

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

**Civil Revision No.4838 of 2014 (O&M)
Date of Decision:February 26, 2018.**

Narinder Nath Sood

.....PETITIONER(s).

VERSUS

Roshan Lal

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjiv Pandit, Advocate
for the petitioner (s).

Mr. C.L. Sharma, Advocate
for the respondent.

SURINDER GUPTA, J.

Revision petitioner-landlord Narinder Nath Sood sought ejectment of respondent Roshan Lal from the shop situated at Jalandhar Road, Hoshiarpur as fully described in the head note of the petition on the ground of non-payment of rent from 01.02.2005; building has become unfit and unsafe for human habitation and that the landlord required the demised shop for his own bona fide use and occupation.

The respondent tendered the rent, which was held as legal and valid but learned Rent Controller accepted plea of revision petitioner that building has become unfit and unsafe for human habitation and the same is required by the revision petitioner for his personal bona fide use and occupation and ordered ejectment of respondent from demised premises. However, above findings of learned Rent Controller were reversed by the Appellate Authority and the rent petition was ordered to be dismissed.

Before proceeding further, it will be relevant to have a look on both the grounds taken by the revision petitioner, which are reproduced as follows:-

“ii.) The building of demised shop is unfit and unsafe for human habitation:-

The demised shop shown in red colour & marked as ABCD and the adjacent property shown in green colour & as marked AEF GHIJ in the site plan annexed herewith as Annexure-”A” is the ownership of the applicant/landlord, the entire building has a common roof. The building of the demised shop, as well as, the adjacent property is about more than 60 years old construction, the bricks of it are laid with the mud, the plaster of the walls are deteriorating (sic deteriorating) day by day and falling down, the building marked ABEFGHIJ in the site plan annexed herewith has suffered numerous cracks and is in dilapidated condition and its repair is not at all possible. And, due to the heavy rains in the past the condition of the building has become much worst and unfit/unsafe for human habitation & it may collapse any time in future. The applicant/landlord due to the dilapidated condition of the building wants to demolish the building in question and to reconstruct it.

iii.) The applicant/landlord bonafidely requires the demised shop for his own use and occupation:-

The son of the applicant/landlord is aged about 31 years, he is unmarried, highly educated and is unemployed. The demised shop and the adjacent building thereto are located at Jalandhar Road in the heart of the Hoshiarpur town. The applicant/landlord is running his business in the name & style of “Nitin Sanitary, Jalandhar Road, Hoshiarpur” in the property shown in green colour & marked as AEF GHIJ in the site plan annexed hereto.

The applicant/landlord is in the evening of his life. The applicant/landlord by demolishing the building marked ABEFGHIJ shown in the site plan which includes the demised shop in occupation of the respondent/tenant wants to construct a single building with all the latest technology and wants to settle his son in the business of some showroom of a reputed multinational company by getting the franchise of it. It may be of electronics or of garments or of sanitary or of any other qualitative products. Thus, the applicant/landlord wants to vacate (sic vacation of) the demised shop for his own bonafide requirement & personal necessity to settle his son in business.”

In order to prove that the demised premises has become unfit and unsafe for human habitation, the revision petitioner moved an application for allowing his building expert to inspect the demised premises. That application was allowed by the Rent Controller vide order dated 16.03.2010 as the counsel for respondent-tenant had no objection to it. Expert examined by the petitioner-landlord Mr. Rahul Dev Sayal (Architects) gave his report Ex.A3 drawing the conclusions as follows:-

“CONCLUSION

In view of the above said instance report in my visual inspection and observation, with regard to the facts, and existing condition of the shop in dispute in possession of Sh. Roshan Lal tenant, I have (sic reached) to the conclusion that the shop building is in dilapidated condition and has passed its life of the ceiling material and also passed all the stages of its repair, unstable and is dangerous for tenants and passer by. The roof of the shop is not in good condition. The cracks have developed. The wall are not in plumb. It is very unsafe

for the human habitation. It requires Reconstruction and Demolition.”

To rebut the report of the building expert examined by petitioner-landlord, respondent-tenant also examined his expert Mr. Vijay Bagga, who gave his report Ex.R1, stating the condition of the building as follows:-

“Conclusion:-

In view of my visual inspection and observation made with regard to the existing condition of the shop in dispute, I have come to the conclusion that the shop in dispute is in a good condition and has a future life of more than 30 years. The age of the entire building is more than 30 years. So in my opinion, the shop in dispute is in a perfect condition. Even it does not require any type of repair.”

