

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.2936 of 2018 (O&M)
Date of decision:13.07.2018.

Jagdish Rai Madaan

...Petitioner

Versus

Deepak Kapoor

....Respondent

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. B.S. Bhalla, Advocate for the petitioner.

Ms. Isha Goyal, Advocate for the caveator-respondent.

LISA GILL, J. (ORAL)

The petitioner-tenant is aggrieved of order dated 28.02.2017 passed by learned Rent Controller, Amritsar, whereby eviction of the petitioner from the demised premises has been ordered. The petitioner-tenant is also aggrieved of order dated 06.02.2018 passed by Appellate Authority, Amritsar, vide which appeal filed by him has been dismissed.

Brief facts necessary for adjudication of the case are that a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') was filed by the respondent-landlord, while pleading that the petitioner was inducted as tenant in two bedrooms, one dining-cum-drawing room, one kitchen, two bathrooms and two stores forming part of the property on the first floor of the demised premises w.e.f. 29.09.1987 at a monthly rent of Rs.1100/-. Petitioner was, thereafter, given another room on rent on the first floor w.e.f. 25.09.1991 and the total rent of tenanted portion was increased to Rs.1300/- per month. Eviction of the petitioner was sought on the ground that he had not paid or tendered the rent from February, 2010

and the demised premises was required by the landlord for personal use, occupation and bonafide personal necessity.

Petitioner resisted the petition while submitting that the petition was filed only with a view to pressurize him to increase the rent and hence the same was not maintainable. It was pleaded that the rent due from February, 2010 was not deposited as the landlord had not paid water and sewage charges to the concerned department. Respondent/landlord filed the petition only with the sole motive to harass and humiliate the petitioner. It was further pleaded by the petitioner that the landlord had sufficient accommodation. He was in possession of eleven rooms on the ground floor. Moreover, parts of the premises on the first floor were in possession of some other tenants as well and the necessity put forth by the landlord was not bona-fide.

Replication was filed by the landlord-respondent wherein the averments of the petitioner-tenant were denied. It was mentioned in the said replication that the petitioner had got vacated part of the ground floor from a tenant approximately sixteen/seventeen years ago and the accommodation so vacated was in a dilapidated condition and occupied by servants. Needs and requirements of the family had changed. Therefore, it could not be said that the premises in question were sufficient or that the premises were not required for the bonafide personal necessity of the landlord.

Following issues were framed by the learned Rent Controller, Amritsar: -

1. Whether the respondent is liable to be ejected from the demised premises on the ground of non-payment of rent? OPP

2. Whether petitioner requires the demised premises for his personal use and occupation and for personal use and occupation of his son and his family and relatives? OPP
3. Whether the respondent has become source of nuisance for the petitioner? OPD
4. Whether the petition is not legally maintainable in the present form? OPR
5. Whether the petitioner has no locus standi to file the present petition? OPR
6. Whether the petition is filed without any cause of action? OPR
7. Relief.”

Learned Rent Controller, on considering the facts and circumstances of the case as well as the evidence on record allowed the petition while holding that the respondent-landlord is entitled to recover possession of the demised premises on account of bonafide personal necessity. Therefore, eviction of the petitioner from the demised premises was ordered.

Appeal filed by the petitioner was dismissed by the learned Appellate Authority, Amritsar, on 06.02.2018. Hence aggrieved, the present revision has been filed.

Learned counsel for the petitioner submits that ground regarding non-payment of rent does not survive as the rent had already been tendered by the petitioner. However, it is vehemently argued that the bonafide necessity of the respondent-landlord has not been proved on record. It is contended that the landlord did not disclose that he had got part of the premises on the ground floor vacated at an earlier point of time. In his petition for eviction, the landlord to the contrary stated that he had not vacated any premises in the urban area. This pleading it is urged was absolutely false as

it is admitted by the landlord that the said premises on the ground floor were got vacated by him from a tenant namely V.G. Patel. Petition filed by the landlord in respect to premises held by V.G. Patel was allowed on 08.02.2000. The petitioner sought to lead additional evidence before the Appellate Authority to prove order dated 08.02.2000 but his application was dismissed primarily on the ground that this fact was duly mentioned by the landlord in his replication, thus stood admitted. The petitioner also moved an application for appointment of a local commissioner to determine the condition of the premises in question but the same, it is submitted, was wrongly dismissed by the learned Rent Controller. Civil Revision No.5321 of 2017 was filed by the petitioner to challenge rejection of the prayer for appointment of local commissioner. However, in the meantime, the main rent petition was decided, therefore, the matter was not pursued.

It is further argued that the family of the respondent-landlord comprises merely of the said landlord, his wife, son, daughter-in-law and two grand-daughters. Therefore, there is no requirement of the premises in excess of those already in possession of the landlord. He relies upon the judgments of Hon'ble Supreme Court rendered in **Dina Nath (deceased) through LRs and another Vs. Subhash Chand Saini and others, 2014 (11) SCC 20** and **Adil Jamshed Frenchman (D) by LR's Vs. Sardar Dastur Schools Trust and others, 2005 (2) SCC 476.** It is, thus, prayed that this petition be allowed.

