

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 717 of 2018

Date of Decision : 02.04.2018

M/s Amrit Trading Company and another

....Petitioners

Versus

Davinder Singh Bhalla

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. G.S. Sirphikhi, Advocate
for the petitioners.

Surinder Gupta, J.

This is revision against order dated 20.02.2014 passed by learned Rent Controller, Batala whereby petition filed by respondents no. 1 to 3 seeking ejectment of revision-petitioners from the demised premises, comprising of two contiguous single storey shops situated in Old Kanak Mandi, Batala, was allowed on the ground of personal *bona fide* necessity of respondents no. 1 and 2, who intend to start business of commission agent of food-grains, fertilizers and pesticides etc. in these shops. Revision-petitioners challenged the order of learned Rent Controller before Appellate Authority, Gurdaspur but their appeal was dismissed.

2. Learned counsel for revision-petitioners has assailed orders of learned Rent Controller and Appellate Authority with two pleas. Firstly, that the premises in dispute was earlier owned by Bawa Daya Singh Bhalla who has died and vide his Will dated 17.09.1974, one shop has fallen to share of respondent no. 1-Davinder Singh Bhalla and other to share of Harjit Singh Bhalla and his sister Krishna Devi. This has

resulted in splitting of tenancy and the joint petition was not maintainable. Secondly, that respondents have sought the demised premises for joint need of Davinder Singh Bhalla and Harjit Singh Bhalla but Harjit Singh Bhalla has not appeared as witness and his personal *bona fide* need is not genuine. In support of his plea that tenancy has splitted in two parts and respondents could file separate petitions for seeking ejectment of revision-petitioners, he has relied on observations of this Court in case of **Lekh Raj vs. Jatinder Kumar, 2006 (3) PLR 588** and that of Hon'ble Apex Court in case of **Mohar Singh (dead) by his legal representatives vs. Devi Charan, 1988 (3) SCC 63**. He has also relied on observations in case of **Brij Bhushan and another vs. Sanjay Harjai and another, 2015 (2) RCR (Civil) 68** in support of his contention that non-appearance of Harjit Singh Bhalla is fatal and does not prove his personal *bona fide* necessity for the demised premises.

3. Respondents have sought ejectment of revision-petitioners on the ground of personal *bona fide* necessity. This is not disputed that both the shops form one single tenancy in favour of revision-petitioners and respondents are owners of both the shops as per Will of Bawa Daya Singh Bhalla, erstwhile landlord of revision-petitioners. The petition seeking ejectment of petitioners from both the shops for personal *bona fide* necessity of respondents, who intend to start joint business in the demised premises being brothers, does not suffer from any legal infirmity. So far as citations referred by learned counsel for revision-petitioners in cases of ***Lekh Raj*** and ***Mohar Singh's cases (supra)*** are concerned, these do not bar the filing of joint petition by respondents

seeking ejectment of revision-petitioners even after death of Bawa Daya Singh Bhalla and inheritance of shops as per his Will. In the above citations, it was held that landlord, who has purchased portion of the entire property under tenancy, can file ejectment petition from the portion purchased by him. Respondents are sons and daughter of late Bawa Daya Singh Bhalla and form one family. Davinder Singh Bhalla and Harjit Singh Bhalla now want to start their joint business in the demised premises to which respondent no. 3-Krishna Devi has no objection. The plea of revision-petitioners that as per Will of Bawa Daya Singh Bhalla, tenancy has splitted in two parts as one shop has been inherited by Davinder Singh Bhalla and other shop by Harjinder Singh Bhalla and Krishna Devi resulting in splitting of tenancy, has no merit and joint petition by landlords, who are owners of both shops, is maintainable.

4. The other argument of learned counsel for revision-petitioners is non-examination of Harjit Singh in support of his contention that he also requires the demised premises for his personal *bona fide* necessity.

5. Learned counsel for the revision-petitioners has relied on observations of a Coordinate Bench in case of ***Brij Bhushan (supra)***, wherein dismissal of the ejectment petition due to non-examination of son of landlord, for whose personal bona fide necessity, premises was sought to be vacated, was held justified.

6. In the aforesaid case, there were several issues decided against the landlord and the cumulative effect of those issues resulted in dismissal of the petition and one of the observation was non-examination

of son for whose need, the premises was sought to be vacated. This question was specifically examined by a Coordinate Bench in case of **Hukam Chand vs. Saroj Rani, Civil Revision No. 7382 of 2016 decided on 27.10.2017**), the question in that case was as follows:-

“4. The questions, which fell for consideration before the Appellate Authority, were (i): whether the son of the landlady for whose benefit the non-residential premises is sought to be got vacated, if not the landlord or the owner himself, is also required to plead the ingredients of Section 13(3)(a)(i) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, and; (ii) where son does not appear in the witness-box, while the mother does, what would be the fate of the ejectment petition, by omission to plead that the son does not own any other building in that urban area or landlady or her son for whose need ejectment was sought does not own any building in the same urban area, and thus learned counsel for the petitioner argues that this is a mandatory requirement if a petition is filed on the ground of bona fide requirement of the landlady for her son. The question is; what is inevitable result.”

7. Relying on the observation of Hon'ble Apex Court in case of **S.P. Sethi Vs. R.R. Gulati and others 2006(3) PLR 93**, it was observed in para 7 as follows:-

“7. *In all these three cases, the sons for whose personal requirement the ejectment was sought were not produced as witnesses and yet the plea succeeded. 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.*”

8. In this case Davinder Singh Bhalla, one of the landlord, has appeared in the witness box and stated about personal *bona fide* necessity of shops for himself as well as his brother. Testimony of Davinder Singh Bhalla is suffice to prove personal *bona fide* necessity of respondents-landlord for the demised premises to start their own business and learned Rent Controller and Appellate Authority have committed no error of law while relying on statement of Davinder Singh Bhalla to this effect

9. In view of above, observations in cases of ***Lekh Raj*** and ***Mohar Singh (supra)*** referred by learned counsel for petitioners have no merit. No other argument has been advanced by learned counsel for petitioners.

10. On perusal of orders passed by learned Rent Controller and Appellate Authority, I find no merit in this petition and the same is dismissed.

April 02, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No