

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.6849 of 2011 (O&M)
Date of Order:12.09.2018

Jagdish Lal

..Petitioner

Versus

Kuldip Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajinder Sharma, Advocate,
for the petitioner.

Mr. APS Sandhu, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Landlord-petitioner is in the revision petition against the order passed by the learned Appellate Authority, reversing the judgment of the learned Rent Controller.

Only ground which survives for consideration before this Court for eviction is bonafide requirement of 3 sons of the landlord. It is not in dispute that landlord Jagdish Lal, who is no more had four sons, namely, Brij Lal, Balbir Kumar, Manohar Lal and Rakesh Kumar. Initially, eviction was sought on the ground that all the four sons require the premises. However, later on it was amended and bonafide requirement of 3 sons, namely, Brij Lal, Balbir Kumar and Rakesh Kumar was pleaded. It has been pleaded by the landlord that Brij Lal and Balbir Kumar, 2 grown up sons, are working with him in his shop since they do not have any independent premises. It has come in evidence that Rakesh Kumar is running his small business from a rented premises i.e. Khokha (wooden kiosk).

Learned Rent Controller ordered eviction whereas learned Appellate Authority reversed the decision by recording a finding which is result of misreading of evidence.

Learned Appellate Authority has observed that when the landlord appeared, he admitted that the shop which was in possession of his brother had fallen to his share. When one reads the statement of Jagdish Lal, only fact which has been stated by Jagdish Lal is that Manohar Lal is residing on the upper portion of the above said shop of said Kishori Lal @ Shori Lal. The exact statement of Jagdish Lal is extracted as under:-

“Shori Lal is my brother and Manohar Lal is residing on the upper portion above the shop of said Shori Lal which has come to my possession.”

Learned first appellate court has taken this statement as an admission of the fact that the shop is in possession of Jagdish Lal. In the considered opinion of this Court, one line in the cross-examination cannot be read in isolation. Still further it is well settled that if a judgment is to be based upon admission in oral evidence, such admission has to be categorical, specific and unambiguous. If one reads the statement of Jagdish Lal in entirety, it is clear that one shop is in possession of Shori Lal. The question which was put to Jagdish Lal was with regard to upper portion of the shop, which had come to the possession of Manohar Lal.

Learned counsel for the respondent, however, drew attention of the court to lay out plan Ex.A1/4 to assert that there is a store behind the shop occupied by the tenant where Rakesh Kumar stores his articles. He submitted that this shop is available. A bare look at the lay out plan Ex.A1/4, it is apparent that the alleged store is behind the shop and does not

have any direct access on the road. A shop cannot be run from the premises which does not have access directly from the road.

Still further, the children of landlord cannot be compelled by the tenant to occupy premises which is not suitable for the business. It is not in dispute that Rakesh Kumar is at present running his small business from a tenanted premises i.e. wooden kiosk. It is further not in dispute that apart from Rakesh Kumar, two other sons, namely Brij Lal and Balbir Kumar in absence of any independent premises were helping the landlord in his grocery shop. Hence, the order passed by the learned Appellate Authority reversing the judgment passed by the learned Rent Controller is erroneous and have result of misreading of evidence.

In view of the aforesaid, the order passed by the learned Appellate Authority is set aside and that of the learned Rent Controller is restored.

The revision petition is allowed.

September 12, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No