

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

(1) **Civil Revision No.2482 of 2003 (O&M)**

(2) **Regular Second Appeal No.819 of 2003 (O&M)**

Date of Decision: May 31, 2018

Sadhu Ram

.....PETITIONER(s).

VERSUS

Darshan Singh

...RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate
for the petitioner/appellant in both the cases.

Mr. R.K. Chugh, Advocate
for the respondent in both the cases.

SURINDER GUPTA, J.

CR-2482-2003

This is revision by Sadhu Ram, landlord-petitioner against the order of Appellate Authority Rupnagar dated 13.01.2003, whereby the order passed by Rent Controller, allowing the petition filed by revision petitioner-landlord seeking ejectment of respondent-landlord from the shop bearing Municipal No.B-VII/1848-B situated in Jawahar Market, Pull Bazar, Ropar, on the ground of personal bona fide necessity of the petitioner was set aside.

2. Revision petitioner-landlord sought ejectment of respondent-tenant from the shop in question on the ground of non-payment of rent w.e.f. 17.08.1994 and his personal bona fide necessity to start business for his son Harbans Lal. He has alleged that his son was not doing any business

as he (Harbans Lal) has been shunted out from their business by his grand sons (sons of Harbans Lal) and revision petitioner intended to start business for Harbans Lal in the demised premises.

3. On appearance, respondent admitted the relationship of landlord and tenant between the parties. He contested the plea of requirement of the shop for bona fide necessity of the revision petitioner on the ground that this petition has been filed after revision petitioner failed to implement agreement dated 17.08.1994. It was pleaded that the landlord owns other shops at Ropar, which are sufficient for use of landlord and his son. Respondent had earlier filed suit against the landlord seeking relief of mandatory injunction restraining the petitioner from causing any obstruction in reconstruction of the shop as per terms of agreement dated 17.08.1994. During the pendency of this petition, landlord had purchased one shop vide sale deed dated 04.07.2000 while the other shop was purchased by Harbans Lal.

4. Pleadings of the parties led to the framing of issues as follows:-

- “1. Whether the respondent is in arrears of rent as alleged ?
OPA
2. Whether the applicant requires the demised premises for his personal use as alleged? OPA
3. What is the rate of rent? Onus on Parties.
4. Whether the application is not maintainable as alleged?
OPR
5. Relief.

5. Learned Rent Controller after going through the evidence on record observed that the rate of rent of the demised premises was ₹35/- per month and the tenant has paid the rent as due at the time of filing of the

petition, as such, was not liable to be ejected from the demised premises. Learned Rent Controller upheld the need of the revision petitioner for the demised premises with the observations in para 15 of the order, which reads as follows:-

“15. Now it is to be seen that needs appears to be bonafide or not. When the petitioner says, who himself is working at Nalagarh and aged about 90 years, wants to give the shop after getting it vacated to his son for running a business, then the evidence of the applicant is suggesting that grand sons of the petitioner are not treating nicely the son of the petitioner, it is to be presumed that the petitioner has made out a case for bonafide necessity. Therefore, in view of the above discussion, keeping in view the evidence led by the petitioner, arguments addressed by the learned counsel for the petitioner, and keeping in view the categoric law on the point of bonafide necessity in favour of the landlord, it is to be held that applicant succeeded in discharging the onus of issue No.2 so this issue is held in favour of the petitioner and against the respondent.”

6. In appeal, learned Appellate Authority set aside the order passed by learned Rent Controller with observations as follows:-

(i) It is admitted case of the parties that petitioner Sadhu Ram and respondent Darshan Singh entered into compromise, as per which respondent Darshan Singh had to vacate the shop, the possession of which after reconstruction was to be handed over to him at enhanced rate of rent. Darshan Singh did not vacate the shop as per agreement and Sadhu Ram filed a civil suit seeking direction to Darshan Singh to vacate the shop but could not be successful and his suit was dismissed. Thereafter, Darshan

Singh filed injunction suit to restrain Sadhu Ram from interfering in raising construction by him over the shop as per their agreement. This petition was filed after the dismissal of the suit filed by Sadhu Ram and filing of the suit by Darshan Singh.

