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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 5156 of 2015(O&M)
Date of Decision:1.12.2018

Sukhdev Singh

---Petitioner

vs.

Lajwanti

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

***

Present: Mr. Ravish Bansal, Advocate
for the petitioner
Mr. Avnish Mittal, Advocate
for the respondent

***

Rekha Mittal, J.

The present petition directs challenge against concurrent findings of fact whereby petitioner-tenant has been ordered to be evicted from the shop in dispute bearing No. B-ii/1265, situated at Banwari Market, Patiala Road, Rajpura, detailed in head note of the eviction application on the twin grounds of bona fide personal necessity and cease to occupy.

Lajwanti, claiming herself to be the landlady of the demised premises sought eviction on the grounds inter alia non-payment of rent w.e.f. 1.5.1999; bona fide personal necessity for her son Raju; additions and alterations made by the tenant that is likely to impair value and utility of the premises and cease to occupy.

The Rent Controller, Rajpura vide order dated 10.12.2012 allowed the eviction application on the aforesaid twin grounds. The appeal

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preferred by the petitioner did not find favour with the Appellate Authority, Patiala whereby eviction on the aforesaid grounds was affirmed.

The facts relevant for disposal of the present petition are that as per case of the respondent, she is owner of the disputed shop which is on rent with the petitioner @ Rs. 186.25/- per month. The shop in dispute is required by her for personal bona fide necessity to adjust her son Raju for running business of car repair after reconstructing the same. The shop is lying closed for a period of six months prior to filing of eviction application and is still lying closed.

The petitioner/respondent filed reply and, in turn, raised the plea that he purchased half share of shop in dispute from Sh. Ashok Kumar son of Ramji Dass on his behalf and on behalf of his mother Smt. Ram Murti daughter of Sh. Rakha Ram vide registered sale deed dated 16.8.1995. He also purchased portion of shop from Ashok Kumar vide registered sale deed dated 31.5.2007. He took shop No. B-1/1265 on rent from Sh. Rakha Ram @ Rs. 185.25/- per month. After death of Rakha Ram, a decree was passed in favour of Ashok Kumar son of Ramji Dass to the extent of 1/3rd share in land comprising khasra No. 495, suffered by Smt. Kasturi Devi widow of Rakha Ram. Shop in dispute is also part of khasra No. 495, situated at village Banwari, Tehsil Rajpura. The respondent relinquished her share in khasra No. 495 and suit filed by her against Ashok Kumar and Ram Murti was dismissed. The respondent is no longer landlady of the petitioner. It is further averred that in order to save eviction, he tendered arrears of rent on the first date of hearing. He has controverted the allegations on the basis whereof eviction has been sought. It is further

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averred that a shop adjoining to the shop in question which was in possession of Narain Dass has already been vacated on the ground of personal necessity of the respondent for her son Raju. All other material averments of the eviction application have been denied with prayer for dismissal of the same.

The Controversy between the parties led to framing of following issues and additional issues:-

"1.Whether the respondent is liable to be evicted from the shop in dispute on the grounds of arrears of rent or for personal necessity?OPA

1-A Whether the respondent has purchased the shop in question and is to its effect?OPR

1.B Whether the rent controller has no jurisdiction to try and decide the present petition?OPR

2.Relief."

To prove her case, the respondent appeared in the witness box and examined Balwinder Pal Singh PW2 and Mohinder Singh PW3. On the other hand, Sukhdev Singh petitioner appeared in the witness box and examined Mangat Singh RW2. The respondent landlady further examined Tejinder Kumar AW6, Yagya Dutt, Photographer AW7 and Gurpreet Singh PW8.

The Rent Controller decided issues No. 1, 1.A and 1.B in favour of the respondent with the findings that there exists relationship of landlady and tenant between the parties. The shop in question is required bona fide for personal necessity of son of the respondent. The petitioner

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has ceased to occupy the premises in question. However, the application with regard to the petitioner having made additions and alterations or the shop has become unfit and unsafe for human habitation has been rejected. The Appellate Authority affirmed findings of the Rent Controller with regard to relationship of landlady and tenant between the parties and so also the petitioner being liable to be evicted on the grounds of personal necessity and cease to occupy.