On the basis of reports of the experts and the statements of the witnesses, learned Rent Controller observed that while the expert examined by the petitioner-landlord was appointed under order of the Court and had inspected the premises in the presence of landlord and tenant, the expert examined by the tenant was not appointed under the order of the Court and had also not inspected the premises in the presence of landlord. His report was rejected on the ground that the same is as per the sweet will of the tenant. While relying on the report of expert examined by the landlord, learned Rent Controller took note of his opinion that walls of the demised premises are in eroded condition; cracks have developed; roof of the shop is in bad condition; dampness has developed and entire construction is about 50 years old. About report of expert examined by the tenant, it was

observed that he had not taken photograph of the false ceiling or got

removed the racks fixed by the tenant to take photographs. His opinion regarding the existing construction of the demised premises is not definite.

Appellate Authority differed with the findings of the Rent Controller on the ground that expert examined by the landlord was an Architect while expert examined by the tenant is a Civil Engineer, whose opinion carries more weight. The report of the expert examined by the landlord was termed as a very weak for the reasons mentioned in the judgment as follows:-

“..... He admits that only 3 to 4 bricks are visible from where the plaster is peeled off but at the same time, he admits that it can be rectified with minor repair. Although, he deposed that there are two cracks in the southern wall but he has not taken the photographs of the same and he could not give any reason for not taking the photographs when he himself has taken the photographs from the other area of the walls. Had he taken these photographs, it would have shown as to what is the extent of these two cracks and whether these two cracks make the wall unsafe. So this is very weak point of the report.”

The Appellate Authority found that the foundations of the building are safe; walls have not bulged out; and mere fact that temporary ceiling was partly damaged, is not suffice to reach the conclusion that the building is unfit and unsafe for human habitation as false ceiling is a temporary arrangement and can be easily replaced. The expert examined by the landlord, though has stated about some cracks but the same appeared to be minor as he has not given any dimension of those cracks or taken photographs of the same.

I have also perused the report of both the experts. AW1 Rahul

Dev Sayal, in his report, has stated that southern side wall of shop has developed crack from top to bottom; inside the shop, plaster is eroded and there is fungus and dampness in the shop. Admittedly, he has not taken any photographs of the cracks of the wall. While describing the condition of the roof, he has stated that internal false ceiling of the roof was in damaged condition and has fallen from many sides. Tile terracing on the roof has developed cracks and water seeps inside the shop when it rains.

So far as the seepage of water from roof is concerned, the same can be stopped with little efforts by minor repair of the roof. As far as false ceiling is concerned, same is not part of main building and can be removed or replaced at any point of time. While describing the condition of the floor, expert of landlord states that it has cracks and water seeps in floor, which is made of cement and concrete. Condition of floor again need not be taken any note as expert of revision petitioner has nowhere stated that floor is in depressed condition. The cracks appear in the cement floor with the passage of time, which can be repaired very easily. The roof of the shop is made of RBC and there is nothing on record that from any place, the roof has bent down. The expert has also described the condition of the shuttering in front of the shop as rusted and wood work as totally damaged. The wood work referred by expert appears to be fixtures/furniture of the tenant which he would have placed there to carry on his business. The condition of the fixtures and furniture do not describe the condition of the building. Learned Appellate Authority has elaborately discussed the report of expert examined by the landlord and has committed no error while observing that from this report, condition of the building is not proved to be dilapidated, unfit and

unsafe. I find no reason to interfere with the findings of Appellate Authority to this effect.

The next ground projected by the revision petitioner-landlord for ejectment of the respondent is his personal bona fide necessity of the demised premises. He required the demised premises to settle his son in business.

Learned Rent Controller while recording findings on this issue in favour of revision petitioner-landlord, has observed in para 28 as follows:-

“28. Now in view of the settled proposition of law, as discussed above, need of demised shop for Nitin Sood to settle him by his father (petitioner) is the valid ground to petitioner Narinder Nath Sood for ejectment of the respondent. Further question is whether demised shop is necessity of the petitioner. It has come on record from the evidence of petitioner and his son Nitin Sood that they are in dire need to settle Nitin Sood by reconstructing the demised shop. This fact has come on record from the cross-examination of RW1, who is none else instead respondent, who has admitted that Nitin Sood had gone abroad. Now these days he sits on the shop and earlier to that he was working in Film Industry at Bombay. Demised shop is situated in a densely populated area. Respondent is not aware about the other shops owned by the petitioner. However, admittedly the other shops of the petitioner are in occupation of different tenants. Further regarding the plea of respondent that said Nitin Sood as AW3 has replied that he is intending to live (sic leave) for Holland having no other option in India. He has denied the suggestion that he is not intending to start his business in India, because of intending to shift to Holland. In such

a situation the law is well settled as is held in Parikshat Suri & Ors.'s case (Supra) that in case of bonafide requirement, the law is i.e.-

