

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

CR No.3714 of 2010 (O&M)
Date of decision : 08.08.2018

Sham Lal

...Petitioner

Versus

Asha Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Bahl, Sr. Advocate with
Mr. Akshay Rawal, Advocate for the petitioner.

Mr. Sanjiv Gupta, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM No.11997-CII of 2016

Dismissed, as not pressed.

Main case

Tenant-petitioner is in the revision petition against the order passed by the Rent Controller, ordering his eviction on the ground of bona fide requirement of the husband of one of the landlady namely Asha Rani, respondent No.1 in the present petition.

Learned Senior Counsel appearing on behalf of the tenant-petitioner has submitted that the statutory requirement of Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 have not been pleaded as the landlord was required to plead that he is not occupying any other building in the urban area concerned or has not vacated such building without any sufficient cause after the commencement of the Act of 1949 in

the said urban area. Hence, he submits that the revision is required to be accepted on this ground alone. He further submits that there are no pleadings of similar nature with regard to the husband of petitioner No.1 for whose requirement the eviction petition has been filed. He further submits that there is concealment of the fact by the landladies as the second shop has not been disclosed. He further submitted that it has come in evidence that the husband is already running a cooler repair shop from the tenanted premises and, therefore, he could not be said to be jobless.

On the other hand, learned counsel for the respondents has pointed out that the tenant-petitioner did not object or point out to the landlord that the necessary requirements have not been pleaded. He submitted that in absence of the pleadings, the landladies cannot be taken by surprise, as opportunity to the landlord to amend her pleadings has been lost. Hence, he submitted that the petitioner cannot be permitted to argue on this issue.

On the second argument of the learned counsel for the petitioner, learned counsel for the respondents has drawn the attention of this Court to the description of two shops given in Ex.P3, a judgment passed in a suit for specific performance. He pointed out that the location of the shop in the present proceeding and description of the property situated on all four sides are same in aforesaid suit . He pointed out that the same boundary and description of the property has been given in the petition for eviction, therefore, there is no second shop. He further pointed out that the tenant when appeared as RW1 in the evidence, has admitted that the landladies are not owners and are not in occupation of any other shop. He

further submitted that no doubt, it has been pleaded that the husband is unemployed, however, it has come in evidence that he is running a cooler repair shop in the tenanted premises, but no evidence has been led by the tenant to prove that on the day, the petition was filed, the husband was running a cooler repair shop. He submitted that the petition was filed in September, 2006, whereas the evidence was led in June, 2009. He submitted that it cannot be expected from the able bodied man to await for the eviction proceedings to mature before start working.

This Court has considered the submissions.

With regard to the first argument, this Court finds substance in the argument of the learned counsel for the respondents. The tenant, while filing the written statement, has only pleaded as under:-

“That the present petition has not been filed in accordance with provisions of law.”

If the tenant was serious in taking such objection, he should have objected to the same by specifically taking this objection, giving an opportunity to the landlady to amend the pleadings. Still further, it has already come in evidence of the tenant that the landladies are neither owner nor in occupation of any other premises.

With regard to the second argument, it may be noticed that the description of the properties surrounding the alleged two shops, as given in the suit which was filed on 10.12.2001 is as under:-

*“East:- House of Shri Sham Lal
West:- House of Shri Sohan Lal
North:- House of Shri Sham Lal
South:- Road.”*

and the description of the properties mentioned in the rent petition which was filed, is exactly the same, the same is extracted as under:-

*“North:- House of Sham Lal
South:- Road
East:- House of Sham Lal
West:- House of Sohan Lal”*

On the careful perusal thereof, it is apparent that the shop is only one and not two as claimed by learned counsel for the petitioner. Still further, the tenant has admitted that there is no other shop in possession of the landladies.

Similarly, with regard to the next argument of the learned counsel, it may be noted that no evidence has been led to prove that on the day when the eviction petition was filed, the husband of respondent No.1-landlady was running a cooler repair shop. It has come in evidence that the husband is running a cooler repair shop from a tenanted premises. Every owner is entitled to occupy his own building rather than continue to occupy the tenanted premises.

In view thereof, there is no ground to interfere.

Revision petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

08.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No