

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR No.4835 of 2016 (O&M)

Date of decision: 14.08.2018

Lal Chand (since deceased) through his LRs
Prem Lata and another

..... Petitioner

Versus

Ashok Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. Arvinder Arora, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Tenant-petitioner is in the revision petition against the order passed by the learned Rent Controller which has been affirmed by the Appellate Authority ordering eviction of the tenant on the ground of bona fide requirement of son of the landlord Vikesh Kalra who graduated in the year 2009 and is doing private job. It will be noted that the tenant-petitioner is owner of seven shops in the urban area concerned which have been leased out. The tenant-petitioner contested the petition on the ground that the landlord is owner of many shops and the landlord was also a tenant who has vacated the premises without any sufficient cause after charging huge amount. In the replication, the landlord clarified that he was tenant under Sh. Sanjeev Aggarwal who had filed a petition for eviction. During pendency, a compromise was arrived at and the landlord had to vacate the

premises. Both the authorities after appreciating the evidence available on the file ordered eviction.

Learned counsel for the petitioner has raised the following three arguments:-

1. It is admitted by the landlord that he purchased a shop in dispute in the year 2009 when the petitioner-tenant was already in possession. He submitted that the petition was filed on 05.08.2011 i.e. within two years and therefore, it must be assumed that the landlord had no bona fide necessity.

2. Learned counsel has further submitted that the ingredients of Section 13 (3) (a) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 have not been pleaded with regard to the landlord and therefore, the petition is not maintainable.

3. Learned counsel has further submitted that the landlord has concealed the material facts from the Court and therefore, the petition was liable to be dismissed.

On the other hand, learned counsel for the respondent-landlord has pointed out that the necessary ingredients have been pleaded in Para 3 (ii) and Para 4. He submitted that the requirement of property in question in the context of need of the son Vikesh Kalra has been pleaded. It is further pleaded that the son of the petitioner is neither occupying any shop in the urban area of Municipal Committee, Naraingarh nor he has vacated any shop without any sufficient cause after the commencement of 1949 Act. Still further, in Para 4, the landlord has pleaded that he has not vacated any premises in the urban area of Naraingarh after the commencement of 1949 Act. Hence, he submitted that the requirements of the Act have been

pleaded. Still further, learned counsel has drawn attention of the Court to Ex.D-6/C, the copy of the assessment register of the Municipal Committee which proves that the property No.491 is a residential property and not commercial. He further submitted that under the Haryana Urban (Control of Rent and Eviction) Act, 1973, a purchaser-landlord is entitled to file a petition immediately and there is no moratorium period provided in the Act to file a petition after the landlord purchases a premises which is in occupation of a tenant.

This Court has considered the submissions and with the able assistance of learned counsel for the parties gone through the judgments passed by the Courts below and the record.

As far as first argument of learned counsel with regard to purchase of tenanted premises, it will be noted that Haryana Urban (Control of Rent and Eviction) Act does not laid down any restriction on the landlord to file a petition for a specified period (moratorium) from the date of purchase of premises in occupation of a tenant. In such circumstances, the purchase of tenanted premises two years before the filing of the petition cannot be used against the landlord.

Further, with regard to second argument, it will be noted that the requirement of the landlord had been pleaded. All the three requirements of the Act had been fulfilled in the petition with regard to the son. However, learned counsel for the petitioner pointed out that such fact has not been pleaded with regard to the landlord. However, once the tenant filed a reply, the landlord clarified the factual position with regard to the premises which was in his occupation and he had to vacate the same because of eviction proceedings filed against him. In the considered

opinion of this Court, once in the replication, such fact has been pleaded, the requirements of the Act have been completed/fulfilled.

With regard to argument of learned counsel for the petitioner-tenant that there was concealment of fact, learned counsel has referred to the statement of landlord and his son. Learned counsel has laid stressed on the statement of landlord to assert that the property No.491 is a shop as admitted by the landlord. However, in the considered view of this Court, learned counsel is trying to pick and read one line in isolation of the entire statement. No doubt, the landlord has admitted that front portion of the property No.491 was purchased after paying stamp duty of a commercial property. The landlord further goes on to say that property No.491 is a shop, however, in the very next line, he states that the same is only a room. Still further, the municipal assessment record has been produced which proves that the property No.491 is a residential premises.

In view thereof, there is no ground to interfere with the orders passed by the Courts below.

All the pending miscellaneous applications, if any, shall stand disposed of accordingly.

Revision petition is dismissed.

14.08.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No