

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

CR No.4846 of 2014(O&M)

Decided on: 10.09.2018.

Arun Kumar

.....Petitioner

Versus

Rajesh

.....Respondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Bhupinder Ghai, Advocate
for the petitioner.

Mr. A.S.Ahluwalia, Advocate
for the respondent.

LISA GILL, J. (Oral)

Petitioner-landlord is aggrieved of judgment dated 10.03.2014 passed by the learned Appellate Authority, Chandigarh, whereby order dated 17.08.2013 passed by the learned Rent Controller, Chandigarh has been set aside. Consequently, eviction of the respondent-tenant as ordered by the learned Rent Controller has been set aside and the petition filed by the petitioner dismissed.

Brief facts necessary for the adjudication of the case are that the petitioner-landlord filed a petition under Section 13 of East Punjab Urban Rent Restriction Act, seeking eviction of the respondent-tenant from the premises as described in the petition. It was averred that the respondent was a tenant in an area of 150 Sq. feet at the Plot/Shed No. 691, Industrial Area, Phase-2, Ram Darbar, Chandigarh. Fresh lease deed dated 24.09.2005 was executed between the petitioner and the respondent

for a term of eleven (11) months and rent of the premises was fixed at the rate of ₹2300/- per month, to be increased at the rate of 5%, in case, the lease was to be extended. However, the respondent-tenant is alleged to have occupied another room measuring 5 feet x 5 feet without permission of the petitioner. He even stopped paying rent on one pretext or the other. Respondent-tenant was alleged to be in arrears of rent since August 2005 at the rate of ₹2415/- per month as well as electricity charges. Personal necessity was pleaded by the petitioner while stating that he required the premises for his personal use and occupation by restarting of the work of car garage. Petitioner stated that he was unemployed. The car garage which used to be run in the premises earlier had been closed due to some problems after the death of the petitioner's father. However, the petitioner again sought to reopen the said garage for his livelihood.

Petition was contested by the respondent-tenant *inter alia* submitting that the tenanted premises were not properly described as no site plan was attached. Moreover, the landlord, it was pleaded did not come to Court with clean hands. The present petition was filed as a counter blast to the suit filed by the respondent against the landlord, which was decreed by the learned Civil Judge (Jr. Division), Chandigarh. It was further pleaded that respondent-tenant was in possession of only 138 Sq. feet and not 150 Sq. feet. It was denied that he was in illegal occupation of any area. The premises, it was averred could not be used for a garage, as it was allotted for a manufacturing unit. Moreover, the petitioner was contended to have let out a part of the premises to a new tenant at a higher rate of rent and the present petition has been filed for

the purpose of increasing the rent only. The petitioner-landlord, it was averred resided abroad and came to India periodically. Dismissal of the petition was prayed for.

The following issues were framed by the learned Rent Controller, Chandigarh:-

1. Whether the respondent is in arrears of rent w.e.f. August 2005 onwards @ Rs.2415/- per month alongwith electric charges etc, for the same period?
OPP
2. Whether the petitioner requires the premises in question for his personal use and occupation?OPP
3. Whether the petition is not maintainable?OPR
4. Whether the petitioner has no cause of action?OPR
5. Relief.

Learned Rent Controller, Chandigarh negated the ground of non payment of rent as the provisional rent stood deposited. The petition filed by the landlord was however allowed on the ground of *bona fide* personal necessity on 17.08.2013.

Appeal was preferred by the respondent-tenant. The same was allowed by the learned Appellate Authority, Chandigarh, vide impugned judgement dated 10.03.2014 while setting aside judgement dated 17.08.2013.

Aggrieved therefrom, the present petition has been filed by the petitioner-landlord.

Learned counsel for the petitioner vehemently argues that personal *bona fide* necessity of the petitioner is clearly borne out from the evidence on record. It is even admitted by the respondent-tenant that the

petitioner is unemployed. There is nothing on record to rebut the averment that earlier a garage was indeed run in the premises in question. Moreover, learned Appellate Authority, Chandigarh has wrongly concluded that merely because the petitioner has not sought the eviction of other tenants from the demised premises, his need and requirement is not *bona fide*. It is stated that the petitioner is also seeking eviction of another tenant namely Rajan, who is occupying 450 Sq. feet area. Petitioner can easily start his work initially with 150 Sq. feet area itself i.e. the area occupied by the respondent. As and when premises in possession of Rajan are vacated, the petitioner would expand his work therein. Moreover, the petitioner, who is the landlord is the best judge to consider his need and requirement. The respondent, it is contended has failed to prove that the personal need and requirement of the petitioner is not *bona fide*. It is thus prayed that the present revision petition be allowed.