(ii) Landlord could not produce cogent evidence to prove that his son Harban Lal was idle and had been ousted by his sons. He has not produced record of the income tax or sales tax to prove that at any point of time, Harbans Lal was jointly running business with his sons and at what stage, he was separated.

(iii) Harbans Lal has admitted that he is residing in the same house, which is owned by Sadhu Ram. Postman AW2 Bhajan Ram stated in his cross-examination that Harbans Lal was running shop of electric goods in the Bazar and 5-7 persons were working in that shop. RW1 and RW3 have also stated that Harbans Lal was jointly running electric shop with his sons and residing with them in the same house.

(iv) The plea of the revision petitioner Sadhu Ram that he is having his business at Nalagarh was also not accepted in view of the fact that age of Sadhu Ram was 90 years and it was found improbable that he, at this juncture of his life, was residing separately. Consequently, conclusion was drawn that Sadhu Ram, Harbans Lal and sons of Harbans Lal are jointly residing in the same house and the plea of landlord that Harbans Lal has been ousted by his sons was discarded.

(v) The landlord has not pleaded that shop in occupation of Harbans Lal and his sons was not sufficient for their business or that the demised shop was also required for extension of their business.

(vi) Ejectment petition was taken as a counter blast to the suit filed by respondent Darshan Singh seeking relief of injunction against the revision petitioner to restrain him from reconstruction of the shop by respondent as per the agreement.

(vii) Learned Appellate Authority also took note of the fact that if Harbans Lal was idle since 1980, what prevented the landlord to seek ejectment of respondent from the demised premises from 1980 to 1998, when this petition was filed.

(viii) It was also observed that Harbans Lal and his sons are in occupation of shop owned by the petitioner and the dimension of the above shop and the exact business being run in that shop was not mentioned in the ejectment petition.

(ix) During the pendency of this petition, landlord had purchased property, which he termed as 'Khola' in main Bazaar, while as per assessment register for the year 1998-99 to 2001-02 Ex.R1, said property purchased by Sadhu Ram and Harbans Lal from Ram Parshad and Hari Parshad was assessed to house tax. In view of this subsequent fact, the need of the revision petitioner-landlord was held as not bona fide.

7. Revision petitioner-landlord has sought ejectment of respondent-tenant from the demised premises as he require the same to start some business in this shop for his son Harbans Lal. He has alleged that Harbans Lal was not doing any business after being shunted out of the business by his sons. Learned Rent Controller found the need of the revision petitioner as bona fide and ordered ejectment of the respondent from the demised premises. Appellate Authority for the reasons as discussed

above in para 6, has discarded the need of the landlord with the observation that the same is not bona fide. The fact which weighed before the Appellate Authority are that there was some compromise between the parties in which respondent Darshan Singh had to vacate the shop which after reconstruction was to be handed over to him at enhanced rate of rent. The petitioner-landlord filed a suit for direction to the respondent-tenant to vacate the shop so that he could carry out necessary construction as per compromise dated 17.08.1994. That suit was contested by the respondent-tenant and ultimately dismissed. Thereafter, respondent-tenant himself filed the suit seeking relief of mandatory injunction directing the landlord not to cause any obstruction in the construction of shop by him as per terms of agreement dated 17.08.1994 and his suit was also dismissed, however, his appeal was accepted by first Appellate Court and regular second appeal (RSA No.819-2013) was filed by defendant Sadhu Ram against judgment of first Appellate Court, which is being decided with this revision. As the compromise dated 17.08.1994 was not honoured, so it could not be looked into in the ejectment proceedings either in favour of against any party to the petition. Observation made in this regard by the Appellate Authority are not relevant to decide the personal bona fide need of the landlord.

