

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

**Civil Revision No.7194 of 2014 (O&M)  
Date of Decision: May 24, 2018**

Sanjay Kapoor

**.....PETITIONER(s).**

**VERSUS**

Pawan Bhasin and others

**....RESPONDENT(s).**

**CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA**

Argued by: Mr. Vipin Mahajan, Advocate  
for the petitioner (s).

Mr. Nitish Garg, Advocate  
for respondents.

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**SURINDER GUPTA, J.**

This is revision petition against the judgment dated 24.03.2014 passed by Appellate Authority (under the East Punjab Urban Rent Restriction Act, 1949), Bathinda, whereby the order of the Rent Controller directing the revision petitioner to vacate and hand over possession of shop No.22 (ground floor) situated in Gol Diggi Market, The Mall/Amrik Singh Road, Bathinda, for personal bona fide necessity of the respondents was upheld.

The need for the demised premises as projected by the respondents-landlord in para 2 (ii) of the ejectment petition is reproduced as follows:-

“That the shop in question is required by the applicant no. 1 and applicant no. 3 for running business in the shop in dispute. The applicant no. 2 is wife of applicant no. 1 and mother of applicants no.3 & 4. Applicant no. 3 Tarun

Kumar is B.Com. whereas applicant no. 4 Mayank Bhasin has just passed his +2 class. The applicant no. 4 wants to continue his studies whereas applicant no. 3 wants to start business in the disputed shop alongwith his father Sh. Pawan Bhasin, applicant no.1. The applicant no. 1 had suffered heart problem and remained admitted. The applicants had no business and wanted to start a Restaurant in the shop in dispute. Since the shop in question was in possession of the respondents, the applicant no. 1 was left with no alternative but to open the Restaurant under the name and style of M/s Mirch Masala Eating Point in Ist Floor & 2nd Floor of shop no. 22. The abovesaid restaurant had been opened in April, 2003. The applicant no. 1 is the sole proprietor of the above said restaurant. The applicant no. 1 has to go up stair for running restaurant, which is harmful for the health of the applicant no. 1 as the doctors have advised the applicant no. 1 to avoid climbing stair cases etc. But the applicant no. 1, to earn livelihood for the family had to start business in the Ist & 2nd Floor. 2nd Floor is used as Kitchen whereas Ist floor is being used as Restaurant. But the applicants no. 1 & 3 want to start the business of the Restaurant at the ground floor because the business of Restaurant can flourish much better on the ground floor portion. The first floor is also insufficient and is not suitable for business of Restaurant. Thus the applicant no. 1 requires the premises in dispute for his personal use and occupation, for running business of Restaurant/Hotel therein, alongwith his son applicant no. 3. Except the building in question, the applicants do not own or possess any other residential or commercial building at Bathinda nor the applicants have vacated any such building at Bathinda without any reasonable cause after enforcement of this act. Medical reports of C.M.C.Heart

Research Centre, Christian Medical College, Ludhiana, where the applicant no. 1 remained admitted from 24.2.2001 to 2.3.2001 are attached herewith and discharge summary of the applicant no. 1 is also attached herewith.”

The Appellate Authority while upholding the bona fide necessity as projected by the respondents-landlord observed that respondent No.1 Pawan Bhasin (since deceased) was running business of restaurant under the name and style of M/s Mirch Masala Eating Point on the first and second floor of shop No.22. He suffered heart problem and was unable to climb staircase and ultimately closed his business as he wanted to start the same on the ground floor. In the building of which demised premises is a part, shop in question is on the ground floor, there are two basements and two upper storeys, which are in possession of respondents-landlord. This fact is admitted that the basement got filled with water and the notice was given by Sub Divisional Magistrate for getting the basement repaired. Under the order of Sub Divisional Magistrate, basement was got repaired. Respondents have put forth the plea that basement is not suitable for their business as these are filled with mud. On upper storey, respondent No.1- Pawan Bhasin was not in a position to carry on restaurant due to his health problem and suitability. He also wanted to adjust his son in the business in demised premises. Looking into the need as projected by the landlord, Appellate Authority has observed as follows:-

