

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No. 3480 of 2014 (O&M)

Date of decision:- 16.01.2018.

Krishan Lal Arora

...Petitioner

versus

Amar Nath Khunger

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. C.M. Munjal, Advocate
for the petitioner.

Mr. K.B. Raheja, Advocate
for the respondent.

RITU BAHRI J.

The present petition is for setting aside impugned judgments passed by the Courts below ordering the eviction of the petitioner from the demised premises.

Brief facts of the case are as pleaded by the respondent in the ejectment petition are that he is owner of one shop bearing M.C No. 4481 measuring 9' and 50' (as fully described in the head note of the petition) situated at Wool Bazar, Fazilka. He purchased the above said shop in the name of his brother Shri Sada Lal in the year 1967-68, who vide agreement dated 24.07.1996 gave back the said shop to him and now he is the owner of the shop in question. Krishan Lal Arora (petitioner herein) took the shop on rent from the previous owner approximately in the year 1973-74. After purchasing the disputed property, the rent was settled between the petitioner and respondent at Rs.1000/-per month. But the petitioner had not paid the rent w.e.f 01.08.1996, thus he is also liable to pay the house tax to the respondent, as the M.C Fazilka levied tax known as house tax on the property in question after letting out the same to the petitioner. Further the

shop in question became unfit and unsafe for human habitation and requires construction as the age of the building is about 40/45 years. The respondent needs the shop for his personal use and occupation as his son who is C.A wants to open his office.

To this ejectment petition, petitioner filed his reply and thereafter, following issues were framed.

- “1. Whether the respondent had not paid the rant w.e.f 01.08.1996? OPA*
- 2. Whether the shop in question had become unfit and unsafe for human habitation and requires reconstruction? OPA*
- 3. Whether the petitioner needs the shop in question for his personal use? OPA*
- 4. Whether the respondent used the building in such a bad way to impair its value? OPA*
- 5. Whether the petitioner is entitled for ejectment? OPA*
- 6. Whether the petition is not maintainable? OPR*
- 7. Relief.”*

The learned trial Court after going through the evidence led by the parties, allowed the petition filed by the petitioner-respondent and the respondent-petitioner was ordered to be evicted from the demised premises on the ground of personal necessity.

Against the order of the learned trial Court, the petitioner filed an appeal, which was also dismissed and hence the present revision petition.

Both the Courts below after going through the evidence held that a perusal of the copy of house tax assessment register for the year 1995-96 shows that the disputed shop in question is recorded in the name of Amar

Nath but the possession is with Krishan Lal. In the assessment register 1998-99 Amar Nath has been shown in the ownership column. Further as per sale deed dated 24.12.2009, Sada Lal sold the shop in question to his brother Amar Nath Khunger. R.W.3 Rajinder Sharma during cross examination stated that Sada Lal was owner of the shop and now the same has been purchased by his brother i.e Amar Nath Khunger.

Further as per receipts Ex R1 to Ex R4, the rent of the shop had already been paid by the petitioner till 31.03.2009 @Rs.300/- per month and the respondent was held entitled to recover the rent from the period w.e.f 01.04.2009 till its actual realization.

P.W.6 Krishan Kumar Bogra, Civil Engineer/Building Expert vide his report Ex PW6/A gave the opinion that (i) Ist floor terracing seems repaired 8 to 10 years ago and uneven and rainy water stands there, traces found on floor and parapitawall, (ii) Ist floor room 9'X10' fully deserted and broken and no passage/non stair to first floor. The side shop of M/s Daulat Ram Amar Natah developed a major crack shown in snap No. 1 due to water merging in side walls from rear nohras (iii) The shop in dispute is thus not fit for human habitation and may collapse during rains. In his cross examination, he stated that he could not see any of the allegedly broken batten in the last portion of the disputed shop.

With regard to the fact that the respondent needs this shop on the ground of personal necessity, he himself stepped in to the witness box and stated that demised premises is required for his personal use and occupation as his son wants to open his office. His son Pawan Khunger also stepped into the witness box and stated that he wants to open the office in the shop in question and he has not other building/premises in his name.

Learned counsel for the petitioner argued that the respondent was not owner of the property in dispute and he filed the ejectment petition on the basis of the agreement dated 24.07.1996 which is not registered under the Indian Registration Act. Further the petitioner had paid the rent to Sada Lal upto 31.03.2009 and the respondent filed the ejectment petition on 28.08.2008, thus he was not owner of the suit property on the date of filing of the petition.

On the other hand, learned counsel for the respondent has relied upon a judgment of this Court in a case of ***Surinder Dhingra vs. Bhim Sain Arora, 2011(4) RCR (Civil) 722*** wherein this Court had upheld the order of eviction by holding that there was no serious challenge by the tenant as regard to bonafide requirement and the landlord was a best judge of his requirement. Further the contention of the tenant with regard to relationship of landlord-tenant being sham transaction, was rejected as did not produce any evidence in support of his contention. In para 15, it has been observed as under:-

“15. In the present case, there is no serious challenge to the bonafide need of the respondent-landlord. Even, it has come on record that the demised premises have fallen to the share of the respondent in a family partition effected between the brothers and mother after the death of their father. There is nothing on record to challenge the genuineness of the aforesaid documents. Simple averment raised on behalf of the petitioner that the aforesaid documents are a sham transaction, is bound to be rejected in the absence of any evidence to contradict the aforesaid documents. The reliance of the petitioner on Exhibit R2 i.e. a petition filed under Section 6 (A) of the Rent Act in which Sheela Devi, mother of the respondent-landlord received the rent under protest, is of no help to him as in the aforesaid petition

Sheela Devi had accepted the rent by making the statement that she was receiving the rent under protest and the landlord of the demised premises was his son i.e. the respondent-landlord. In this view of the matter, the finding of Appellate Authority ordering eviction of the petitioner on the ground of personal bonafide need of the respondent-landlord has to be affirmed.”

Heard learned counsel for the parties.

Reference at this stage can further be made to a judgment of this Court in a case of ***State of Punjab and another v. Rajinder Jain and anr, 2010(3) RCR (Civil) 45*** wherein eviction sought on the ground of personal necessity. The tenant contended that family arrangement was made up affair and was aimed at just enabling the landlords to obtain ejectment. This Court held the tenant cannot challenge a family settlement/partition in course of summary proceedings under Rent Act. In para 13, it has been observed as under:-

13. *Insofar as the plea raised by the petitioner-tenants qua the validity of the impugned family settlement is concerned, the law would not allow them to as claim locus standi to have a say in the context. It was held by this Court in **Roshan Lal Versus Ved Parkash 2002 (2) RCR (P&H) 494** that a tenant cannot challenge a family settlement/partition in the course of summary proceedings under the Rent Act. A similar view was obtained in **S.C.Leekha Vs. Air Commodore Mohinderjit Singh, 1998 (2)RCR 304**. Even otherwise, PW-1 Rajinder Jain who is a signatory to the family settlement aforementioned also testified at the trial to prove the factum of the impugned family settlement which was also supported by the testimony on oath of PW-2 Shanti Nath Bansal, who is a relative of the respondents. The latter witness also categorically told the Court that the tenanted premises had fallen to the share of the respondents who are inclined to set up a retail outlet for the sale of textiles of varying hues and also other articles including furnishing material/accessories carpets etc. PW-3-Rajesh Gupta, also a close relation of the respondents-landlords, deposed to prove the factum of*

family settlement aforementioned.

In the present case, the respondent has been able to prove that he is owner of the shop in question, as he had purchased the same from his brother vide sale deed dated 24.12.2009. The record of the Municipal Council in the shape of copy of house tax assessment register for the year 1995-96 and 1998-99 reflects the name of the respondent as owner of the shop in question. Further the petitioner has not been able to prove that the respondent has enough property in his name. Thus, it has been proved on record that the respondent required the demised premises for his personal use for setting up the business of his son.

On 15.01.2018, learned counsel for the petitioner seeks some time to get instructions from his client that in how much time he will vacate the shop but today i.e 16.01.2018, learned counsel for the petitioner stated that the petition be decided on merits.

In view of the above observations, no ground is made out to interfered in the concurrent findings of facts arrived at by two Courts below while exercising revisional jurisdiction and the revision petition is dismissed.

16.01.2018

G Arora

(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No