

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

**CR No.2968 of 2018(O&M)**  
**Date of decision: 16.5.2018**

Amrit Pal Sharma and another .....Petitioners

VERSUS

Surinder Kaur .....Respondent

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Deepak Bhardwaj, Advocate for the petitioners.

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**REKHA MITTAL, J. (Oral)**

**CM No.9946-CII of 2018**

Heard.

Allowed as prayed for.

Annexures P-4 and P-5 are taken on record subject to just exceptions.

Disposed of accordingly.

**CR No.2968 of 2018**

Challenge in the present petition has been directed against orders dated 09.05.2016 passed by the Rent Controller and dated 11.04.2018 by the Appellate Authority whereby the petitioners have been evicted from the demises premises on the ground of bona fide personal necessity of Ashok Kumar son of the respondent/landlady.

The facts relevant for disposal of present petition are that the respondent sought eviction of petitioners from the shop forming part of khewat khata No.4202/7970-7972 comprised in khasra Nos.6156/2596/1266 (2-19), 6157/2596/1266 (0-0 ½), 6158/2596/1266 (0-

0½) total measuring 3 bighas to the extent of 33.33 square yards situated near Ghazal Restaurant, Hira Bagh, Rajpura Road, Patiala on the grounds of non-payment of rent and personal necessity. It is averred that the respondent purchased plot measuring 33.33 square yards vide registered sale deed No.11950 dated 16.10.2006 from Sat Pal son of Nand Lal resident of Upkar Nagar, Patiala. After purchase, the respondent constructed shop over the said plot and let out the same to petitioner No.1 in June 2007 at monthly rent of Rs.5,000/-. Petitioner No.1 is stated to be in arrears of rent since 01.02.2009 till filing of the petition. She has further averred that she is out of job having no source of income. Ashok Kumar, her son has done course in Kharad (Lathe work) and is doing denting painting work and needs the shop in question for his bona fide use and occupation.

The petitioners filed reply and raised preliminary objections challenging maintainability of the eviction application based upon documents fabricated by the respondent in collusion with Sat Pal and Babbu, her real brother. It is alleged that the petitioners are in occupation of the shop since 1995 onwards. Petitioners took vacant plot from Sat Pal and Babbu @ Dharam Pal in April 1995, constructed shop in October 1995 and since then they are paying rent to Sat Pal and Babbu at the rate of Rs.1100/- per month which was enhanced to Rs.1500/- per month in the year 2010. The petitioners deposited monthly rent in the bank account of Rajni, at the asking of Sat Pal and Babbu. The said account No.284 was operated jointly in the name of Rajni and Surinder Kaur as Rajni is daughter of Surinder Kaur – respondent. After July 2010, the said account was intentionally closed and respondent personally received rent at the rate

of Rs.1500/- per month for the month of August 2010 and executed a receipt but thereafter she refused to issue receipts. The rent was sent through money order vide receipt dated 12.01.2011 in the name of Ashok Kumar son of the respondent and again money order was dispatched on 17.02.2011 but the same was returned by Postal Department. The petitioners filed petition under Section 31 of the Punjab Relief of Indebtedness Act, 1934 for deposit of rent w.e.f. 01.09.2010 at the rate of Rs.1500/- per month.

The respondent filed the replication, reiterated her stand taken in eviction application and denied averments of the written statement challenging grounds of eviction.

The controversy between the parties led to framing of issues reproduced in para 5 of the eviction order. The parties were permitted to adduce evidence in support of their respective claims. After having heard counsel for the parties in the light of materials on record, the Rent Controller ordered eviction of the petitioners on the grounds of arrears of rent and bona fide personal necessity. The Court in appeal set aside the eviction order on the ground of arrears of rent etc in view of findings recorded in para 21 and 22 of the judgment but rejected appeal qua eviction on the ground of personal necessity.