Counsel for the petitioner has assailed consistent findings of the courts both in regard to there exists relationship of landlord and tenant between the parties and so also his being liable to be evicted on the ground of bona fide personal necessity and cease to occupy.

The first and foremost submission made by counsel is that the petitioner filed application (Annexure A-2) for additional evidence under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure (in short "the Code") for production of orders of Hon'ble the Supreme Court passed on 21.7.2014 but the said application remains undecided at the time of disposal of the appeal. It is vehemently argued that as the Appellate Authority has decided the appeal without deciding the application for additional evidence, the order passed by the Appellate Authority is liable to be set aside and the matter needs remittance to the Appellate Authority for decision of the appeal afresh by disposing of the application for additional evidence. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **Jatinder Singh and another minor through mother vs. Mehar Singh and others** alongwith connected case **2009(1) RCR (Civil) 253, Hakam Singh vs. State of Haryana and others**

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alongwith connected appeals **2008(4) RCR (Civil) 422** and **Malayalam Plantations Limited vs. State of Kerala and another 2011(3) RCR (Civil) 609.** Further reference has been made to judgments of this Court **Sham Lal and Sons and others vs. Rajiv Kumar 2010(1) PLR 661, Shadi Lal vs. Municipal Committee, Rewari 1994 (2) RRR 617, Rajbir Singh vs. Virender Singh and others 1996(1) PLR 703** and **Charan Singh vs. Jagtar Singh 1999(2) RCR (Civil) 315.**

To assail findings with regard to relationship of landlord and tenant between the parties, it is argued that the petitioner has purchased part of the shop in question from Ashok Kumar and Ram Murti, co-owners to the extent of 2/3rd share, therefore, he being co-owner of the shop can not be evicted by invoking Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short "the Act").

With regard to eviction on the ground of bona fide personal necessity of Raju, it is vehemently argued that neither in the eviction application nor in her testimony by Lajwanti, there is an averment in compliance with the provisions of Section 13(3)(a)(ii) of the Act that said Raju is not occupying in the urban area concerned for the purpose of business any other such building and he has not vacated such a building without sufficient cause after commencement of the Act, in the urban area concerned. It is further argued that Raju did not appear in the witness box to provide an opportunity to the petitioner to elicit the facts with regard to his occupation of any other such building or having not vacated such a building after commencement of the rent Act. According to counsel, in absence of pleadings or proof to comply with the requirements of Section

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13(3)(a)(ii) (b) and (c) of the Act, findings recorded by the Courts qua eviction on the ground of personal necessity suffer from perversity and can not be allowed to sustain. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Ajit Singh and another vs. Jit Ram and another 2008(4) RCR (Civil) 390,** wherein in para 11 of the judgment, it has been held, reads thus:-

> "From the aforesaid decision of this Court, it is therefore, clear that this Court has laid down authoritatively that a non-residential premises, if required by a son for user by him would cover the requirement of words used in the Section, i.e. "for his own use" in reference to a landlord. Therefore, if "his own use" has been interpreted by this Court in the above-said manner, then the requirements as laid down in Section 13(3)(a)(ii) (b) and (c) of the Act has to be interpreted in the same manner to hold that (a) the son of the landlord has to plead in the eviction petition that, (b) he is not occupying in the urban area concerned for the purpose of his business any other such building or rented land as the case may be; and (c) he has not vacated such a building or rented land without sufficient cause after the commencement of the Rent Act, in the urban area concerned."

In addition, it has been argued that the respondent-landlady tried to introduce totally different case in view of testimony of Tejinder Kumar, another son of the respondent who has claimed that the shop in question is required for his bona fide personal use and occupation. It is argued that

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there is no evidence on record that Raju is also known as Tejinder Kumar. It is further argued that in the given circumstances, non-examination of Raju assumes greater significance and an adverse inference is liable to be drawn against the respondent for her failure to examine Raju without any tangible explanation.