8. While discarding the need of the demised premises for the son of revision petitioner, Appellate Authority has observed that he had not produced any income tax or sales tax return to prove that at any point of time, Harbans Lal was jointly running business with his sons and when separated. It was also observed that he and his sons were living in the same house owned by revision petitioner. The Appellate Authority has gone to

the extent of discarding the plea of revision petitioner that he is carrying on business in Nalagarh. The petitioner at that point of time was 90 years of age and Appellate Authority refused to believe that at this juncture of life, he is residing separately and a presumption was drawn that he is residing with Harbans Lal and grand sons i.e. sons of Harbans Lal.

9. All the above observations recorded by the Appellate Authority are not tenable. Revision petitioner-landlord was not required to produce income tax or sales tax returns of Harbans Lal as it is nowhere case of of the respondent-tenant that he is carrying on any independent business. As per revision petitioner, his son Harbans Lal was earlier sitting in the shop of his sons from where he was shunted out. There cannot be any reason to disbelieve the testimony of Harbans Lal or his father (revision petitioner-landlord) that sons of Harbans Lal are no more allowing him to sit in the shop. Even if, it be believed that Harbans Lal at any point of time had gone to the shop of his sons, this does not mean that his need to set up separate business is not bona fide.

10. The relationship of parents and children is so affectionate that parents tend to ignore follies, misdeeds and misbehaviour of their children for their betterment. They always try to come to their help and rescue as and when need so arise. The mere fact that entire family is living in one house nowhere leads to presumption that their relations are cordial and they are having joint mess. It give solace to the parents to live in the same house with their children, even if, their wards are not so obedient and respectful. The parents usually have the weakness to see their wards and grand children in front of their eyes and tolerate their misdeeds to the extent they can but

this cannot be taken as proof of their intention to give up their right to live the life in their own way, to earn their separate livelihood and do their own business. The entire approach of the Appellate Authority in this regard is not only erroneous and perverse but not tenable in the eyes of law.

11. Learned Appellate Authority has gone a step further to make out a case that the landlord has not pleaded that shop in occupation of Harbans Lal and his sons was not sufficient for their business or that the shop in question was required for extension of their business. The landlord has never sought ejectment of respondent-tenant on the ground that the shop in occupation of Harbans Lal and his sons was not sufficient for their business or the demised premises is required for extension of their business. The need set up by the landlord was altogether different and there was no occasion for the Appellate Authority to record such findings.

12. Appellate Authority has also observed that the present petition is a counter blast to the suit filed by respondent Darshan Singh. This observation is again erroneous and perverse. As already discussed, it was the landlord, who had filed civil suit for performance of the agreement dated 17.08.1994, which was contested by the respondent and thereafter, respondent himself sought direction to carry out the required construction which was also declined by the trial Court, as such, compromise dated 17.08.1994, filing of suit by the revision petitioner-landlord and then by the respondent-tenant, has no relevance so far as the bona fide need of the revision petitioner for demised shop is concerned.

13. Another factor, which weighed before the Appellate Authority while rejecting plea of revision petitioner for demised premises, was, if

Harbans Lal was idle since 1980 what prevented the landlord to seek ejectment of respondent-tenant from the demised premises till filing of this petition in the year 1998? The answer was quite obvious and not difficult to find as the petitioner felt the need to adjust his son in the business before filing of this petition. It is proved on file that revision petitioner-landlord himself was carrying on his business. He was competent to take care of his son and daughter-in-law. The grand sons were already in their separate business. No question was put to the landlord to explain as to why he had not sought ejectment of the respondent from the demised premises earlier when his son Harbans Lal was sitting idle. Firstly, the Appellate Authority was not required to make such observation and secondly, it could not draw any adverse inference against revision petitioner on this score without calling the landlord to explain as to why he had not sought the ejectment of the respondent-tenant earlier. Another observation by learned Appellate Authority that landlord has not described the dimensions of the shop in which his grandsons are carrying on business has nothing to do with his need for shop in question. Landlord was not required to give the dimensions of that shop in possession of his grand sons or the exact business being run in that shop.

