

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

CR No.5528 of 2018 (O&M)
Date of decision : 27.08.2018

M/s Bihari Lal Raj Kumar

...Petitioner

Versus

Rakesh Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajan Bansal, Advocate for the petitioner.

ANIL KSHETARPAL, J.

The tenant-petitioner is in the revision petition against the order passed by the Rent Controller evicting the tenant, affirmed in appeal by the Appellate Authority.

It is the case of the landlords-respondents that four brothers alongwith their mother Savitri Devi, purchased the property in dispute vide sale deed dated 10.01.1966. After the death of mother, her share came to her four sons namely Sudarshan Kumar, Prem Nath, Rakesh Kumar and Bhushan Kumar. It was claimed that the property (a shop) in dispute which is in possession of the tenant/petitioner is bonafidely required by applicant No.1-Rakesh Kumar for his own use and occupation. It was pleaded that all the three applicants namely Rakesh Kumar, Sudarshan Kumar and Prem Nath do not own or possess any other building in the country except the demised premises.

It was pleaded that Rakesh Kumar is working in M/s Sudarshan Shoe Company, owned by his brother on salary basis and he wishes to open his own business. It was further pleaded that there is a space available on the first floor but that is not suitable for the business which the landlord proposes to start.

The tenant-petitioner contested the petition on the ground that total property is 18 feet x 93 feet which has opening towards both the sides and M/s Sudarshan Shoe Company is in possession of 12 feet x 18 feet only. It is further pleaded that separate eviction proceedings have been filed against other tenants i.e. Avtar Singh and Mukhtiar Singh.

Learned Rent Controller after appreciating the evidence held that the requirement of the respondents-landlords is bona fide and the tenant is not ready to occupy first floor of the premises.

An appeal filed by the tenant has also been dismissed by the Appellate Authority. It may be noticed that during the pendency of the eviction proceedings, an application for additional evidence was filed and the tenant-petitioner wanted to produce some declaration made by Rakesh Kumar while getting his son admitted in a public school in March, 1996, wherein he had claimed that he is owner alongwith his brothers of M/s Sudarshan Shoe Company.

In reply to the application, it was pleaded that the aforesaid statement was made by Rakesh Kumar in the year 1996 and it was made only to ensure that son gets admission in the public school. Still further, it has been asserted that the rent petition is filed in the year 2015 and that statement would not be relevant in the year 2015 after passage of so much

time.

Learned Appellate Authority after re-appreciating the evidence available on the file affirmed the judgment passed by the Rent Controller ordering eviction of the tenant. It is not disputed that an application for additional evidence was dismissed by the Appellate Authority by a detailed order.

Learned counsel for the petitioner has submitted, while referring to the income tax records of M/s Sudarshan Shoe Company, that in the balance sheet in the liability column of M/s Sudarshan Shoe Company, deposits of Rakesh Kumar and his wife are almost of ₹7,00,000/-. He submitted that such deposits obviously mean that Rakesh Kumar is not merely an employee.

This Court has considered the submissions. The petitioner has produced no evidence to prove that Rakesh Kumar is partner in M/s Sudarshan Shoe Company. In fact on careful reading of the income tax record, it is proved that M/s Sudarshan Shoe Company is a proprietorship business of Sudarshan Kumar. This would be clear from Ex.A2 to Ex.A7.

Learned counsel for the petitioner further submitted that another space at the first floor is available and effort is being made to lease out the same.

This Court has considered the submission.

Learned Rent Controller has specifically noticed in para 24 that during cross-examination when the tenant appeared as AW1, he admitted that he is not ready to take the possession of the first floor of the property on lease which is lying vacant. The landlord is entitled to start his own

business. The landlord cannot be deprived of the possession of the property and he cannot be compelled to work under his brother throughout his life.

Here is a case where one brother wants to open his own business. In such circumstances, his bona fides cannot be doubted.

Keeping in view the aforesaid facts, this Court does not find any good ground to interfere in the revisional jurisdiction against the concurrent findings of fact arrived at by the Authorities below.

Revision petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

27.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No