

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

119

CR No.517 of 2017 (O&M)
Date of decision: 26.09.2018

Rajinder Kaur

..... Petitioner

Versus

Kavita Bawa and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. M.L. Sarin, Sr. Advocate with
Ms. Hemani Sarin, Advocate
for the petitioner.

Mr. Amit Jain, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Affidavit filed by the petitioner-tenant is taken on record.

Tenant-petitioner is in the revision petition against the concurrent finding of fact arrived at by the Rent Controller, affirmed in appeal by the learned Appellate Authority ordering her eviction on the ground of bona fide requirement of the landlady.

The eviction proceedings were filed by the landlords by pleading that respondent No.1 took on rent a shop bearing private No.4 forming part of building bearing No.123/3 Doongi Pathshala, Bazar Jallinanwala Bagh, Amritsar. It was claimed that initially it was oral tenancy which was reduced into writing vide rent note dated 01.11.1993. It was pleaded in the rent petition that there are six shops in the area. Out of these six shops, two shops are under tenancy of Sifti restaurant with basement whereas third shop is under tenancy of one Patharwala whereas shop No.4

and shop No.5 are with the tenant-petitioner (herein). It was mentioned that with regard to shop No.5, a separate petition is being filed. It was further disclosed that Kuljit Singh is occupying shop No.6 as a tenant. It was pleaded that since the petitioners had no space available, therefore, they are temporarily running their business from the passage which leads to their residence with a view to earn their livelihood. It was pleaded that one of the landlord-Vijay Kumar was previously doing a job in a shop but his services have been terminated whereas the other landlord i.e. Suresh Kumar is unemployed. It is further pleaded that one of the landlord-Gaurav Bawa is also now 22 years old and he wishes to open a restaurant.

In the written statement, the tenant took a stand that tenancy of shop No.4 and 5 is one and the landlords are already running their eating joint which is not the passage but a shop. Learned Rent Controller as well as Appellate Authority after appreciating the evidence found that tenancy of shop No.4 and 5 is single tenancy and in fact, it is only a single shop. Hence, the ground of material impairment as pleaded by the landlords on account of removal of the intervening wall was rejected. However, the Rent Controller as well as the Appellate Authority held that the requirement of the landlords is bona fide as they are at present running their eating joint from a narrow passage of 6 feet wide only and the landlords cannot be forced to continue to run their business from the aforesaid small narrow lane which is in fact a passage for going to the residence.

On 24.09.2018, learned senior counsel appearing for the petitioner-tenant submitted that the petition was not maintainable as no eviction proceedings have been initiated with respect to the premises namely shop No.5 which was disputed by learned counsel for the respondents-landlord. Learned counsel for the respondents-landlord produced photocopy

of the petition filed with regard to shop No.5 but the same was adjourned sine die to await the decision of the present case. Learned senior counsel, on instructions from the petitioner, insisted that no petition has been filed qua shop No.5. The petition was adjourned for today granting opportunity to the petitioner-tenant to file an affidavit. The petitioner has filed an affidavit admitting that separate petition with respect to shop No.5 is pending. She admits that another petition qua shop No.5 has already been filed which has been adjourned sine die as contended by learned counsel for the landlords. Today, however, learned senior counsel once again submitted that the present petition is not maintainable as eviction has been sought only qua shop No.4. He admitted that both the Courts below have found that the premises is single one and there is no removal of intervening wall. However, senior counsel insisted that once the petition has been filed only qua shop No.4, therefore, the petition is liable to be dismissed.

On the other hand, learned counsel for the respondents-landlord pointed out that it is the case of the tenant in the written statement that two shops are not in existence and it is only one which is under the tenancy of the tenant. He submitted that this stand of the tenant has been accepted by both the Courts below. Hence, he submitted that once the premises is one and single unit and eviction therefrom has been sought, the present petition cannot be dismissed on the ground that the eviction of the part of the premises has been sought. He further pointed out that neither in the pleadings nor before the authorities below such an objection was ever taken by the tenant and therefore, the petitioner-tenant cannot be permitted to raise an argument for the first time in the revision petition.

