

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 20.09.2018

1. CR No.6966 of 2014 (O&M)

Rajesh Kumar Goel

..... Petitioner

Versus

Parveen Kumar Sharma and another

..... Respondents

2. CR No.6967 of 2014 (O&M)

Rajesh Kumar Goel

..... Petitioner

Versus

Ramesh Kumar Singla

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. Rakesh Gupta, Advocate
for respondent No.1 (in CR-6966-2014).

ANIL KSHETARPAL, J.

Vide this judgment, CR 6966 of 2014 and CR No.6967 of 2014 shall stand disposed of as common issue needs determination.

In fact, this was set of three revision petitions, out of which, one tenant i.e. of shop No.24 has already been vacated and the possession has been handed over to the landlord in December 2016.

The petitioner-landlord pleaded that he bona fide requires the premises consisting of these three shops in order to set up his business of trading in clothes and garments. It will be noted that these three shops are of

equal size as width is concerned 7'8x12'. The petitioner pleaded that he is married having one and half year male child and presently doing a private job in a poultry farm at Kaithal. However, on account of increase in the family members, he is unable to pull along with the meager salary and therefore, he needs to set up his own business.

The tenant contested the petition and pleaded that the requirement is not bona fide. When the tenant appeared in evidence, it was suggested to him that two shops had fallen vacant which he has rented out on increased rent. The landlord explained that the aforesaid two shops were in possession Paras Ram who had handed over possession to Davinder @ Ravinder and thereafter, the lease deed was executed with Davinder @ Ravinder @ 1200/- per month for both the shops. Learned Rent Controller ordered eviction whereas the Appellate Authority has chosen to reverse the aforesaid finding. Learned Appellate Authority has given five reasons for accepting the appeal of tenant:-

1. A rice mill is owned by the landlord which could be utilized for running garment business.
2. Father of the petitioner had also filed a petition which was dismissed.
3. There is no evidence that the landlord is in possession of the resources to open the business.
4. The landlord after the order of eviction filed an application for fixation of fair rent, therefore, the landlord was only interested in increase of the rent.
5. Two shops had fallen vacant and the landlord has rented out the premises to Davinder @ Ravinder.

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 and the record.

As far as availability of rice mill, it is not disputed that the rice mill has already been sold after the death of father of the landlord who died in the year 2001. As regards father having filed the petition, it will be noticed that the aforesaid petition was filed for the requirement of the son but that was before the death of the father.

Although, learned counsel for the petitioner-landlord submits that there is no evidence in this regard and this fact is being disputed, however, this would not come in the way of the petitioner-landlord keeping in view that the present petition has been filed in the year 2010. The bona fide requirement can arise at any time.

Next reason assigned by the First Appellate Court is that in absence of evidence with regard to sources available with the landlord to open and run the business of trading in the clothes and garments, the need pleaded is not bona fide. In the considered view of this Court, this does not fall within the jurisdiction of the Rent Controller to examine whether the landlord has the resources or not. As regards filing of an application for fixation of the fair rent immediately after filing of the petition, it will be noted that fixation of fair rent is a right available with the landlord and that cannot be taken as a ground to doubt the bona fides of the landlord particularly keeping in view that the petitions remain pending at different levels for years together. Last ground which has been more hotly contested by learned counsel for the parties is induction of new tenant i.e. Davinder @ Ravinder in two shops vacated by Paras Ram. If one carefully examines the evidence of the landlord, it is apparent that Paras Ram had handed over the possession to

Davinder @ Ravinder and thereafter, the landlord had executed a fresh rent note with him. No evidence has given on record that Paras Ram ever surrendered possession and the shops came in possession of the landlord even for a single day. In such circumstances, the landlord had no choice but to enter into a lease deed with Davinder @ Ravinder. It will be noted that the tenant has led no evidence to prove that Paras Ram had handed over the possession to Davinder @ Ravinder with the consent of the landlord. Still further, the aforesaid suggestion given to the landlord has been explained by him that this event took place 2-3 years back. As noted above, bona fide requirement can arise at any point of time. Here is the case where young landlord who was having only one and half year child presently in private job and is looking to start his business to grow in life. It has come in evidence that the family of the landlord suffered huge losses and their rice mill as well as the shop in the grain market had to be sold. Keeping in view the aforesaid facts, the bona fide requirement of the landlord has been wrongly doubted by the learned Appellate Authority.

In view of the discussion made above, the order passed by the learned Appellate Authority is set aside and that of the Rent Controller is restored. However, the tenant is granted two months time to handed over the vacant possession of the premises.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Both the revision petitions are allowed.

20.09.2018

Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

**(ANIL KSHETARPAL)
JUDGE**

Yes / No
Yes / No