- i) tenant cannot dictate the terms or question the bonafide of landlord;
- ii) landlord would be best judge of his requirement;
- iii) Rent Controller cannot begin with the presumption that there was lack of bonafides of the requirement of landlord;
- iv) landlord would have complete freedom to decide nature of the business which eh would carry on.”

Learned Appellate Authority admitted that “there is no quarrel with the proposition of law that requirement of son would be considered to be bonafide requirement of the father.” However, keeping in view the fact that the revision petitioner owns five shops at Naloyian Chowk, the plea of revision petitioner was discarded on the ground that he has not stated as to how and why these shops are not fit for starting business for his son and this fact was taken as concealment of material facts.

The above observations of the Appellate Authority are against the basic principles of law and the provisions of East Punjab Urban Rent Restriction Act. As per provisions of Section 13 (3) (a) (i), landlord is required to state about other premises in his occupation. The above shops were in possession of the tenants. Both the revision petitioner as well as his son have stated that these shops are in possession of tenants, a fact neither controverted nor denied by respondent-tenant. Learned counsel for respondent has conceded that the statement of landlord and his son to this effect has not been rebutted. Another fact taken into consideration by the Appellate Authority while rejecting the plea of petitioner that he required

premises for his bona fide need is the subsequent event of marriage of son of petitioner with a lady who is citizen of "Holland". Son of revision petitioner has admitted his marriage and visit to Holland and the possibility that he can work for gain in Holland on the basis of temporary permit issued to him. His wife is doing job in Holland. He has, however, stated that it is not easy to start a business in Holland. Firstly, he has to take admission in some school to learn the Dutch language. His wife has understanding with him that if he decides to settle in India, she will have no objection to come and reside with him. For the time being, he has no option in India, as such, was shifting to Holland. From the above statement of Nitin son of revision petitioner, this conclusion cannot be drawn, even remotely, that need of the revision petitioner is not bona fide as projected in the ejectment petition. Learned Appellate Authority appears to have gone astray while observing that the revision petitioner could not prove his bona fide necessity for the demised premises as per the requirement of law. In Indian society, every father has a pious wish to settle his son in business. Revision petitioner is presently carrying on business under the name and style of "Nitin Sanitary" and wants to expand the same by demolishing the premises in his possession and in possession of respondent-tenant and construct a modern show-room. Son of the petitioner was unmarried at the time of filing of the ejectment petition. Even if, he has married a girl from Holland, who is employed there, the need of the petitioner for the demised premises remains bona fide and genuine. This is also apparent from the fact that the revision petitioner wants to expand his business to settle his son, otherwise, he could easily plead and seek ejectment of respondent on the ground that he required the

adjoining premises to expand his own business. The fact that the revision petitioner has sought to settle his son in the business shows pious wish of a father to adjust his son in the business during his life time. While understanding the bona fide need of the petitioner, this fact is to be kept in mind that if a person living in India can carry on business in foreign country, son of petitioner can also run and look after his business even if he chooses to live in Holland. Modern techniques and IT software help a person not only in keeping watch over his business, but also to run it smoothly and successfully from a remote place. The findings of learned Appellate Authority rejecting the contention of revision petitioner that he requires the demised premises for his personal bona fide necessity to settle his son are against the facts on record and perverse, as such, are reversed.

As a sequel of my above discussion, this revision petition has merits and the same is accepted. Order passed by the Appellate Authority on issue No.3 is set aside and that of Rent Controller is upheld. Respondent is ordered to be ejected from the demised premises. Respondent is allowed time of two months from the date of this order to vacate and hand over vacant possession of the demised premises, subject to the condition that he will clear entire arrears of rent/mesne profits upto 28.02.2018 within a period of two weeks and will pay mesne profits @ ₹7500/- per month w.e.f. 01.03.2018 till handing over vacant possession of the demised premises to the revision petitioner-landlord. Mesne profits shall be paid in advance on or before 10th day of each subsequent month.

February 26, 2018.

Sachin M.

**(SURINDER GUPTA)
JUDGE**

***Whether speaking/reasoned:
Whether Reportable:***

***Yes/No
Yes/No***