To challenge findings qua eviction on the ground of personal necessity, counsel for the petitioners has two fold submissions to make. The first submission made by counsel is that plea of the respondent that tenancy was created in June 2007 at monthly rent of Rs.5,000/- after purchase of plot measuring 33.33 square yards vide registered sale deed No.11950 dated 16.10.2006 and thereafter the shop in question was

constructed by the respondent gets falsified and belied in view of evidence adduced by the petitioners and certain admissions of the respondent in her cross examination. It is argued with vehemence that as plea of the respondent with regard to creation of tenancy in 2007 or rent being fixed at the rate of Rs.5,000/- per month is not worthy of credence and reliance, it creates a doubt and gives jolt to her plea of bona fide personal necessity.

Counsel has strenuously argued that the respondent sought eviction of the petitioners from shop measuring 33.33 square yards but as a matter of fact, the shop in question is 50 square yards, therefore, application for eviction from a part of the tenancy premises is not maintainable being for partial ejection. To substantiate his contention, he has pointed out towards para 16, 20 and 26 of the judgment of Appellate Authority wherein the Court has taken note of contention raised by counsel for the petitioners/appellants, reply thereto by counsel for the respondent/landlady and findings recorded by the Appellate Authority in this regard.

I have heard counsel for the petitioners, perused the paper-book particularly the orders impugned and documents annexed with the petition.

Before advertng to the first submission made by counsel, I would like to deal with the second submission qua petition being bad for partial ejection. To a pointed query raised by the Court, counsel would fairly inform that no such issue of partial ejection or area of the shop in question being 50 square yards was raised before the Rent Controller at any stage of the proceedings that remained pending for almost 5 years. Once the petitioners have not raised a factual plea contesting claim of the

respondent on the ground of partial ejectment or the area of the shop in question being 50 square yards as against 33.33 square yards alleged by the respondent, no such factual plea which is beyond pleadings could possibly be raised before the Appellate Authority. In appeal, counsel for the petitioners advanced arguments in respect of area of the demised shop. Nevertheless, it has never been admitted by the respondent that area of the shop in question is 50 square yards. In para 20 of the judgment of Appellate Authority, Court has noticed the submission made by counsel for the landlady that even if version of the tenant is considered then also the landlady having purchased a part of the property has become a co-sharer in the same and one of the co-sharers can seek eviction of the tenant from the demised premises. It is nowhere been conceded by counsel for the respondent before the Appellate Authority that factual contention raised by the petitioners/appellants with regard to area of the shop in question is correct. Similarly, the Appellate Authority has not accepted plea of the petitioners that area of the shop in question is 50 square yards but the eviction has been sought qua area measuring 33.33 square yards. In absence of the petitioners raising a factual controversy or an admission by the respondent/landlady that the shop in question is 50 square yards, no such plea of the petitioners can be entertained much less accepted that the eviction application is bad being filed for partial ejectment or eviction order would not be executable for want of specifying the area from which eviction has been ordered. In this view of the matter, contention raised by counsel for the petitioners is not meritorious and liable to be rejected.

This brings the Court to the second submission with regard to averments qua creation of tenancy in 2007 or the rate of rent to be

Rs.5,000/- per month, being incorrect. Indisputably, the petitioners have not denied relationship of landlord and tenant between the parties. On the contrary, the petitioners have raised the plea that on the instructions of previous landlords Sat Pal and Babbu, they started paying rent by way of deposit in Account No.284 in the joint name of Rajni and Surinder Kaur (respondent herein). They have further averred that Surinder Kaur received rent for the month of August 2010 and issued receipt. Later, they sent rent through money order in the name of Ashok Kumar, son of the respondent. Counsel for the petitioners is right that Surinder Kaur in her cross examination has not specifically denied that disputed shop was rented out to the petitioners by Sat Pal in the year 1995. She has admitted that electric meter in the shop is in the name of Amrit Pal Shama since 1995. However, the petitioners have failed to create even a slightest doubt regarding bona fide need of Ashok qua the shop in question for doing business of denting and painting. In this view of the matter, I find it difficult to accept contention of the petitioners that findings of the Courts allowing eviction on the ground of bona fide personal necessity of Ashok, son of the petitioner suffer from an error much less illegality warranting intervention in exercise of limited revisional jurisdiction.

No other point has been raised.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. No order as to costs.

**MAY 16, 2018**

‘D. Gulati’

**(REKHA MITTAL)**

**JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no