

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

135

**CR No.3993 of 2017 (O&M)
Date of decision: 21.11.2018**

Gopal Dass

..Petitioner

Vs.

Subhash Chander

..Respondent

CORAM:HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Dheeraj Mahajan, Advocate
for the petitioner.

Mr. Ravinder Advocate
for the respondent.

AJAY TEWARI, J.(ORAL)

This petition has been filed against concurrent judgment of the Courts below allowing an application for eviction filed by the respondent against the tenant in respect of a shop on the ground that he wanted/required it for his son to start business, since he was unemployed.

The case of the petitioner was that the requirement was not *bona fide*, since the son was held doing the business 'near the disputed property'. Even in the affidavit filed by way of evidence in his own evidence, the petitioner used the same vague phrase.

On the other hand, not only the respondent's witnesses, even the witnesses appearing on behalf of the petitioner had accepted that the respondent and his family owned 5 adjacent shops and they were 5 tenants. In these circumstances the courts below allowed the petition.

Even today, I asked learned counsel as to what was the exact interpretation of the expression 'near the disputed property' and for the first time I think today, that it has come out that as per the petitioner the son of the respondent had started business in one of the rooms in the house.

Counsel for the respondent has argued that actually it was another daughter-in-law of the respondent who was running the said business from one room in the house. Counsel for the respondent has further argued that even if the arguments that the son was running the business is accepted, yet the fact that a person had to start his business from a residential room in anticipation of getting his commercial place vacated cannot be held against him and such a person would not be covered by the factors mentioned in sub Section (c) or (d) of Section 13(a)(i).

I have heard counsel for the respondent. In the first place the petitioner has not been able to establish that it was son of the petitioner who was running business, and just made a bald statement. Secondly, even if this assertion and argument is accepted, the argument would have to be rejected because if a landlord starts a business in a residential room while waiting for the commercial premises to be vacated, it would not erode his requirements.

Counsel has further argued that the son of the respondent did not appear to testify and has relied upon **Brij Bhushan and Another Vs. Sanjay Harjai and Another 2015 (2) RCR (Civil) 68, Rajiv Gupta Vs. Jiwan Ram 2015(1) RCR (Civil)762**. On the other

hand, counsel for the respondent has relied upon judgment in **Mehmooda Gulshan Vs. Javaid Hussain Mungloo 2017(1) RCR (Rent) 273** wherein the Supreme Court has held as follow:-

"Mere non-examination of the family member who intends to do the business cannot be taken as a ground for repelling the reasonable requirement of the landlord. Under the Act, the landlord needs to establish only a reasonable requirement. No doubt, it is not a simple desire. It must be a genuine need. Whether the requirement is based on a desire or need, will depend on the facts of each case".

It is against the background of this exposition of law that this case has to be decided. The judgement of Hon'ble Supreme Court has been followed by this Court in **Hukam Chand Vs. Saroj Rani 2018(1) PLR 381**. There is a catena of judgements that in a case of personal necessity, there is presumption in favour of the landlord and it is for the tenant to rebut this presumption. In my considered opinion the presumption which was existing in favour of landlord and to which he testified in his own testimony, could not be rebutted by the petitioner.

In view of above, the revision petition is dismissed.

November 21, 2018

Poonam (II)

**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned: *Yes/No*

Whether reportable: *Yes/No*