

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

117

CR No.2858 of 2018 (O&M)
Date of Decision : 02.05.2018

Budh Ram

..... Petitioner

Versus

Davinder Singh Bains

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Aalok Jagga, Advocate
for the petitioner.

AJAY TEWARI, J. (Oral)

This petition has been filed against the concurrent orders of the courts below ordering eviction of the petitioner from the shop in dispute.

The case of the respondent-landlord is that he had three contiguous shops and he had sought eviction of the tenants from all the three shops on the ground of personal necessity. It was his case that both he and his wife retired as Teacher and his son and daughter-in-law were also qualified and working as Teacher and they wanted to open a tuition center after combining all the three shops. Both the courts below having allowed the petition the petitioner-tenant is before me. At the very outset, it would be profitable to notice that though the revisional jurisdiction under the East Punjab Urban Rent Restriction Act, 1949 (for short '*the Act*') is wider than

that, say under Section 115 of the Code of Civil Procedure yet it can not justify that this Court turn itself into the Court of Rent Controller and appreciate the entire evidence *de novo* without having due regard to the concurrent findings of the courts below.

The first argument of the counsel for the petitioner is that once the premises were sought for the necessity of not only the landlord but his wife, son and daughter-in-law, it was incumbent upon them, if not to have pleaded so, at least, to have appeared as witness and stated so. In my opinion, this argument though not entirely meritless can not lead to the conclusion that in every case where the other members of the family did not appear as witness the landlord can never show bonafide necessity. No doubt if the other members of the family appear and testify the case of the landlord becomes much stronger but can it be said that if the other members of the family do not appear the case never be proved? I do not think that the law can go so far seeing that now the judicial view is veering around to the point (especially in cases of personal necessity) that the court has to presume that the landlord is speaking the truth and it is for the tenant to rebut the presumption. In the circumstances, the blanket argument that in the absence of the son, the daughter-in-law and the wife the petition had to fail is rejected. That leaves us with the testimony of the landlord. The landlord has come forward and stated his case and has not been shaken in cross-examination and, this coupled with the presumption alluded to earlier, leads me to the conclusion that he has established his personal necessity, at least on the date of filing of the petition.

Counsel for the petitioner has then argued that there is no

averment that the wife, the son and the daughter-in-law of the landlord did

not own or vacate any such property after the commencement of the East Punjab Urban Rent Restriction Act, 1949 (for short '*the Act*'). In my opinion, this would also not lead to an inevitable fatality. The intention of the Act is that a landlord who possesses or has vacated premises should not be allowed to profit from his own wrong and then evict the tenant from another premises. In the present case also, had it been the stand of the petitioner that either the landlord or his wife or son or daughter-in-law had in their possession or had vacated any premises, this argument would have been compelling but leave alone that, there is not even any averment that the landlord, his wife, his son or his daughter-in-law owned any other property anywhere else. Consequently, this argument is also rejected.

The third argument raised by counsel for the petitioner is that in reply to an application which had been moved by the petitioner the landlord had admitted that his son and daughter-in-law had immigrated to Canada and therefore the personal necessity ceased to exist on this score also. I find myself in disagreement with the argument of the counsel for the petitioner. In the first place, the position has to be seen as of the date of filing of the petition because otherwise a recalcitrant and obstructionist tenant would always try to keep a petition pending, thereby taking the family of the landlord as hostage i.e. to say either they starve or they give up the case after a petition is pending for years on end. The landlord or his family members cannot be reasonably expected to wait indefinitely, and who knows, when the shops are vacated, the son and daughter-in-law may come back. Consequently, this argument is also rejected.

Petition is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

May 02, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No