Counsel would argue that findings of the courts with regard to the petitioner having ceased to occupy the premises by relying upon testimony of an official from the Punjab State Electricity Board, Rajpura can not withstand the test of judicial scrutiny in view of the facts elicited in testimony of Balwinder Pal Singh PW2 and the document marked as an exhibit in his testimony. It is argued that document Ex. PW2/B pertains to the period from 12.5.1999 to 9.1.2006 but the period relevant in the present context is four months prior to institution of eviction application on 21.11.2000. It is further argued that in six months prior to November 2000, the meter reading shows consumption of electricity, therefore, evidence of PW2 is not at all sufficient much less cogent to establish plea of the respondent that the petitioner has ceased to occupy the tenancy premises continuously for a period of four months before filing of the eviction application.

Counsel representing the respondent has supported consistent findings recorded by the courts with the submission that the same neither suffer from material irregularity nor perversity thus, can not be interfered with in exercise of revisional jurisdiction. To refute contention of the petitioner that order passed by the Appellate Authority is liable to be set aside for want of decision of application Annexure A-2, seeking permission

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to adduce additional evidence, it is argued that the respondent earlier filed application for additional evidence Annexure A-1 to produce copies of orders of FCR Punjab, Chandigarh dated 4.12.2008 and dated 5.4.2011 of the Punjab and Haryana High Court in matter pertaining to sanction of mutation but the same was dismissed by the Appellate Authority while disposing of the appeal. Counsel for the petitioner has not made any submissions to assail order passed by the Appellate Authority dismissing application dated 4.12.2013 (Annexure A-1). It is argued that if orders passed by the FCR and the High Court in regard to sanction of mutation qua khasra No. 495 are not relevant and material for deciding the controversy, non-disposal of application for additional evidence (Annexure A-2) can neither enure to benefit of the petitioner nor can be construed as a ground for setting aside the order passed by the Appellate Authority. In support of his contention, he has relied upon judgment of this Court **Bhag Singh Malik @ Bhal Singh Malik vs. Chinmay Tapovan Trust Yol Camp, Dharamshala (H.P.) and another CR No. 4453 of 2018 decided on 1.8.2018** with further submission that order passed by this Court has been affirmed by Hon'ble the Supreme Court.

Another submission made by counsel is that the petitioner being a tenant in the shop is otherwise not competent to raise an issue of title of the suit shop particularly in the circumstances that in the earlier litigation between the parties the question of landlady-tenant relationship has already been answered against the petitioner vide order Ex. A-1 passed by the Appellate Authority (Ad hoc), Patiala and the same has attained finality between the parties.

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The respondent in the application for eviction as well as in her testimony on oath has reiterated her stand with regard to necessary compliance of the provisions of Section 13(3)(a)(ii)(b) and (c) of the Act that she is neither in possession of any other such building in the urban area concerned nor has vacated the same after commencement of the Act, therefore, the petitioner can not be heard to say that there is non-compliance of mandatory requirements in law. Further argued that non-examination of Raju for whose necessity the eviction has been sought is also of no significance as statement of respondent alone is sufficient to establish her plea that tenancy premises is required for use and occupation by Raju. In support of his contention, he has relied upon judgment of this Court **Manmohan Lal vs. Shanti Parkash Jain 2014(5) RCR (Civil) 667.** It is argued that as the petitioner did not raise an objection with regard to non-impleadment of the facts with regard to occupation of any such building or vacation of such building by Raju, the petitioner is deemed to have waived such objection and cannot be allowed to raise this issue for the first time before this court. In this context, reliance has been placed upon judgment of this Court **Gurbaj Singh vs. Parshotam Singh and others 2011 (4) RCR (Civil) 518** and **Arun Kumar vs. Des Raj Tandon (since deceased) through his LR CR No. 7149 of 2017 decided on 7.9.2018.**

I have heard counsel for the parties, perused the paper book and records.