Learned counsel for the caveator-respondent, however, submits that both the learned courts below have returned findings on proper appreciation of the evidence on record. It is contended that the family of the respondent consists of his wife, married son, daughter-in-law and two grand

children. They are in possession of the premises of the ground floor. It is vehemently denied that 11 rooms are available on the ground floor. It is further submitted that eviction of the tenant V.G. Patel in the year 2000 has been specifically mentioned in the replication filed before learned Rent Controller. There is no question of any concealment by the landlord. Therefore, application of the petitioner to lead additional evidence to prove order dated 08.02.2000 by the learned Appellate Authority, Amritsar cannot be a ground to set aside the impugned decision. It is not in dispute that after the eviction of V.G. Patel, the demised premises have not been let out on rent subsequently. It is, thus, prayed that this petition be dismissed.

I have heard learned counsel for the appellant and caveator/respondent and have gone through the photocopies of the record furnished in court today.

It is not in dispute that the premises in question as described in the foregoing paras, were taken on rent by the petitioner at the monthly rent/license fee of Rs.1100/- by executing a license deed on 29.09.1987. Thereafter, another room on the first floor was rented out to the petitioner on 25.09.1991. The monthly rent payable was Rs.3000/-. Thereafter, respondent-landlord sought eviction of the petitioner from the premises on the ground of non-payment of rent since February, 2010 as well as on the ground of personal necessity. In the amended petition under Section 13 (1) of the Act, it was specifically pleaded by the landlord that he had one son and a daughter. In the year 1987, his son was seven years old and daughter was four years old. Landlord's daughter was married four years prior to filing of the petition. She had two children. His son was married in the year 2007 having two daughters. It is further pleaded that the landlord had five sisters,

out of them two had since passed away. All the sisters have their own families and all of them are on good cordial terms with the landlord i.e. their brother. The landlord's son, daughter-in-law and grand-daughters are residing along with landlord and his wife on the ground floor of the house in question. The other family members often visit the landlord. There are only three bedrooms, a drawing room and a prayer room on the ground floor. The other rooms shown in the site plan attached with the petition are in dilapidated condition and occupied by their servants. It is further pleaded that when the premises of the appellant were rented out to the petitioner, the landlord's children were minor but with the passage of time they have grown up and married, having their own families. The landlord's son, who was married in 2007, was also living with the landlord along with his wife and children. There is insufficient space for all of them in the premises in his possession. As and when the married daughters or sisters of the landlord visit him along with their families, they are unable to provide proper space.

In my considered opinion, contention of learned counsel for the petitioner that bonafide necessity of the landlord is not proved, is not borne out from the record. Argument vehemently urged on behalf of the petitioner is that the landlord did not approach the court with clean hands as he did not reveal about a suit for eviction filed by him against the tenant V.G. Patel on the ground floor and that he had got possession of a few rooms on the ground floor of the house in question. The petitioner's application for additional evidence to prove on record, judgment dated 08.02.2000 passed by learned Rent Controller in respect to the eviction of V.G. Patel was wrongly dismissed. However, this argument is not tenable for the reasons as discussed hereinafter. In para 5 of the preliminary objections of the written

statement, the petitioner stated that the landlord had sufficient accommodation with him as he had eleven rooms in his possession on the ground floor. Replication was filed by the respondent-landlord. In reply to the preliminary objection, the respondent-landlord specifically denied the same and himself revealed that sixteen/seventeen years ago he had got vacated some of the rooms on the ground floor from another tenant namely V.G. Patel, but when he got possession of the said rooms the same were in dilapidated condition and they were now occupied by their servants. These could not be used for residence of the family members. Order dated 08.02.2000 is clearly admitted by the respondent-landlord. Recital in the eviction petition is that the landlord has not himself vacated any other accommodation in the urban area without reasonable cause, nor he owns or possesses any other property therein. Thus, it cannot be accepted that there is concealment of material facts by the landlord. In the factual matrix of the case, rejection of the application for leading additional evidence does not cause any prejudice to the petitioner and he cannot avail any benefit thereof.

Moreover, it is not in dispute that eviction of V.G. Patel was ordered in the year 2000 when the landlord's son was unmarried. Marriage of his son took place in the year 2007 and thereafter the couple was blessed with two children. There is no denial by the petitioner that landlord has one married daughter, five married sisters and two sisters who have since passed away have left behind their own families. All of them are admittedly on cordial visiting terms with the landlord.

The judgments cited by learned counsel for the petitioner are not applicable to the facts and circumstances of this case. The Hon'ble Supreme Court in Mohd. Ayub and another Vs. Mukesh Chand, 2012 (2) SCC 155 and

Bhimanagouda Basanagouda Patil Vs. Mohd. Gudusaheb 2003 (3) SCC 101 has held that the landlord's requirement, need not be a dire necessity. As long as the necessity is found to be bonafide, relief should be afforded to the landlord and affluence cannot be a ground to deny the same. In Ram Nath Vs. Rajender Pershad 2003 (12) SCC 127, Hon'ble Supreme Court upheld the eviction of the tenant on the ground of personal necessity. Family of the landlord in that case consisted of four adults and three children. The landlord had three married daughters. It was observed by the Hon'ble Supreme Court that merely because daughters were married, it could not be said that they do not come and stay with their parents even occasionally.

No other argument has been addressed.

In the present case, both the learned courts below have returned specific finding of facts based on logical and proper appreciation of the evidence on record.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned judgments which may call for any interference by this Court in exercise of revisional jurisdiction. Accordingly, this revision petition is dismissed. However, a period of four weeks is afforded to the petitioner to hand over the peaceful and vacant possession of the demised premises to the respondent-landlord.

(LISA GILL)
JUDGE

July 13, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No