14. During the pendency of this petition, landlord/Harbans Lal purchased *Khola* which respondent is alleging to be a shop. However, purchase of the same, in no manner, dilute the need of the revision petitioner-landlord for the demised premises, for the reason that the suitability of a shop is to be seen by the landlord and the tenant has no role to suggest in this regard to the landlord.

15. From the above discussion, it is apparent that the reasons given by the Appellate Authority while accepting the appeal of the respondent-tenant and rejecting the need of the revision petitioner-landlord of the demised premises as “not bonafide”, are perverse, against the settled principle of law and legally not tenable.

16. Learned counsel for the respondent-tenant has argued that demised shop was required by the revision petitioner to start business of his son Harbans Lal who has since died. After the death of Harbans Lal, need as projected by the landlord no more subsists, as such, this revision petition is liable to be dismissed on this very score.

17. It is not disputed that Harbans Lal has since died. Even the revision petitioner-landlord Sadhu Ram is no more in this world. However, the law is well settled that need as projected by the landlord is to be seen at the time of filing of the petition. Hon'ble Apex Court in case of ***Gaya Prasad Vs. Pradeep Srivastava 2001 AIR (SC) 803*** and ***Shakuntala Bai and others Vs. Narayan Dass and others 2004 AIR (SC) 3484*** has observed that crucial date for deciding the bona fide requirement of the landlord is the date of application for eviction.

18. Learned counsel for the respondent has further argued that AW4 Bhajan Ram, Postman deposed that he had seen Harbans Lal sitting in the shop in Pull Bazar. This statement of Bhajan Ram brings out the hollowness of the claim of revision petitioner-landlord that Harbans Lal has been shunted out by his sons from the business. On perusal of the statement of Bhajan Ram AW4, I find that he has nowhere stated that Harbans Lal was seen by him sitting in shop of his sons. Bhajan Ram identified Harbans Lal

and has stated that he is running a shop in Pull Bazar. It is very common in the Indian society to refer the shop of children as shop of their father. It was not got verified from him as to whether he had ever seen Harbans Lal sitting on that shop or what is basis of his statement that electric goods business being carried out in a shop at Pull Bazar belongs to Harbans Lal. From the statement of AW4 Bhajan Ram, no inference can be drawn that Harbans Lal was carrying on his own business in Pull Bazar, Rupnagar. For the sake of arguments, even if it be believed for a while that Harbans Lal was assisting his sons in their business or sitting in their shop, still the need for the demised premises as projected by the revision petitioner-landlord is bona fide. If a father during his life time has passion to settle his son in his separate business, his need for the shop, which require for business of his son, is genuine and bona fide. Applying the above parameters, need of revision petitioner to settle his son in business in shop in dispute is genuine and bona fide.

19. As a sequel of my above discussion, I am of the considered opinion that the Appellate Authority had gone astray while recording sweeping and baseless observations against revision petitioner and committed grave error while setting aside the well-reasoned order passed by the Rent Controller. The reasoning recorded by the Appellate Authority is perverse and not sustainable in the eyes of law. Consequently, this revision petition is accepted. Order passed by learned Appellate Authority is set aside and that of learned Rent Controller is affirmed.

RSA-819-2013

20. Respondent Darshan Singh (later referred to as 'the plaintiff')

filed a suit seeking relief of mandatory injunction for direction to appellant Sadhu Ram (later referred to as 'the defendant') not to cause any obstruction in the reconstruction of the shop, as per terms of the agreement dated 17.08.1994.

21. The case of the plaintiff in brief is that he had taken the disputed shop on rent from the defendant on 14.05.1974. Vide agreement dated 17.08.1994, it was agreed that the area of the shop will be reduced to 8'x10' and plaintiff will vacate the shop and defendant after reconstruction will hand over possession of the same to the plaintiff at the monthly rent of ₹300/-. It was also settled that shop will be reconstructed within 45 days after vacating the same, failing which the plaintiff will be at liberty to reconstruct the same and deduct the costs of construction from the rent. With malafide intention, defendant filed a suit for mandatory injunction against the plaintiff for direction to vacate the shop for reconstruction despite the fact that before the institution of the suit, the shop had already been vacated. That suit was dismissed with the observation that it is the defendant who had committed breach of the terms of the agreement dated 17.08.1994.