The questions that call for consideration are :-

1. Whether non-disposal of application for additional evidence (Annexure A-2) constitutes a ground for setting aside order

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passed by the Appellate Authority?

2. What is the effect of non-impleadement of ingredients of Section 13(3)(a)(ii)(b) and (c) of the Act qua occupation or/and vacation of such building by Raju of non-examination of Raju as a witness.
3. Whether testimony of Balwinder Pal Singh PW2 has rightly been made basis for upholding plea of the respondent to order eviction on the ground of cease to occupy.

Indisputably, in the earlier eviction proceedings, the petitioner tendered arrears of rent. He also tendered arrears of rent in the present case. In the earlier eviction application, a specific issue was raised with regard to existence of relationship of landlady and tenant between the parties as the present petitioner denied the respondent to be landlady after passing of judgment dated 30.1.1999 by the Additional Civil Judge (Senior Division), Rajpura in case titled "Lajwanti vs. Smt. Ram Murti and others" that came to be affirmed in appeal by the Additional District Judge, Patiala vide judgment and decree dated 14.12.2001. The said issue was answered in favour of the respondent landlady by the Rent Controller, Rajpura in rent petition No. 12 of 26.2.2002 and order passed by the Rent Controller was affirmed in appeal decided on 14.5.2008 vide order Ex. A-1. Counsel for the petitioner has not disputed that order passed by the Appellate Authority dated 14.5.2008 has attained finality. In the given scenario, it is not open for the petitioner to raise any question with regard to ownership of the shop in question that amounts to denial of relation of landlord and tenant between the parties. In this context, reference can be made to judgment of

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this Court **National Floor Mills Private Limited vs. Ram Sarup 2013(1) PLR 613** wherein it has been held that tenant without surrendering possession of the property to his own landlord will be estopped from contending by operation of Section 116 of the Indian Evidence Act that he had acquired larger right and, therefore, he cannot be evicted. As the petitioner being a tenant can not raise the question of title of his landlord without surrendering possession, application for additional evidence in order to produce an order passed by Hon'ble the Supreme Court in proceedings pertaining to sanction of mutation is neither relevant nor material for deciding the instant controversy. This apart, the application Annexure A-1 for producing on record the orders passed in mutation proceedings was dismissed by the appellate authority. Counsel for the petitioner has not made any submissions to challenge legality or correctness of the order rejecting his claim for adducing additional evidence. Even otherwise, this court in **Bhag Singh Malik @ Bhal Singh Malik's case (supra)** has dealt with a similar issue with regard to non disposal of application for additional evidence wherein the judgments of Hon'ble the Supreme Court in **Jatinder Singh and another's case (supra)** and **Malayalam Plantations Limited's case (supra)** were also taken into consideration. It was held by this Court that there is no enunciation that non-disposal of an application for additional evidence by the Appellate Authority would automatically vitiate final order or warrant remittance of the matter to the court below for decision afresh along with application for additional evidence, irrespective of whether the application is frivolous, mala fide or meritless. On the contrary, if this court considers the

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application and finds it meritless or inconsequential for decision of the controversy, no useful purpose would be served by remand of the case and decision afresh except compelling the parties to face further agony for years for final determination of their dispute particularly in the circumstances that under the Act, a separate Fora has been created with a clear intent and object that eviction cases are decided expeditiously. When the facts and circumstances of the present case are examined in the light of aforesaid discussion and observations made in **Bhag Singh Malik @ Bhal Singh Malik's case (supra)** wherein the judgment passed by this Court has been affirmed by Hon'ble the Supreme Court, with utmost humility and due respect to the judgments of Hon'ble the Apex Court, in my considered opinion, contention raised by counsel for the petitioner is misconceived and deserves to be rejected. I would hasten to add that in view of earlier decision that there exists relationship of landlord and tenant between the parties that has attained finality, it is not open for the petitioner to raise any such issue nor can he be permitted to raise the question of title before the Rent authorities with limited jurisdiction.

