

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 443 of 2016 (O&M)
Date of Decision : 01.05.2018

Ishwar Prashad and another

....Petitioners

Versus

Dina Nath Sharma

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Avnish Mittal, Advocate
for the petitioner.

Mr. Vivek Aggarwal, Advocate
for the respondent.

Surinder Gupta, J.

This revision has been filed by revision-petitioners (tenants) against concurrent findings of learned Rent Controller and Appellate Authority, Ambala, upholding the need of demised premises bearing House Tax No. 6266/4-10/2 situated near Tonga Stand, Nicholson Road, Ambala Cantt., for personal *bona fide* necessity of respondent-landlord and ordering ejectment of revision-petitioners from the demised premises.

2. Respondent-landlord sought ejectment of the revision-petitioners on the ground of non-payment of rent; personal *bona fide* necessity; and that the revision-petitioners have purchased their own property and shifted their business to that premises.

3. As the main issue, which has been contested during course of argument, is ground of landlord-respondent seeking ejectment of revision-petitioner for his personal *bona fide* need, the same is

reproduced from petition (Annexure P-1) as follows:-

“(ii) That the petitioner requires the tenanted premises for his personal bona fide need as the petitioner is running a Dhaba in the adjoining shop under the name and style of Sharma Bhojnalya. The petitioner wants to expand the dinning hall as the space in the dinning hall is very less. The tenanted premises is situated between the dinning hall and the washroom. The customers have to first come out in order to go to the washroom. Similarly the waiters have to bring the utensils from the road side into the dinning hall. The petitioner also requires the tenanted premises for the personal need of his grandson Vishwas Sharma who has left his studies and wants to start his independent decent business and the petitioner too wants to settle him. The petitioner do not own or possess any other non-residential property within the Urban area of Ambala Cantt. nor has vacated any such property after the Act of 1949.”

4. Learned Rent Controller has taken note of report of building expert regarding location and need of demised premises by landlord-respondent and observed in para 10 of its order as follows:-

“10. The respondents had also got the demised premises inspected by a building expert, whose report is placed on record as Ex.R2 whereas the site-plan prepared by the said local commissioner submitted with his report is placed on record as Ex.R3 which also shows that the demised property falls in between the dinning hall of the dhaba/restaurant being run by the petitioner and the toilet & washing area for utensils. The said building expert, while appearing in the witness-box as RW1, has also admitted in his cross-examination that

except the toilet shown by him in the site-plan Ex.R3 and marked by letters ABCD, there is no other toilet in the whole of the premises of the petitioner. RW1 has also admitted that if any customer of the petitioner has to use the toilet, he has to first come out of the dinning hall into the street and, thereafter, enter the shop/area in which the toilet is situated after crossing the demised shop. RW1 has admitted the similar situation regarding the utensils required to be used in the dinning hall of the petitioner.”

5. Appellate Authority, however, discarded the *bona fide* requirement of landlord-respondent as projected in petition to settle his grandson Vishwas Sharma in the demised premises with the observations in para 22 of the judgment, which reads as follows:-

“22. The landlord has also sought the eviction of the present appellant/respondent from the premises in question on the ground that his grand son has left the studies and he wants to start his business. Though, to rebut this ground the respondent no 1 has stated in his affidavit RW1/B, placed on record in lieu of examination in chief, that Sh Vishwas Sharma has very recently in the month of December 2014 opened his own restaurant under the name and style of 'Dil Desi' at shop no. 407, Sector 32-D, Chandigarh and therefore, he is well settled and does not require the premises in question but the said fact was not pleaded in the pleadings in the written statement. However, in this regard additional evidence was allowed but he has not able to produce any convincing evidence regarding the said fact. As far as the photographs placed on record is concerned, the same have not been proved as per law. Even the respondent no. 1 in

his cross-examination admitted that the property no. 407 situated in Sector 32- D, Chandigarh, was owned by a company under the names of 'Khazana Hotels Private Limited' and grand son of the landlord i.e. Vishwas Sharma was neither a director nor the partner in the said company. The argument of ld counsel for respondent that Vishwas Sharma for whom the premises in question have been sought to be taken has not been examined by the landlord and in the absence of examination of the person for whom the bonafide requirement has been pleaded the bonafide need on this account can not be said to be proved.....”

6. However, requirement of demised premises for own need of landlord-respondent to expand business of his *dhaba*/restaurant and to expand dinning hall and to attach toilet facility for customers etc. was approved.

