

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Date of decision: 06.09.2018

1. CR No.4781 of 2011 (O&M)

Rajesh Kumar

..... Petitioner

Versus

Daya Rani and another

..... Respondents

2. CR No.8734 of 2016 (O&M)

Shabbir Ahmed

..... Petitioner

Versus

Daya Rani and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. Arun Jain, Sr. Advocate with  
Mr. Amit Jain, Advocate  
for the petitioner (in CR-4781-2011).

Mr. Sudeep Mahajan, Advocate  
for the respondents (in CR-4781-2011).

Mr. Anupam Sharma, Advocate  
for the petitioner (in CR-8734-2016).

Mr. Sanjiv Kumar Aggarwal, Advocate  
for the respondents (in CR-8734-2016).

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**ANIL KSHETARPAL, J.**

**Main Cases**

Vide this judgment, I shall be disposing of two revision petitions bearing CR No.4781 of 2011 and CR No.8734 of 2016 which are connected. Counsel for the parties also agreed that both the petitions can be

conveniently disposed of by a common judgment as the issues which requires determination are common.

In CR No.4781 of 2011, two landladies namely Daya Rani wife of Sat Parkash Goel and Santosh Rani wife of Ved Parkash Goel filed the petition seeking eviction from the shop situated within the municipal limits of Kaithal, District Kaithal on the ground that the premises is required by husband of Daya Rani who retired from Uttar Haryana Bijli Vitran Nigam, Kaithal on 30.11.1999, to run a jewellery shop at Kaithal. The petition was filed on 25.01.2008. The second petition which is subject matter of CR No.8734 of 2016 was filed by the same landladies against a different tenant on the first floor of the premises in the first petition and it was pleaded that the premises is bona fide required as Smt. Daya Rani requires it to run her boutique. It is pleaded case of the petitioners that after the retirement of Sat Parkash, they shifted to Delhi and started residing with their son but now some differences have arisen because of which Smt. Daya Rani and her husband are not getting proper respect and treatment from their son and they are feeling as they are burden on their children.

The petitions were contested by pleading that the requirement of the landlords is not bona fide and it is merely a greed.

As per Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, a landlord can apply to the controller for directing the tenant to put the landlord in possession if the landlord requires the premises for his own occupation. The words 'in own occupation' have been interpreted to include the requirement of spouse and other family members.

It is not in dispute that Smt. Daya Rani and son of Santosh Rani i.e. Devinder were also joint owners of a house build in an area of 200 sq.

yards consisting of six rooms on the ground floor and two rooms on the first floor. It has also come in evidence that Devinder had shifted to Delhi and Daya Rani and her husband were in possession of the aforesaid residential house before shifting to Delhi.

It has also come in evidence that Smt. Daya Rani as well as Devinder sold the only residential house vide sale deed dated 24.08.2009 i.e. during the pendency of the petition filed for requirement of the shop. The factum of sale of the residential premises was put to Sh. Sat Parkash who appeared as AW-1 in the case of Rajesh Kumar-tenant, Sh. Sat Parkash stated that he sold the house as there was no need thereof. However, he tried to explain that the house had become old and started falling down. However, when Daya Rani appeared in witness-box as AW-2, she admitted that the house was fit for residence and no portion of the house had fallen down. Both the Courts have ordered eviction of the tenant.

Although this Court is conscious of the fact that the jurisdiction of the Court in the revision petition is very limited. However, this Court is not precluded from examining whether the judgments passed by the Courts below suffered from any perversity or not.

In the present case, the entire case set up by the landlords is that they are not able to get along with the family of their son Rajiv Goyal who is not showing proper respect and therefore, they wish to start their own business. It is also well settled that bona fide requirement is 'sine qua non' for ordering eviction. The Rent Act has been enacted with an object to protect the tenants from even designs of the landlord. In the present case, let us test the bona fides of the landlords. Learned counsel for the respondent-landlord was specifically called upon to explain whether his

clients wish to shift to Kaithal or not. He submitted as under:-

*“In the petition, the landlord has never pleaded that they wish to shift to Kaithal. It is their option whether they wish to run their business while continuing to reside at Delhi or at Kaithal. Residing at a particular place is irrelevant as today the business can be run from any place.”*

In the considered opinion of this Court, the answer of learned counsel for the respondent is evasive. It is not in dispute that the landlords have not pleaded that they wish to continue to reside in Delhi but they wish to open their business at Kaithal which is more than 175 Kms away. If the pleadings are carefully read, it is apparent that Daya Rani and her husband Sat Parkash were not getting along well with the family of their son and therefore, they want to become financially independent. That is the reason why the husband desires to open a jewellery shop whereas the wife desires to open a boutique on the first floor. When confronted with the sale of the residential house, learned counsel for the respondent-landlord tried to explain that the aforesaid property was joint between Devinder and Daya Rani and therefore, the property was sold. However, it will be noticed that there is neither any pleadings nor any evidence to prove that Devender was insisting for the sale of the property or it is because of Devender, the property has been sold. At the cost of repetition, it will be noticed that it is admitted fact that Devender had shifted to Delhi and residential house was in exclusive possession of the Daya Rani and her husband Sat Parkash. It will be noted that Devinder is son of second petitioner No.2 Santosh Rani. Once the residential property has been sold during the pendency of the petition, this Court is of the view that the landladies have a bona fide requirement of both the premises. Now the only issue to be examined is

whether the landlords can claim eviction on the ground that they would like to run their business while residing at Delhi which is 175 Kms away. First of all, it will be noted that it is not the case pleaded by the landlord-respondents. The landlords do not claim that they are running a big company and they are in a position to open their branches/franchises at different places while testing bona fide of the landlords, the Court has to take a practical view of the matter. The landlady wishes to open a boutique in which she has no prior experience and husband wishes to open a jewellery shop now, although, he retired from service in 1999. The wish to open a jewellery shop has been expressed for the first time in the year 2008 only on account of fact that they are not being treating properly by their son and his family. In the considered view of this Court, the requirement of the landlords in both the cases is not bona fide. Learned Appellate Authority has although held that the tenant cannot compel the respondent Daya Rani and her husband to stay at Delhi, however, since counsel for the respondent has taken a different stand, therefore, the aforesaid finding of the Appellate Authority is erroneous.

Learned counsel for the respondent has relied upon a judgment passed by this Court in the case of Madho Ram Garg Vs. Baldev Singh Bath and another 2008(1) HRR 695. Learned counsel has drawn attention of the Court to para 19 and 20 of the judgment wherein this Court has observed that the landlord may reside anywhere in India or in the world and still can run a successful business without residing in the urban area concerned.

In the considered opinion of this Court, the aforesaid judgment is in a peculiar fact situation and does not as a proposition of law lay down that in every case, whenever the landlord pleads that he wishes to run the

business while living away, still, the need of the landlord is bona fide. At the cost of repetition, it will be noted that the landlord has not pleaded these facts.

Keeping in view the aforesaid discussion, the judgments passed by both the Courts below are set aside while allowing the revision petitions and dismissing the eviction petitions.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Both the revision petition are allowed.

**06.09.2018**  
Dinesh Bansal

**( ANIL KSHETARPAL )**  
**JUDGE**

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|---------------------------|----------|
| Whether speaking/reasoned | Yes / No |
| Whether Reportable        | Yes / No |