne profit of Rs.2,000/- per month w.e.f. 18.03.2011 to 14.03.2019.

In view of the above, application for fixing the mesne profit is allowed and the main revision is dismissed as such.

(RITU BAHRI)
JUDGE

14.03.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No