

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision: 19.09.2018

1. CR No.6788 of 2017 (O&M)

Vinod Kumar

..... Petitioner

Versus

Ashok Kumar Chaudhary

..... Respondent

2. CR No.6789 of 2017 (O&M)

Vinod Kumar

..... Petitioner

Versus

Ashok Kumar Chaudhary

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. N.C. Kinra, Advocate
for the petitioner (in both cases).

Mr. Dishant D. Tuteja, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Vide this judgment, CR No.6788 of 2017 and CR No.6789 of 2017 shall stands disposed of as both the petitions arise out a single petition filed against the tenant.

Landlord-respondent sought eviction of the tenant on three grounds:-

1. Requirement of the married son.
2. The tenant has ceased to occupy the premises continuously for a

period of more than 4 months before filing of the suit.

3. The building has become unfit and unsafe.

Learned Rent Controller allowed the petition on bona fide requirement of the son. Two appeals were preferred before the learned Appellate Authority. One filed by the landlord and the other filed by the tenant. Learned Appellate Authority has affirmed the finding of the learned Rent Controller with regard to bona fide requirement of the son of the landlord. The Appellate Authority has also accepted the appeal filed by the landlord and held that the tenant has ceased to occupy the premises without sufficient cause for continuous period of four months before filing of the petition.

Learned counsel for the petitioner submitted that before the petition on the ground of bona fide necessity can be filed, the landlord is required to be the owner of the premises. He submitted that Chaudhary Ram Chaudhary was owner of the property but he had left behind many legal heirs. He submitted that the preliminary decree for partition has been passed but no final decree has been passed. Hence, he submitted that Ashok Kumar who is son of Chaudhary Ram Chaudhary cannot be claim himself to be exclusive owner of the property. He referred to the judgment passed by the Hon'ble Supreme Court in the case of Dr. Ambica Parsad Vs. Md. Alam and another, 2015 AIR (SC) 2459 in support of his submission.

On the other hand, learned counsel for the respondent pointed out that late Sh. Chaudhary Ram Chaudhary, the father of the landlord had executed a Will bequeathing various shops to his sons. He pointed out that the suit filed was not only for partition of the property but was also for

declaration on the basis of a testament led by late Sh. Chaudhary Ram Chaudhary. He pointed out that the aforesaid suit has been decreed and therefore, the shop in question since bequeathed in favour of the landlord, is his exclusive ownership. He further submitted that the judgment relied upon by learned counsel for the petitioner in turn relies upon the previous judgment passed by the Hon'ble Supreme Court in the case of M.M. Quasim Vs. Manohar Lal Sharma and others, AIR 1981 SC 1113. He submitted that in the case of K.D. Dewan Vs. Harbhajan S. Parihar, AIR 2002 (SC) 67, the judgment of M.M. Quasim's (supra) had been considered and found that the language of the provisions of Assam Act and Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 are different.

This Court has considered the submission of learned counsel for the parties and find no substance in the argument of learned counsel for the petitioner-tenant. It is fundamental that the landlord is not required to be owner of the property. Although, in the present case, he is the owner because as per the testament left by late Sh. Chaudhary Ram Chaudhary, Ashok Kumar, the respondent-landlord has been given the shop in question. In any case, a co-owner is also entitled to file a petition for eviction of the tenant unless other co-owners object to it. There is no objection from other co-owners. Still further, it is not in dispute that the tenant has been paying the rent to the landlord continuously without any objection and he has never disputed the status of the landlord. Still further, the Hon'ble Supreme court in a subsequent judgment has already explained that the language of the Bihar Act and Assam Act is different than East Punjab Urban Rent Restriction Act, 1949 or Haryana Urban (Control of Rent and Eviction) Act,

1973, which are pari-materia inter se.

Next argument of learned counsel is that the requirement of the landlord is not bona fide as he had received and exchanged a small shop by giving a bigger shop to the brother. He submitted that the exchange had taken place only with a view to create a ground for eviction. On the other hand, learned counsel for the respondent has pointed out that the property in question is not subject matter of exchange. He further submitted that the exchange had taken place in the year 2016 whereas the present petition has been filed in 2011 when he required the premises for his married son.

This Court has considered the submission of learned counsel for the parties. It is well settled that the tenant cannot challenge the actions of his landlord which are not related to the property in dispute. The exchange is between two brothers which took place much before filing of the petition. In the considered opinion of this Court, the tenant has no locus standi to challenge such exchange. Still further, the bona fide necessity which has been pleaded has arisen subsequently and therefore, there is no substance in the submission of learned counsel for the petitioner.

Next argument of learned counsel for the petitioner is to the effect that as per the provisions of the Rent Act, the landlord is required to prove that the tenant has ceased to occupy the premises for a continuous period of four months without reasonable cause from the date of filing of the petition. He submitted while referring to the statement of official of the Electricity Board that continuous cease to occupy the shop is not proved.

It will be noted that Dharmender PW-4 has been examined in evidence who has proved that from August, 2010 to December, 2011 i.e. a

period of one year and four months, total consumption of electricity was 79 units. It has come in evidence that most of the time when the official belonging to the Electricity Board went to the spot to take the electricity meter reading, the premises was found locked. The present petition was filed on 07.09.2011. The landlord was required to prove that the tenant has ceased to occupy the premises without reasonable cause for a period of four months prior to filing of the petition which take us to May. As noticed from August, 2010 to December, 2011, the total consumption of electricity is only 79 units which if divided would turn out to be 7 or 8 units per month. Still further, the tenant in the present case has not produced any evidence of sale or purchase of the goods/material in which he deals to prove that he is in occupation of the premises or he is doing any business. Learned counsel for the petitioner submitted that in cross-examination, the tenant was asked about the record which he undertook to produce but thereafter his evidence was closed on the same date.

It will be noted that the tenant has not made any attempt to produce any record either before the learned Rent Controller or before the Appellate Authority or before this Court. In such circumstances, no fault can be found with the conclusion drawn by the Courts below.

Keeping in view the aforesaid facts, there is no ground to interfere with the orders passed by the Courts below.

Both the revision petitions are dismissed.

19.09.2018

Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No