

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Civil Revision No. 3092 of 2018(O&M)

Date of Decision: 15.05.2018

Madan Lal Sharma

.....Petitioner

Versus

Jaspal Singh

..... Respondent

CORAM:- HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present:- Mr. Gagandeep Singh Sirphikhi, Advocate
for the petitioner.

Mr. Abhey Gupta, Advocate for
Mr. Amar Vivek, Advocate
for the respondent.

HARINDER SINGH SIDHU, J.

The tenant has filed the present revision petition against the order dated 20.10.2016 of the learned Rent Controller, Batala, whereby the eviction petition filed by the respondent-landlord has been allowed. He has also challenged the order dated 12.12.2017 of the Appellate Authority Gurdaspur whereby his appeal against the order of learned Rent Controller was dismissed.

The respondent filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for eviction of the tenant from the demised shop situated on the ground floor of the property as mentioned in the petition. It was the case of the respondent that he had purchased the property from Improvement Trust, Batala vide transfer deed dated 25.1.2007 which was registered on 29.1.2007. Previously the petitioner was a tenant in the other shop on the Northern side of the present shop. By consent he vacated that shop as the landlord wanted to sell it to Punjab Gift House. The present shop was rented out to the petitioner in February 2009 on a monthly

rent of Rs.12,500/- and since then he is in occupation thereof and is running the business of tubewell boring goods. The tenancy was an oral one. The petitioner-tenant had earlier filed a civil suit for permanent injunction against the landlord wherein he admitted the tenancy.

Eviction was sought on two grounds (i) non-payment of arrears of rent and (ii) that the demised premises were required for bonafide need for the own use and occupation of the landlord and for the occupation of his son Gurinder Singh.

It was pleaded that the landlord had two sons. His son Gurinder Singh was in the business of steel furniture which he carried out on the ground floor on the southern side of the demised shop. He was also using the first floor for his business. On account of increased public demand and due to installation of heavy machinery for manufacturing and preparing steel furniture, the respondent landlord and his son needed additional space for expansion of the business. It was pleaded that the demised premises being on the ground floor was most suitable for expansion of the business as the son of the landlord was also using the adjacent shop and the first floor for his business. It was pleaded that neither the landlord nor his family members had any other suitable accommodation for such use and occupation nor they had vacated any similar accommodation within the Municipal limit of Batala.

The petitioner disputed that any arrears rent were payable. He also disputed the bona fide need of the landlord. It was his case that one son of the landlord was employed as a teacher and the other son was running his business separately on the ground floor and on the first floor. The landlord himself had sold two shops , one to Punjab Gift House and another to a

Cloth Merchant. The premises in dispute was a three storied building. The shop under the tenancy of the petitioner was a separate shop and was not joined with the shop in occupation of the son of the landlord.

The learned Rent Controller relying on the cross examination of the petitioner wherein he stated that the rate of rent of the showroom adjacent to the demised premises was Rs.15,000/- per month and considering that as per the version of the petitioner himself the rate of rent of the demised premises was initially Rs.3750/- which was later on enhanced to Rs.6500/-, concluded that on second enhancement the rate would have increased from Rs.6500/- to Rs.12,500/- per month. The arrears of rent were accordingly computed at Rs.8,41,612/- which the petitioner was held liable to pay.

Learned Rent Controller also accepted the plea of bonafide need of the respondent-landlord based on the evidence of the landlord who appeared as AW-1 and his son Gurinder Singh, who appeared as AW-3 and reiterated the version set out in the ejectment petition. The learned Rent Controller also noted that the petitioner in his cross-examination had admitted that the site plan Ex.A1 was correct as per actual site. The portion shown as ABCDEF was in the possession of the petitioner as a tenant. He also admitted that the site in question was the only property in possession of the landlord within the Municipal limits of Batala. He also admitted that there was no intervening wall in the shop in possession of the landlord and the shop in his possession. He also admitted that previously the respondent landlord was carrying out the business alone but later on his son Gurinder Singh had also associated himself with the said business. It was also admitted that they were doing the business of manufacturing and selling steel furniture.

Accordingly the Rent Controller allowed the petition. The petitioner was directed to hand over vacant possession of the demised premises to the respondent within three months of the date of the order. He was also directed to pay an amount of Rs.8,41,612/- as arrears of rent to the respondent-landlord.

On an appeal filed by the petitioner, the learned Appellate Authority reversed the findings of learned Rent Controller on the issue of non-payment of arrears of rent. However the findings regarding the bonafide need of the respondent-landlord were affirmed. Accordingly the appeal was dismissed.

Learned counsel for the petitioner has argued that the eviction petition has been wrongly allowed. He referred to the following extracts from the cross-examination of the respondent to stress that the findings regarding bona fide need were incorrectly recorded:

“.....It is correct that the rate of rent of the shops situated near the disputed shop had increased and which had increased upto Rs.15,000/-. It is correct that now I also want to increase the rent. The place on which I am doing the business at that place the business of mine and of my son is going on well. It is wrong that the shop in dispute is not required by me and my son for our business.....”

Learned counsel for the petitioner argued that the landlord has admitted that he wanted to increase the rent of the demised premises. Further he also admitted that their business was going on well from the present place. Learned counsel accordingly contended that the eviction was being sought only with a view to increase the rent. There was no intention or need to expand the business as it was already doing well.

There is no merit in the assertion of learned counsel for the petitioner.

A stray line in the cross examination of the landlord that he also wanted to

increase the rent cannot be held to negate the need projected by him in the petition and in his deposition. Moreover this assertion has to be read in the context of the earlier line in the same cross examination where it is recorded that the rate of rent of the shops near the disputed shops had increased upto Rs.15,000/-. Further mere admission of the landlord that his business and that of his son was going on well does not militate against the need to get the demised shop vacated, rather it supports the need. For it is only in respect of a business that is going well that there may be need for expansion which was in fact the case set up in the ejectment petition. The learned Rent Appellate Authority has also considered this issue by noting that the landlord in his cross examination no doubt had stated that he alongwith his son is running the business in the shops already in their possession and their business was very well but this does not mean that he had no right to expand his business for deriving more income.

The Courts below have recorded the findings based on the evidence on record. There is no infirmity or perversity in the findings recorded.

Accordingly there is no merit in the petition and the same is dismissed.

(HARINDER SINGH SIDHU)
JUDGE

15.05.2018
dinesh

Whether speaking/reasoned: Yes
Whether Reportable: Yes/No