

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Civil Revision No. 5260 of 2018(O&M)

Date of Decision: August 23 , 2018.

Hind Kumar

..... PETITIONER (s)

Versus

Ved Prakash and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Saurabh Kaushik, Advocate
for the petitioner.

Mr. Rajbir Singh, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The petitioner, who is a tenant of the respondents' shop at Cinema Road, Nabha, District Patiala, is aggrieved of judgment dated 08.09.2016 passed by the learned Rent Controller, Nabha whereby his eviction from the demised premises was ordered as well as judgment dated 08.05.2018 vide which the learned Appellate Authority, Patiala upheld the eviction of the petitioner/tenant from the premises, in question.

Brief facts necessary for adjudication of the case are that, the respondents/landlords filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act') seeking eviction of the petitioner

from the shop in question. It is pleaded that the petitioner/tenant had taken the demised shop on rent at the rate of ₹2,000/- per month from the mother of the respondents, Smt.Vidya Devi in the year 1960. Smt. Vidya Devi passed away on 15.12.1990. There is no dispute regarding the relationship of landlord and tenant between the parties. Eviction of the petitioner was sought by the respondents on the ground of non-payment of rent, diminution of the value of the premises and change of user as well as on account of bonafide personal necessity. It was contended that the petitioner/tenant was in arrears of rent and house tax w.e.f. 01.04.1995 till the filing of the petition on 23.11.2010. He had taken the demised premises on rent for running a Karyana shop however he started tea stall therein, thereby diminishing the value and utility of the demised shop and changed the user thereof. Further, the respondents/landlords were stated to be four brothers. It was stated that the said landlords alongwith their father Amar Nath were residing in the rear portion of the demised shop. There were three other shops adjoining the demised shop and the said three shops were got vacated from the respective tenants since the respondents/landlords were facing hardship to reside in the house. The respondents/landlords intended to get the whole property partitioned amongst themselves and to construct their separate residences for each family. The petition was resisted by the petitioner/tenant while asserting that he was regularly paying the rent of the shop in question. It was contended that the respondents/landlords were running a commission agency shop as well as Rice Sheller at Amargarh, Tehsil Malerkotla District Sangrur. There were three other vacant shops of the respondents/landlords and in case there was any need of the demised shop for personal necessity, they could have started their business in

the said three vacant shops. The petition, it was contended, was filed merely to pressurize the tenant to enhance the rate of rent.

From the pleadings of the parties, the learned Rent Controller framed the following issues:-

- “1. Whether the rent tendered is short and invalid? OPP
2. Whether the respondent had changed the nature of business from Karyana shop to tea stall and had changed the nature of business? OPP
3. Whether the petition requires the shop for their own personal use? OPP
4. Whether the application is not maintainable? OPR
5. Whether the petition is malafide and has been filed for enhancing the rate of rent? OPR
6. Relief.”

The learned Rent Controller on considering the facts and circumstances of the case directed the eviction of the petitioner/tenant on account of bonafide personal necessity of the landlords. Appeal filed by him was dismissed by the learned Appellate Authority, Patiala vide judgment dated 08.05.2018. Hence, this revision petition has been filed.

Learned counsel for the petitioner/tenant vehemently argues that the respondents/landlords have taken a stand which is contradictory to their petition. In the petition, it is stated that the respondents/landlords are residing at the rear side of the shop in question, whereas in the cross-examination, it was admitted by respondent-Ved Parkash that he alongwith his family is residing at Hira Mahal Colony. It is only one of the landlords who is residing at the rear portion of the shop alongwith his family. It is stated in the testimony of Ved Parkash that they seek to partition the property amongst all the brothers. Therefore, it is a stand

which is contradictory to their averments in the petition. In case the respondents/landlords seek to partition the property amongst themselves, they are at liberty to file separate petition. It is further contended that only one of the landlords has been examined whereas the bonafide necessity for usage of the property in question for any particular person does not stand proved. The person for whom the property is to be used should have been examined and in absence thereof, bonafide necessity is not proved. It is thus prayed that this petition be allowed and the impugned judgments be set aside.

Learned counsel for the respondents/caveators, on the contrary, refutes the abovesaid averments while submitting that a specific stand has been taken by the respondents/landlords that they seek to partition the property amongst all the brothers and to construct separate portions for all the four families. Therefore, the truthful stand taken by the respondents/landlords while testifying before the learned Rent Controller, does not in any manner detract from the case of the landlords. It is further contended that the petitioner/tenant himself admitted to having sold two shops in his ownership during the period of his tenancy itself. Bonafide personal need of the respondents/landlords is duly proved on record. It is thus prayed that the revision petition be dismissed.