7. Learned counsel for revision-petitioners has argued that landlord-respondent is 92 years of age. He was not keeping good health. He could not appear in Court as his own witness due to health problem, as such, his plea that he wants to expand his business has no merit. Even otherwise, this plea raised by landlord-respondent is contradictory as he on one hand has projected his need to expand his business while on the other hand for setting up of independent decent business for his grandson. He owns other properties in Ambala and is also managing director of M/s Khazana Hotel Pvt. Ltd. In these circumstances, learned Rent Controller and Appellate Authority have committed grave error while upholding need projected by landlord-respondent as *bona fide* and

genuine. He has further argued that property in question is of Wakf Board and to this effect information was taken under the Right to Information Act, which has been placed on file as Annexure P-4. Learned Rent Controller and Appellate Authority have upheld the plea of landlord-respondent that revision-petitioners have purchased other property and shifted their business there, without looking into the fact that business in that property is being run by son of revision-petitioner no. 1 and not by revision-petitioner.

8. Firstly, I take plea of revision-petitioners that the demised premises is owned by Wakf Board. Perusal of written statement shows that revision-petitioner admitted the tenancy under the landlord-respondent, as such, in the absence of any evidence on record he is debarred from raising the plea for the first time in this revision that the demised premises is owned by Walk Board.

9. It has been argued that the plea of personal *bona fide* necessity of demised premises as raised by learned counsel for landlord-respondent is contradictory. This point is not required to be discussed in detail as Appellate Authority has already rejected the plea of landlord-respondent seeking ejectment of revision-petitioner from the demised premises on the ground that the same is required for need of his grandson Vishwas Sharma.

10. Perusal of site plan of the demised premises shows that the shop in question is in between the restaurant of landlord-respondent and the premises, which landlord-respondent is using for washing the utensils and to provide facility of toilet to his customers. Learned Rent Controller

as well as Appellate Authority have looked into the need of landlord-respondent for expansion of his dinning area and to give approach to customers to use washroom. While looking into the need of landlord-respondent for the demised premises, Appellate Authority has observed in para 21 of its judgment/order as follows:-

“21.To prove the above said averments the landlord has examined his general power of attorney holder Radhey Sharma as PW-3 who has placed on record his affidavit Ex. PW3/A in view of his examination in chief. He has also placed on record Ex. P 17, the site plan. A perusal of the same goes to show that the demised premises lies between the Dinning Hall of the Dhaba of the restaurant and the toilet/washing area. Even the building expert report placed on record as Ex. R2 along with the site plan as Ex. R3, prepared by the local commissioner, goes to show that the premises in question is situated between the Dinning Hall of the Dhaba and the toilet and washing area for utensils. The said fact has been clearly stated by RW 1 in his cross-examination where he has stated that except the toilet shown by him in site plan as Ex. R3 marked by letters ABCD, there is no other toilet in the whole of the premises of the petitioner. Thus, the ground taken by the landlord is that he requires the premises in question for expanding his restaurant so as to provide facility of Dinning Hall as well as the toilet to his customers.....”

11. I find no substance in the argument of learned counsel for revision-petitioners that landlord-respondent is 92 years of age and at this stage his plea seeking expansion of his business cannot be believed. The

mere fact that landlord-respondent has not appeared as witness, is no reason to discard his plea. He has examined his son Rajesh Sharma as his general power of attorney. Being a family member, Rajesh Sharma, PW-3 could depose about the need of landlord-respondent. There is no bar that a person in advance stage of life cannot think of expansion of his business. Even if, he is not having a good health still he could carry on his business through his family members or employees. The fact that landlord-respondent is looking after his business is duly proved from the fact that despite his old age landlord-respondent is managing director of M/s Khazana Hotel Pvt. Ltd. (as argued by learned counsel for revision-petitioner). Findings approving the need of demised premises for personal *bona fide* necessity are findings of fact based on evidence, which cannot be interfered in this revision-petition. The scope of interference in revision petition is very limited as observed by Apex Court in case of **Hindustan Petroleum Corporation Ltd vs. Dilbahar Singh, 2014(9) SCC 78**, which reads as follows:-

“We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such

finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself of correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

12. On perusal of paper-book and documents on record, I find no legal or factual infirmity in order passed by learned Rent Controller as well as the Appellate Authority, calling for any interference in this revision petition, which has no merit and the same is dismissed.

May 01, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No