IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.6974 of 2015 (O & M)
Date of Decision:21.08.2018

M/s Shree Ram Medical Agencies and another ...Petitioners

Versus

Varinder Kumar ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gaurav Chopra, Advocate
for the petitioner.

Mr. Sandeep Jasuja, Advocate
for the respondent.

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ANIL KSHETARPAL, J.(Oral)

Tenants-petitioners are in the revision petition against the order passed by the learned Rent Controller affirmed by the Appellate Authority.

Respondent-landlord sought eviction on the ground that he requires the premises (shop) for running a cyber cafe by his son Vimarsh, who was 23 years old at that time. It was further pleaded that the building has out lived its age and hence unfit and unsafe for human habitation. As regards second ground that the building being unfit and unsafe, both the authorities have decided against the landlord, therefore, the only ground which needs consideration is whether requirement is bona fide or not?

In the present case, during the pendency of the rent petition before the learned Rent Controller, an application was filed by the tenant pleading that Vimarsh Kakkar, the son, for whom the shop is sought to be got vacated is in fact employed since June 2009. Application was dismissed and revision was also dismissed. Application for additional evidence was

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dismissed on the ground that it is a piece of evidence and no pleadings are required.

Application for additional evidence moved was also dismissed by the learned Rent Controller vide order dated 02.09.2014 by observing thus:-

> *"Perusal of the file shows that on the similar facts, as incorporated in the application u/s 151 CPC, referred to above, a similar application was moved by the counsel for the respondent which was decided on merits as per a detailed order dt. 01.09.2014. As far as the application seeking time for filing revision against that order is concerned, it is the prerogative of the counsel to file revision against any order that does not suit him and that the Court's permission is not required for the same. With these observations, both the applications moved today are hereby disposed of."*

From the reading of the aforesaid conclusion drawn by learned Rent Controller that the Court dismissed the application for additional evidence only on the ground that application for amendment of the written statement and revision against the aforesaid has been dismissed.

Learned Rent Controller after noticing that the landlord has admitted that two more shops have fallen vacant during the pendency of these proceedings ordered eviction. It may be noticed that Vimarsh had not appeared in the evidence.

Appeal filed before the Appellate Authority was also dismissed. Learned Appellate Authority although in Para 33 has observed that in

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evidence the landlord has also set up a requirement for his other son i.e. Vilas, who has also stepped into the witness-box but thereafter the Court abandoned the aforesaid ground by concluding that the requirement of the demised premises for son Vimarsh is established. With regard to additional evidence, Appellate Authority observed that since petition has remained pending for a period of 4 years and the tenant could not be permitted to lead additional evidence to prove that son Vimarsh is employed or is doing any business.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below,

In the considered view of this Court, it is well settled that the need of the landlord should be bona fide and not result of greed. East Punjab Urban Rent Restriction Act, 1949 provides for eviction of a tenant on the ground of bona fide necessity.

In the present case, two factors have been overlooked by the Courts namely availability of two more shops which had been vacated by the other tenants during the proceedings of this case and secondly, Courts have not permitted the tenant-petitioner to lead additional evidence to prove that he was employed when the petition was filed. Since this Court is remitting the matter back to the learned Rent Controller, therefore, it would not be appropriate for this Court to give any finding, lest it may cause prejudice either to petitioners or to the other party.

In view thereof, the orders under challenge are set aside.

Case is remitted back to the learned Rent Controller.

Since the original petition was filed in the year 2010 and more

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than 8 years have lapsed, landlord would be at liberty to move an application for pleading further personal requirements, if any. If such an application is moved, the Court would sympathetically consider the same. Parties would be granted opportunity to lead evidence in support of their amended pleadings, if any filed. The application for additional evidence shall stand allowed and the tenant would be granted opportunity to lead evidence to prove the facts as asserted in the application for additional evidence.

Revision petition is disposed of.

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

Parties through their counsel are directed to appear before the learned Rent Controller on 10.09.2018.

21.08.2018 **(ANIL KSHETARPAL)**
sheetal **JUDGE**

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No

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