22. The defendant contested the claim of the plaintiff with the plea that the plaintiff was requested to hand over the vacant possession of the disputed shop as per terms of compromise but he was putting off the matter on one pretext or the other. Defendant had issued two notices sent by registered post to the plaintiff but he had been avoiding to accept the service of the notices. The necessary reconstruction could not be carried out as the plaintiff failed to hand over the possession of the disputed shop to the

defendant. Defendant has pleaded in para 2 (ii) of the written statement that he was still ready to reconstruct shop as per agreement but in replication, the plaintiff alleged that he had no faith in him and direction be issued in the shape of mandatory injunction restraining the defendant not to cause obstruction in the reconstruction of the shop by plaintiff as per the agreement.

23. Learned Civil Judge (Sr. Division), Rupnagar dismissed the suit with the observation that suit filed by plaintiff (respondent) was barred by limitation.

24. No satisfied, the plaintiff filed appeal before the first Appellate Court, which was accepted with the observation that it was the landlord (defendant) who had committed breach of the terms of agreement dated 17.08.1994 and it was also so held in the civil suit filed by the defendant titled as '*Sadhu Ram Vs. Darshan Singh*' decided by Additional Civil Judge (Sr. Divn.), Rupnagar vide judgement dated 28.02.1997, as such limitations starts from the date of dismissal of the suit filed by Sadhu Ram. The suit of the plaintiff was held within limitation and the appeal was accepted with direction to respondent-defendant not to cause obstruction in the reconstruction of the shop as per terms of the agreement dated 17.08.1994.

25. A question of law, which arise for consideration in this case, is as to whether suit filed by the plaintiff is within limitation?

26. Learned counsel for plaintiff has argued that the first Appellate Court has rightly observed that the limitation to file the suit starts from the date of dismissal of earlier suit filed by defendant Sadhu Ram. That suit was filed on 03.10.1994 and decided by learned Additional Civil Judge (Senior

Division), Ropar on 28.01.1997, as such, present suit filed by the plaintiff on 02.02.1998 is within limitation.

27. Relief of mandatory injunction, as sought by plaintiff-respondent cannot be allowed firstly because while accepting the revision filed by Sadhu Ram (CR-2482-2003), respondent-tenant has been ordered to be ejected from the demised premises, as such, no permission to the plaintiff (tenant) to reconstruct the shop can be allowed. Even otherwise, this observation of learned first Appellate Court that limitation to file suit starts from the date of dismissal of suit filed by Sadhu Ram on 28.02.1997 is erroneous, perverse and against the law. The limitation for seeking specific performance of the agreement as per Article 54 of the Limitation Act, is three years. Article 54 reads as follows:

54. For specific performance of a contract.	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has noticed that performance is refused.
---	-------------	---

28. Case of the plaintiff, when examined as per provisions of Article 54, is beyond the period of limitation as he has alleged that he vacated the shop and as per the agreement, but the defendant failed to reconstruct the shop as per agreement. The contingency had happened and the cause of action accrued to the plaintiff when he noticed that performance of the agreement had been refused.

29. Earlier suit was filed by Sadhu Ram on 03.10.1994. The plaintiff has alleged that he had vacated the shop prior to filing of the suit and defendant had refused to reconstruct the shop. The limitation to seek specific performance of the agreement dated 17.08.1994 started from the

day, he had vacated the shop prior to filing of the suit by Sadhu Ram on 03.10.1994. As such, this suit which was filed by plaintiff on 02.02.1998 is barred by limitation. The findings of the first appellate Court on Issues No.1 and 5 are set aside and that of learned Civil Judge (Sr. Divn.), Rupnagar are affirmed.

30. As a sequel of my above discussion, this appeal has merits and is accepted. Suit filed by plaintiff Darshan Singh stands dismissed with costs.

May 31, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No