“Petitioner Pawan Bhasin has specifically deposed that his son requires the demised premises to start the business of restaurant. In view of cases referred above, it is observed by this court that so far as the requirement

and need of the landlord is concerned, it is now well settled law that the landlord is the final judge. If he considers the existing accommodation insufficient and he is in need of better and more commodious premises, the court cannot go into the same and arrive at the conclusion that the alleged need is in fact for extraneous consideration. The court is to proceed on the presumption that normally and generally the landlord is the best judge of his own need and convenience. There is no such evidence which could show contrary that claim put forward by the landlord is very much exaggerated and is promoted by extraneous consideration. In the case in hand, the respondent has not brought on record any evidence to show that need of the petitioner, is not genuine and it is coloured by exaggeration and extraneous reasons.”

Learned counsel for the revision petitioner has argued that son of landlord-respondents has gone to Ukrain and is employed there, as such, need of the demised premises to adjust his son in business no more exists. Son of the respondent has also not appeared in the witness box to depose about his personal bona fide necessity and in the absence of his statement, the Courts below have committed grave error while upholding the need of demised premises for him. Two basements, first and second floor of the premises of which demised premises is part, are in possession of respondents-landlord and if they intend to start a restaurant, the accommodation with them is sufficient. Pawan Bhasin has died during the pendency of the appeal, as such, need of the demised premises as projected by him stood exhausted. The version of the appellant that the basement of the premises were lying filled with mud and water, are not correct as the

same were got cleaned and repaired. Respondent No.1 had also not disclosed the vacation of shop by him in which he was earlier carrying tea business, as such, petition is bad on this score.

Learned counsel for respondents has argued that all the arguments put forth by learned counsel for the revision petitioner, have already been answered by the Rent Controller and Appellate Authority. The son of respondent No.1 had gone to Ukrain to get training and had returned after one year. There is no evidence that he had permanently settled there. Pawan Bhasin had set up genuine need for the premises in possession of revision petitioner as due to his heart ailment, he was not in a position to go upstairs, where he had started his restaurant. Due to health problem, he had to ultimately close the restaurant. Revision petitioner despite having information about heart disease of respondent Pawan Bhasin, had deliberately denied the same. Because of his ailment Pawan Bhasin could not survive and expired but the need of the demised premises does not come to an end as the ejection of the revision petitioner was sought to settle son of the deceased. Even otherwise, it is a settled proposition of law that the bona fide requirement of the landlord is to be seen at the time of filing of the petition and not at the time of its final decision or appeal or revision.

Firstly, I take the effect of death of Pawan Bhasin on the ground of personal bona fide necessity as projected by the respondents-landlord. The law in this regard is well settled. Hon'ble Apex Court in case of ***Gaya Prasad Vs. Pradeep Srivastava 2001 AR (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. Even otherwise, the respondents have not projected the need of the demised premises exclusively for use by Pawan Bhasin. The need was also projected for setting up the business and adjust respondent Tarun Bhasin-son of Pawan Bhasin. It was wish and vision of Pawan Bhasin to start a restaurant to earn livelihood for his family and also to settle his son Tarun Bhasin in this business. He had started the restaurant on the first floor of the building but could not be successful in continuing this business. He found ground floor of the building more suitable for running restaurant. Tenant is nobody to suggest as to where and how the landlord should start his business. It is landlord, who is best judge to decide as to how he has to run his business, earn livelihood and settle his family member. In the case of ***Vinod Kumar Vs. Aruna Jain and another, 2017 (2) RCR (Civil) 448***, it was observed by this Court that it is for the landlord to select, chose and decide as to what type of business he has to carry on and which premises is suitable for his business and tenant has no role to suggest as to where landlord should do that business.

This argument of learned counsel for the revision petitioner that need of the respondents qua the demised premises has no more survives after demise of Pawan Bhasin, has no merits and is rejected.

This plea that Tarun Bhasin had gone to Ukrain was also raised before the Rent Controller and was answered as follows:-

“It is pertinent to mention here that on 17.12.2010, respondent moved an application for taking into consideration the subsequent event, wherein he mentioned that son of the petitioner had left Bathinda

and personal necessity of the premises no longer subsists, but the petitioner in reply to said application mentioned that Tarun Bhasin had no business. So, he took Visa for one year for business training and has gone to Ukrain. He is to return back after one year after getting training in business and he is aged about 31 years. Tarun Bhasin shall come back to India after expiry of Visa period.”