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

Relationship of landlord and tenant between the parties is not in dispute. The property in question is in joint ownership of the respondents, who are four brothers. It is the specific stand of the landlords-respondents that the premises in question are joint property. There were other three shops (in possession of other tenants) alongwith the shop in question which is in

possession of the petitioner as a tenant. All three of the said shops stand vacated and they have not been let out on rent again. Respondents-landlords have taken a specific stand that they are facing a lot of problem in residing in the said premises. They wish to divide the whole property amongst all the four brothers who have their own separate families. Much stress has been laid by learned counsel for the petitioner on the deposition of PW1 Ved Parkash wherein he stated that respondents-Paramjit Kumar and Ashok Kumar are residing at PUDA Colony, Hira Mehal, Nabha and it is only one of the brothers and his family who were residing in premises behind the shops in question to contend that the landlords have not come with clean hands.

It is further contended that the premises are not required for personal necessity in any manner. PW1 Ved Parkash deposed that he would settle the children in business after getting the demised shop vacated whereas in the petition filed by the landlords, it is stated that they require the premises for separate residence, therefore, the need projected was stated to be malafide. Moreover, the said child/children were never examined. I do not find any merit in the said argument raised by learned counsel for the petitioner. It is specifically mentioned in the petition filed by the respondents-landlords that they are four brothers and they wish to partition the entire premises including the demised shop amongst themselves. Three of the shops have admittedly been vacated after efforts made by the respondents-landlords. It is conceded that none of the three shops have again been let out on rent by the respondents-landlords. The learned Appellate Authority in this respect has rightly observed as under:-

“(33) Now reverting to the case in hand where the appellant-tenant

has pointed out variation in the need projected by respondents-landlords during cross-examination of Ved Parkash PW1 wherein he deposed that they would settle their children in the business after getting the demised shop vacated in place of their original plea of partition of entire premises including demised shop for constructing separate residence for respondents-landlords. At this outset, the concept of “personal necessity” has to be given a wider meaning. The pleadings and evidence led by respondents-landlords are not pointing out that the demised shop after vacation would be used by them for some other purpose than their personal necessity. The subsequent revelation made by Ved Parkash PW1 in his cross-examination as pointed out by appellant-tenant does not turn the need projected by them to be malafide. Whether the respondents-landlords will use the tenanted shop for residential purpose after joining it with rear portion or they would facilitate their children to start their business in the joint property after partition, is a case of bona fide personal necessity. The respondents-landlords could have pleaded personal necessity of their children at very first instance and on this ground they would get the demised shop vacated from the appellant-tenant. In these circumstances, the variation pointed out in cross-examination of Ved Parkash PW1 is not sufficient to raise any doubt over the need projected by respondents-landlords.”

At this stage, it is relevant to note that the petitioner-tenant clearly admitted in his cross-examination that he has own residence in the area of Mehas Gate. He admitted the photographs Ex.RW1/ and Ex.RW1/2 to be of his house having a passage in the middle surrounded by two shops on front side. At the first instance RW1 Hind Kumar (the petitioner) denied the ownership of these shops and in the next breath accepted that the said shops were constructed by

him. However, the petitioner sought to explain that he had already sold the said shops. In the facts and circumstances of this case, eviction of the petitioner has been rightly ordered. Furthermore, merely because the children for whom the business was pleaded to be started were not examined, cannot be fatal to the case of the respondents-landlords neither is there any merit in the plea that all the respondents-landlords should have been examined in order to prove bonafide personal necessity on their part. Application under Order 41 Rule 27 CPC filed by the petitioner before the learned appellate court, Patiala to prove ownership of two plots in the names of the wives of respondent-Paramjit Kumar and Ashok Kumar has been rightly dismissed.

Keeping in view the entire conspectus of facts and evidence on record, the learned courts below have rightly held that personal bonafide necessity of the respondents-landlords has been duly proved on record.

There is nothing on record which indicates any perversity or illegality in the impugned judgments dated 08.09.2016 and 08.05.2018 passed by the learned Rent Controller, Nabha and the learned Appellate Authority, Patiala, respectively, which calls for interference by this Court in exercise of revisional jurisdiction.

Consequently, this revision petition is dismissed.

August 23 , 2018.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No