This brings the Court to eviction of the petitioner on the ground of bona fide personal necessity of the shop for business of Raju, son of the respondent. There is no dispute that neither in the petition nor in testimony of the respondent or Tejinder Kumar, there is no averment that Raju is not in occupation of any such building in the urban area concerned nor has he vacated such building after commencement of the Act. Admittedly, Raju did not appear in the witness box to substantiate plea of the respondent that the shop in question is required for his bona fide need to start business of car

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repair.

There are two aspects worth consideration i.e. omission to allege/prove the requirements of Section 13(3)(a)(ii) (b) and (c) of the Act qua Raju and non-examination of Raju as a witness.

Section 13(3)(a)(ii) (b) and (c) of the Act makes it imperative for the landlord to specifically plead all the ingredients in clauses (b) and (c) i.e. that he/she is not occupying another residential building and has not vacated such building without sufficient cause.

Hon'ble the Supreme Court in **Joginder Pal vs.Naval Kishore Bahgal 2002(1) RCR (R) 582** interpreted the words 'for his own use' in regard to a non-residential building and held that these words must receive a wide, liberal and useful meaning rather than a strict or narrow construction. Further held that the expression 'for his own use' is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord himself but also of the normal emanations of the landlord is included therein. By taking into consideration interpretation of the words 'for his own use' in **Joginder Pal's case (supra)**, Hon'ble the Supreme Court, in **Ajit Singh and another's case (supra)**, in para 11, has held to the aforesaid effect extracted hereinbefore, therefore, the requirements for son of the landlord to plead and prove or prove the facts in compliance with Section 13(3)(a)(ii) (b) and (c) is mandatory. Since in view of judgment in **Ajit Singh and another's case (supra),** the landlord has been obligated to plead the requirements of Section 13(3)(a)(ii) (b) and (c) of the Act qua son as well, in my considered opinion, there is no escape for the landlord except either to plead and prove or prove that the son for

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whose requirement the premises is needed also satisfy the requirements laid down in Section 13(3)(a)(ii) (b) and (c),thus failure of the tenant to raise objection that the landlord has not pleaded such facts can not enure to benefit of the respondent-landlord. This apart, in the case at hand, the respondent sought eviction for the requirement of Raju to start business of car repair. Indisputably, Raju did not appear in the witness box to corroborate version of his mother. On the contrary, Tejinder Kumar son of landlady was examined. As has rightly been argued by counsel for the petitioner, there is nothing on record suggestive of the fact that Raju and Tejinder Kumar is one and the same person. Even the courts below have not so held who rather introduced a new case for the respondent by holding that shop is required for both the sons of the respondent.

Tejinder Kumar tendered into evidence his affidavit by way of examination in chief. In para 1 of the affidavit, he has stated "that the present case is on the ground of bona fide need. He also needs the shop in question for running his own business. He want to start his business of car repair as he is having experience in that line". In the concluding line of para 2 of the affidavit, he would reiterate that he needs the shop in question for running his own business. Statement of Tejinder Kumar is conspicuously silent if the shop is required for business of Raju or he along with Raju has to start a joint business of car repair in the shop. The testimony of Tejinder Kumar is in clear contradiction to the case set up by the respondent that shop in question is required for business of Raju. In the given scenario, examination of Raju as a witness assumes significance but the courts have failed to appreciate this vital aspect of the matter. It further appears to the

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court that since Tejinder Kumar another son of the landlady is not in occupation of any other such building in the Municipal area of Rajpura nor has vacated the same after commencement of the Act, she preferred to examine Tejinder Kumar in place of Raju to corroborate her version. As Raju did not appear in the witness box, the petitioner has been denied an opportunity to cross examine him with regard to his having experience in the business of car repair or his intention to start business in the shop or his neither being in occupation of any other such building nor vacated the same after commencement of the Act. In this view of the matter, it can safely be held that consistent findings of the courts allowing eviction on the ground of bona fide personal necessity suffer from perversity and liable to be set aside.