Learned counsel for the revision petitioner has not pointed out any evidence on file to show that the above observation recorded by learned Rent Controller suffers from any infirmity. As such, this argument of learned counsel for the revision petitioner that the personal bona fide need of the respondent for the demised premises no more exists as Tarun Bhasin has gone to Ukrain are also without any merits.

Much stress has been given by learned counsel for the revision petitioner on the point that the basement, first and second floors of the demised premises were quite suitable and sufficient to start business by the landlord. As already discussed, tenant has no right or authority to suggest to the landlord as to where and how he should do his business. This choice falls within the domain of landlord as to where and in what manner, he has to start his business.

It has been argued that Tarun Bhasin for whose need, the ejectment of revision petitioner has been sought, did not appear as witness. The above above argument has also no merits as Pawan Bhasin intended to start his business of restaurant in the demised premises. It was duly proved on record that demised premises was required for the personal bona fide necessity of Pawan Bhasin. He had also projected the need of the demised premises to adjust his son in business. When the ejectment of revision

petitioner had been sought for personal bona fide need of Pawan Bhasin and the same was duly proved, it was not required to examine son whom Pawan Bhasin wanted to settle in the business in the demised premises. Even otherwise, non-examination of son for whose bona fide necessity, the need of the demised premises is projected, is not fatal to his case.

Madras High Court in case of ***Munuswamy Vs. S.S. Nathan 1996 (1) CTC 40 ( Law Finder Doc Id# 660720)*** has observed that it is a settled proposition of law that non-examination of son by the landlord for his bona fide necessity with regard to demised premises is not a requirement. The Rent Controller on the basis of available evidence has to decide whether the bona fide need as projected by the landlord is proved. Similar view was taken by Co-ordinate Bench of this Court in ***Mahesh Chand Vs. Firm Hindu Khandan Mustarka Kripa Ram and sons 2006(2) PLR 43*** and ***S.P. Sethi Vs. R.R. Gulati and others 2006(3) PLR 9***. Hon'ble Apex Court in case of ***C. Karunakaran (D) By LRs Vs. T. Meenakshi 2005 (13) SCC 99, Gulraj Singh Grewal Vs. Dr. Harbans Singh 1992 (1) SCC 68; Mehmooda Gulshan Vs. Javaid Hussain Mungloo 2017 (5) SCC 683*** has also taken the view that non-appearance of son for whose requirement, the ejection of the tenant from the demised premises has been sought, is immaterial.

This question was specifically examined by a Coordinate Bench of this Court in case of ***Hukam Chand Vs. Saroj Rani (Civil Revision No.7382 of 2016 decided on 27.10.2017)*** and it was observed as follows:-

“Therefore, the contention of the petitioner/tenant that nonappearance of the son of the landlady in the witness-box is fatal to the action is misjudged and the argument is

only noticed to be rejected in view of the settled legal position.”

Condition of two basements in the demised premises is not relevant to be discussed while disposing of this revision petition as the landlord intends to start his business on the ground floor and not in the basement. Even otherwise, the revision petitioner has admitted that basement got filled with water (during rainy season). Notices were issued by District Administration for repair of basement which as per the revision petitioner has not been fully repaired.

About vacating of the shop by Pawan Bhasin on the first floor of the building situated in Hospital Bazar, Bathinda, the respondents have explained the same in the rejoinder filed by them. It was stated that shop on rent with respondent-landlord Pawan Bhasin was vacated more than four years ago where petitioner had been running tea business and suffered losses. As a result of which, he had to close that business. Thereafter, he suffered heart attack and after recovery, started running restaurant under the name and style of M/s Mirch Masala Eating Point on the first and second floor of the building, which he had to discontinue at later stage. As such, there was no concealment of fact on the part of respondents in this regard.

As a sequel of my above discussion, I find no legal or factual infirmity in the orders passed by Rent Controller and Appellate Authority calling for any interference in this revision, which has no merits.

Dismissed.

( SURINDER GUPTA )  
JUDGE

May 24, 2018.  
Sachin M.

***Whether speaking/reasoned:***  
***Whether Reportable:***

***Yes/No***  
***Yes/No***