Learned counsel for the respondent however refutes the averments on behalf of the petitioner and submits that the learned Appellate Authority has rendered a well reasoned and logical judgement after proper appreciation of the evidence on record, therefore, the same be upheld. It is contended that the evidence on record clearly shows that the need and requirement of the petitioner is not *bona fide* in any manner. Petitioner has admitted that he used to come to India periodically. Moreover, the petitioner was unable to explain as to why the present respondent and one Rajan were targeted for eviction while not seeking eviction of the other tenants. Respondent filed a suit for permanent

injunction seeking to restrain the petitioner from evicting the respondent from the premises in question, except in due process of law and the said suit was allowed. The present petition seeking his eviction has been filed as a counter blast. Furthermore, the petitioner did not lead any evidence to show that firstly it is permissible to use the premises for running a garage or that the premises of 150 Sq. yards would be sufficient to run a garage. The petitioner's mother filed a suit for eviction of one of the tenant-Shokat Ali-RW-2 seeking his ejectment on the ground of non-payment of rent. Since RW-2-Shokat Ali deposited the rent, the said petition was dismissed as withdrawn on 28.11.2013. It is urged that in case there was indeed a genuine requirement of the petitioner for running a garage in the premises, his mother or the petitioner himself would necessarily have sought ejectment of Shokat Ali on the ground of personal necessity as well. It is further argued that during the pendency of the present proceedings, the petitioner inducted another tenant on the premises in the year 2001, which clearly proves that requirement of the petitioner is not *bona fide*. It is thus prayed that this petition be dismissed.

I have heard learned counsel for the parties and have gone through the record.

It is not in dispute that the petitioner along with his mother and sister are the owners of the demised premises i.e. Plot No. 691, Industrial Area, Phase-2, Ram Darbar, U.T.Chandigarh. Respondent-tenant was inducted as one of the tenants in the premises as detailed in the foregoing paras. The petition seeking eviction was filed on the ground of non-payment of rent, electricity charges as well as personal *bona fide*

necessity. The ground regarding non-payment of the rent obviously does not survive. In order to prove personal necessity the petitioner stated that he required the premises in question for running a motor garage as he was unemployed and he had not vacated any building without sufficient cause after the commencement of the act.

In my considered opinion, the learned Appellate Authority has rightly held that the petitioner-landlord has been unable to prove that he required the premises for his *bona fide* personal necessity or requirement. The present petition seeking eviction of the respondent-tenant was filed in November 2006. The petitioner admitted that he remained abroad from November 2006 till June 2007 and again from October 2007 to March 2008. As per legal notice dated 06.09.2006 Ex.R-1, issued to the respondent-tenant, it is nowhere mentioned that the premises are required for personal *bona fide* necessity for running a garage. Suit for permanent injunction filed by the respondent-tenant for restraining the petitioner from interfering in the peaceful possession of two rooms on the ground floor of plot no. 691, Industrial Area, Phase-2, Ram Darbar, Chandigarh, was decreed by the learned Civil Judge (Jr. Division), Chandigarh, on 23.07.2008 while restraining the petitioner from evicting the respondent-tenant illegally or forcibly except in due course of law. It is admitted by the petitioner that there are five (05) tenants on the ground floor of the premises besides the respondent. Eviction petition has been filed only against the present respondent and one Rajan.

There is nothing on record to indicate as to why no action

was taken by the petitioner for eviction of the other tenants. There is no dispute that it is for the landlord to decide about his personal requirement and necessity, but the said necessity has to be *bona fide*. In the given facts and circumstances of the case, the petitioner has indeed failed to prove his personal necessity in order to seek eviction of the respondent-tenant from the premises. Doubtlessly, the landlord is the best judge of his own requirement but at the same time the said requirement has to be *bona fide*, genuine and not a farce, clearly distinguishable from a mere whim, fanciful desire. In my considered opinion, the learned Appellate Court in the facts and circumstances of the case, rightly allowed the appeal filed by the respondent-tenant setting aside judgement dated 17.08.2013 passed by the learned Rent Controller, Chandigarh and dismissed the petition filed by the present petitioner. Petitioner-landlord in the present case has failed to prove his *bona fide* need or requirement of the demised premises.

No other argument has been raised.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 10.03.2014, passed by the learned Appellate Authority, Chandigarh, which calls for interference by this Court in exercise of revisional jurisdiction.

Petition is accordingly dismissed.

September 10, 2018
s.khan

(LISA GILL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No