Coming to the question of eviction on the ground of cease to occupy, both the courts have relied upon testimony of Balwinder Pal Singh, Meter Reader, Punjab State Electricity Board, Rajpura to allow eviction on the ground of cease to occupy. The eviction application was filed on 20.11.2000 and period of four months prior to institution of the same would be from July 2000 till the date of filing of petition. Balwinder Pal Singh tendered into evidence his affidavit Ex. PW2/A by way of examination in chief. In para 1 of the affidavit, he has stated about record pertaining to Meter No. GF 27/335 A for the period from 12.5.1999 to 9.1.2006 and a copy thereof is Ex. PW2/B. In the second para, he would state that as per records, there was no consumption of power from the meter since 8.1.2005 and the present reading is 20799. A perusal of examination in chief reveals that prior to January 2005, there was consumption of electricity in respect of

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meter installed in the shop in question and the same negates plea of the respondent that the petitioner has ceased to occupy the premises for want of consumption of electricity. Not only this, the witness in his cross examination would state that whenever he visited the shop, he found the shop closed. He visited the shop once in two months. It is difficult to digest that if the witness has found the shop closed on the day of his visit once in two months, an inference can be drawn on the basis of presumptions and assumptions that the petitioner ceased to occupy the demised shop. Further more, perusal of document Ex. PW2/B makes it evident that meter reading from 13.3.2000 till November 2000 records consumption of units more than 100 on each interval of two months, therefore, it cannot be said that since there was no consumption of electricity six months prior to filing of eviction application, it is an evidence of the petitioner having ceased to occupy the shop in question. This apart, the petitioner appeared in the witness box to counter case of the respondent and substantiated his defence plea. He was subject to cross examination at length but nothing tangible and material has been brought forth to prove that he had ceased to occupy the shop for a period of six months continuously before filing of eviction petition. He denied the suggestion that electric meter was lying shut from 12.5.1999 to 9.1.2006. He further stated that he had less work and for that reason consumption is less. Both the courts did not bother to examine the facts narrated by Balwinder Pal Singh and contents of document Ex. PW2/B, in the light of statutory requirement that the landlord has to prove cease to occupy continuously for a period of four months before filing of the petition in order to seek eviction on this ground.

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Perusal of the orders impugned would reveal that the Rent Controller has held that as per the meter reader, there is no consumption of electricity since long time and hence, no work is being carried out in the shop in dispute. Further held that once the roof has fallen, there is no possibility of the shop being used for any purpose. The Rent Controller, on one hand has negated plea of the respondent that the shop in dispute has become unfit and unsafe for human habitation on account of there being holes in the roof of the shop in dispute but on the other hand, has allowed eviction on the ground of cease to occupy by holding that roof has fallen. In view of the above, the Rent Controller has recorded contradictory findings. As a matter of fact, the Rent Controller failed to perform its duty as it did not bother to examine the statement of Balwinder Pal Singh much less thoroughly and meticulously. The Appellate Authority has just reproduced the observations of the Rent Controller to affirm findings on the question of cease to occupy without caring to deal with testimony of meter reader, discussed hereinbefore. In this view of the matter, it can be held without any hesitation that orders passed by the courts allowing eviction on the ground of cease to occupy are unreasoned, sketchy and the result of non-appreciation of evidence and failure to consider that there is not even an iota of evidence to prove that the petitioner had ceased to occupy the demised premises for a period of six months prior to institution of eviction application. The manner in which the courts have dealt with this issue leads to an inference that the courts were hell bent to favour the landlady by passing an eviction order and had even gone to the extent of introducing a new case that the landlady requires the shop to settle her two sons. That

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being so, findings of the courts ordering eviction on the ground of cease to occupy suffer from illegality and perversity and accordingly set aside.

In view of what has been stated hereinbefore, the petition is allowed. Orders impugned are set aside. The application for eviction is dismissed with costs throughout.

(**Rekha Mittal)**
Judge

1.12.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes