

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.353 of 2015(O&M)

Date of decision: **October 12, 2018**

Bhim Sen

... Petitioner

vs.

Avtar Singh

... Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr.Gourave Bhayya Gilhotra, Advocate
for the petitioner.

Mr.Vaibhav Sehgal, Advocate
for the respondent.

Harinder Singh Sidhu, J.

The tenant- Bhim Sen has filed the present revision impugning the order dated 26.11.2014 passed by the Appellate Authority, Ludhiana, whereby, the said Authority has accepted the appeal of the landlord and set aside the order dated 03.10.2013 of the Learned Rent Controller, Ludhiana, and allowed the eviction petition of the landlord and directed the tenant to deliver vacant possession of the shop in dispute within a period of two months.

In this order the landlord would be referred to as the 'petitioner' and the tenant as the 'respondent', as per their status in the eviction petition.

The petitioner - landlord had filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter for short 'the Rent Act') seeking eviction of the respondent – tenant from a shop forming part of property No.B-XXIX-152/9A/7 situated at Sua road,

Hargobind Nagar, Opposite Mahadev Hospital, Giaspura, Ludhiana. The

case set up was that the respondent had taken the aforesaid property at monthly rent of Rs.800/- in the year 1992. It was agreed between the petitioner and the respondent that the respondent would also pay the house tax to the petitioner and the arrears of rent would be paid on or before 10th of every calendar month. The respondent is running a sweet shop in the rented premises in the name and style of “M/s Singla Sweets Shop”. The respondent had paid the rent against receipts upto March, 2007. But after March, 2007, neither the rent was paid nor was the house-tax paid.

The eviction was sought on two grounds;

- (i) that the respondent had neither paid rent nor tendered arrears of rent and the house tax w.e.f. 1.4.2007 despite repeated demands and requests of the petitioner
- (ii) the property in dispute is required by the petitioner for his bona fide use and occupation and for the use of his family members. The petitioner intends to do business in the property, which is most suitable for the said purpose.

It was also pleaded that the petitioner is not in possession of any other suitable property, except the property in dispute in the urban area concerned and that he had not vacated any other property without any reasonable cause within the said urban area after the commencement of the Rent Act.

In the reply filed by the respondent, the relationship of landlord and tenant was admitted. It was stated that the tenancy was oral coupled with delivery of possession. The tenant had been paying rent regularly upto March, 2010. Thereafter, though the respondent had tendered the rent, but the petitioner refused to accept the same.

The learned Rent Controller dismissed the petition opining that the petitioner had failed to establish his personal necessity. The Ld. Rent Controller referred to the cross-examination of the petitioner, wherein, he stated that he had not been working since 1984. Two of his sons had died and after their death, a workshop which was owned by the family was rented out for Rs.1200/- per month. He had also admitted that he had three daughters, who were married and they did not require the shop for their personal use. He also stated that he had rented out two shops in the vicinity of the demised shop; one to a doctor @ monthly rent of Rs.1500/- and another as '*Kiryana Store*' @ monthly rent of Rs.1100/-. Based on the aforesaid, the learned Rent Controller concluded that the petitioner failed to establish his personal necessity and the petition was dismissed. However, the respondent was directed to pay rent @ Rs.800/- w.e.f. 1.5.2011 along with interest.

The Appellate Authority reversed the finding of the learned Rent Controller on the issue of personal necessity. It was held that merely because the petitioner was old and aged more than 75 years, and had not been working since 1984, could not be a ground to hold that he did not need the premises as pleaded by him. Further, the fact that three shops had been rented out could also not form the basis to deny the ground of personal necessity. It was noted that the petitioner intended to augment his income to earn livelihood for his family after the unfortunate demise of his two sons, by setting up some business in the demised premises with the aid and help of his family members. Hence, the need was held bona fide.

Learned counsel for the respondent has again reiterated the

same arguments contending that the petitioner is about 80 years of age and

cannot be expected to work. He had himself admitted that since his retirement in 1984, he has not been working and that at present, he was involved in religious activity. He also admitted to having three shops from which he was receiving rental income. All these contentions have been dealt with and rejected by the learned Appellate Authority.

The petitioner had stated that he had two sons both of whom had died. They were running a workshop in the house and after their death he had rented it out as there was nobody else to run the same. He also admitted that two other shops had been rented out by him. He categorically maintained that he had no other source of income except the rental income, which is not sufficient to maintain the families of his two deceased sons. The three shops have been rented out only for Rs.1200/-, Rs.1500/- and 1100/- per month. Certainly this rental income alone would not be sufficient to maintain two families. It is these unfortunate circumstances that have forced the petitioner to step out of his retirement and shoulder his worldly responsibilities towards the families of his deceased sons. Hence the desire of the landlord to set up business in the demised shop after getting it vacated, is legitimate and justified. There is no ground to interfere with the finding recorded by the Appellate Authority.

There is no merit in the petition.

Dismissed.

October 12, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No