This Court has considered the submission and find no substance in the argument of learned senior counsel. Once both the authorities have

found that shops No.4 and 5 are not separate but one unit and the aforesaid finding has not been challenged and become final, the petition cannot be dismissed on the ground that the landlords are seeking eviction from part of the premises. Still further, the petitioner cannot be permitted to raise an argument for the first time in revision petition without laying down the foundation either in the pleadings or in evidence or at the time of argument before the Courts below.

Learned senior counsel for the petitioner-tenant has further submitted that the landlords have not pleaded necessary ingredients as required under Section 13 of the East Punjab Urban Rent Restriction Act, 1949. He while elaborating has submitted that in fact the passage is a shop which leads to a big hall and since only passage has been disclosed not the hall which is on the back side, therefore, the landlord has not made full disclosure of the facts. He further submitted that there is concealment of fact by the landlord on this aspect. On the other hand, learned counsel for the respondent-landlord has submitted that in the petition itself, the landlord had disclosed that there is a 6” feet wide passage which is at present being used by the landlords for running their business as they have no other place. He submitted that there is no concealment of fact and in fact the landlord had fulfilled the ingredients as required under the Act. As regards concealment, it will be noted that the landlord while filing a petition is required to prove three requirements.

1. He requires it for his own occupation.
2. He is not occupying any other building in the urban area concerned.
3. He has not vacated any such building without sufficient cause after the commencement of this Act in the said urban area.

In the present case, all three requirements have been fulfilled by the landlords. At the cost of repetition, the landlords have pleaded that for the time being, they are using the passage for commercial purpose because they do not have any other place to run their business. As regards a hall on the back-side, it has been specifically pleaded that by the landlords proved in evidence that the premises is part of residence and not part of the commercial property.

Learned senior counsel has further submitted that the landlords have not pleaded that the existing premises in their possession is insufficient. It will be noted that the argument of learned senior counsel is not factually correct. In the rent petition, the landlords have pleaded as under:-

“That on account of the non-availability of the shop, that passage has been converted into a shop by the petitioners No.1 & 2 for use as a shop whereas the fact remains that it is a passage for going to the residential portion and has been converted into commercial use just for the purpose of having a livelihood. But in fact the petitioners are not in possession of any shop except this passage. That petitioner Vijay Kumar is not doing any job as firstly he was doing service in a Shawl shop but now his services have been terminated and his without any service and as such he requires a shop in question for running his business for which separate rent application is being filed. Similarly, Suresh Kumar is also unemployed for which a separate rent petition is being filed against the respondent regarding the second shop for getting eviction of the shop from the respondent. Thus, the shop in question i.e. shop No.4 let out to the respondent is bona fide required by the petitioner No.1 & 2 for their own use and occupation for doing the business of Restaurant. Gaurav Bawa is 22 years of age and is only a matriculate. He has also got expertise to open a Restaurant. This property situated near the Jallianwala bagh and Golden Temple, Amritsar is visited by tourists in numbers. This property is ideally located for opening

the Restaurant by the petitioners No.1 and 2.”

In view of the aforesaid pleadings, it is apparent that the passage which is being used for commercial purposes by the landlords due to the circumstances as they are not in possession of any other premises, itself shows that the pleadings of insufficiency of the availability of the premises is with the landlord has been pleaded.

Learned senior counsel further submitted that no amount of evidence can be considered by the Court without pleadings. There is no dispute with the aforesaid proposition of law. However, in the present case, the landlords have pleaded those facts as required.

In view of the discussion made above, there is no ground to interfere with the findings of fact arrived at by the Rent Controller, affirmed in appeal by the Appellate Authority.

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

Revision petition is dismissed.

The tenant is granted two months time to hand over vacant possession of the premises provided she files an undertaking before the Rent Controller that she would hand over the vacant possession of the premises to the landlords after expiry of two months and deposit arrears of rent/mesne profit within 10 days from today.

26.09.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No