

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

CR-3435-2018 (O&M)
Reserved on:-22.5.2018
Date of Decision:-1.6.2018

Annu Sharma

... Petitioner

Versus

Parveen Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Parminder Singh, Advocate for the petitioner.

GURVINDER SINGH GILL, J.

1. The petitioner/tenant challenges order dated 31.3.2018 passed by learned Appellate Authority, Karnal, whereby her appeal against order of ejectment passed by learned Rent Controller, Karnal has been dismissed.
2. The respondent/landlord, by way of filing a petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973, had sought ejectment of the petitioner from the demised premises in the nature of a shop bearing No.343/18, situated at Char Chaman, Karnal, on grounds of non-payment of rent as well as on account of personal necessity as the wife of the landlord wanted to open a boutique in the said shop as well as in the adjacent vacant shop by demolishing the common wall so as to merge the two shops and to make further alteration as per modern amenities. The ejectment petition was resisted by the petitioner, wherein a stand was taken that the landlord has not approached the Court with clean hands and has filed the petition just to

harass the petitioner. A stand was further taken that the landlord is already running a boutique in the adjacent shop as well as on the first floor thereof and that in addition to the said shops the landlord owns and possessed two more shops situated near Andaaaj Showroom, Kunjpura Road, Karnal, out of which one shop was lying vacant and the other is in occupation of the landlord himself as his office, where he is running the business of property dealer. It was further stated therein that the landlord owns three other shops as well in which his brother is running a grocery business.

3. The learned Rent Controller, Karnal upon appraisal of the evidence led by parties, held that no ground is made out for ejectment of the petitioner on account of non-payment of rent. However, the petitioner was ordered to be ejected from the demised premises in question on ground of “personal necessity” of the landlord vide judgment dated 23.9.2014. Upon appeal filed by the tenant the said findings were affirmed by the learned Appellate Authority, Karnal vide judgment dated 31.3.2018, which has been challenged by way of filing the present revision petition.
4. The learned counsel for the petitioner, while assailing the impugned judgment, has submitted that the learned Appellate Authority as well as the Rent Controller did not appreciate the evidence in the correct perspective and did not give due weightage to the fact that the landlord is possessed of other vacant premises in vicinity. It has also been submitted that in fact in the adjacent shop, which the landlord wants to merge with the demised premises, a business of mobile phones is going on and as such the assertions of the landlord that he requires the premises for setting up a boutique by merging the

two shops is nothing but a hollow assertion. The learned counsel has further submitted that the learned lower Appellate Court also fell in error in declining the application moved by the petitioner for leading additional evidence, which would have clearly established that the brother of the landlord is doing business of mobile phones from the shop adjacent to the demised premises, whereas the petitioner had pleaded that his wife is running a boutique under the name and style of 'Grace Collection' in the adjoining shop.

5. I have considered the aforesaid submissions and have also perused the impugned judgment of the learned Appellate Authority, Karnal as well as the learned Rent Controller, Karnal.
6. The case put forth by the landlord is that he requires the demised premises, which is in the nature of a shop, so as to merge the said shop with the adjacent shop belonging to the landlord in order to enable his wife to set up a boutique from the said premises by carrying out necessary alterations as per the modern amenities. The plaintiff himself appeared in the witness box and stated in tune with the case set up in the petition regarding requirement of the premises for running a boutique by his wife. Though the learned counsel for the petitioner has tried to convince this Court that the alleged requirement of the premises for running a boutique is in fact a false claim and that a mobile shop is being run in the adjacent shop, which is required to be merged with the demised premises but I find that in the reply filed by the tenant to the ejectment application, it has been admitted by the tenant himself that the landlord is running a boutique in the shop adjacent to the shop in question as well as on the first floor thereof as has been specifically noticed by the lower Appellate

Court. In wake of the said admission, this Court need not delve deeper into the controversy.

7. The learned counsel has drawn the attention of this Court to a reply dated 20.12.2017 (Annexure P/2) filed by landlord to an application dated 13.7.2017 filed by the petitioner-tenant before the Appellate Authority seeking issuance of a direction for appointment of Local Commissioner, wherein the landlord admitted carrying on the mobile business in the adjacent shop. The said extract from the reply dated 20.12.2017 is reproduced below for the sake of ready reference:-

“ 3. That para No.3 of the application is absolutely wrong and hence vehemently denied. It is pertinent to mention here that after the passing of the ejectment order, the applicant-appellant did not vacate the shop in question and the shop under the possession of the wife of the respondent-landlord was so small for the purpose of running boutique as the lot of place is required for keeping the clothes i.e. stitched and unstitched, for storing raw materials and for workers. True picture has been shown in site plan Ex.P1, wherein the size of the shop has been mentioned. As the applicant-appellant did not vacate the shop in question and as such, due to the said circumstances, the respondent-landlord could not merge both the shops to widen it. Thus, due to the circumstances, wife of the respondent-landlord suffered lot of financial losses, as such, she had to stop the business a few months back and she started the business of mobile, which also needs much wider space for the business. Thus, the plea taken by the applicant-appellant is false. The respondent-landlord is still in need of shop in question and after getting the same, he will merge the same with his adjoining shop.”

8. From the perusal of the aforesaid reply, it is evident that it was due to compelling circumstances that the wife of the landlord had to change her

business though it is specifically stated therein that she still needs the demised premises so as to merge the shops with the adjacent shop in order to widen the space. In any case, the tenant having herself admitted that wife of the landlord was carrying on the business of boutique, the genuineness of the requirement of the tenant cannot be doubted. Rather the fact that due to paucity of space, she had to change her business, further establishes the case that more space is required for effectively carrying on the business of boutique, which she admittedly was carrying earlier.

9. As regards the contention that the landlord was having three other shops, which were in possession of his brother, a perusal of the cross-examination of the landlord, a copy thereof has been shown to this Court by learned counsel for the petitioner shows that he has specifically stated that the three shops in front of the demised premises belong to his brother, who is residing separately. He has further clarified that his other shops are in Dayal Singh Colony, which are double storied and that in one of the shop he is running business of property dealer and in the other building material is lying.
10. Even if the landlord does have some more shops in some other area, which admittedly are in his occupation though he is carrying on some other business from the same, the landlord cannot be forced to run his business from the said premises as it is the landlord, who is the best judge as regards his requirements. This would be all the more true in the present case where the wife of the landlord had already been running a boutique from the premises adjacent to the demised premises and from the first floor. As such, the aforesaid contention raised on behalf of learned counsel for the petitioner

would not carry any weight so as to the defeat the right of the landlord to seek ejectment.

11. Another argument raised by learned counsel for the petitioner that the landlord has not specifically averred that he had not vacated or was not in possession of any other shop in the area and that the said averments being mandatory, the ejectment petition was liable to have been dismissed.
12. I have considered the aforesaid submissions.
13. In the present case, the landlord has specifically stated that he is in possession of another adjacent shop, which is lying vacant and which he wishes to merge the said shop with the demised premises. Such averment as regards possession of a vacant shop would be sufficient compliance of the statutory requirements. In this context a reference may be made to a judgment of Honourable Apex Court reported as AIR 1999 (S.C.) Page 3029 Syed Dastagir Vs T.R. Gopalakrishana Setty wherein the Hon'ble Apex Court held as under:

“In construing a plea in any pleadings, Courts must keep in mind that a plea is not an expression of art and science but an expression through words to place facts and law of one's case for a relief. Such an expression may be pointed, precise some time vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. In India most of the pleas are drafted by counsel hence the aforesaid, difference of pleas which inevitably differ from one to the other. Thus, to gather true spirit behind a plea it should be read as a whole.”

14. In view of the discussion made above, I do not find any infirmity in the findings of the learned Rent Controller and as affirmed by the lower Appellate Court and the same are hereby affirmed.

15. No other point has been raised or urged before this Court. Finding no merit in the revision petition and the same is hereby dismissed.
16. The petitioner is, however, granted time till 31.12.2018 to hand over vacant physical possession of the demised premises subject to the condition that all the arrears of rent/mesne profits are duly paid and he continues paying the rent/mesne profits regularly in future and also subject to the condition that he furnishes an undertaking to this effect before the Rent Controller within a period of three weeks from today.

1.6.2018

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No