

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

CR No.777 of 2016(O&M)
Date of Decision: 25.05.2018

Ashwani Kumar

---Petitioner

Versus

Dr. Kirpal Singh Khera and another

---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Ajay Singla, Advocate for the petitioner.

Ms. Reeta Kohli, Senior Advocate with
Mr. Kirat Pal, Advocate for respondent No.1.

HARINDER SINGH SIDHU, J.

The tenant has filed this revision petition impugning the order dated 10.3.2015 of the Ld. Rent Controller, Jalandhar whereby the eviction-petition filed by the land-lord has been allowed. Also impugned is the order dated 18.12.2015 of the Appellate Authority, Jalandhar whereby his appeal has been dismissed.

For facility of reference, the parties will be referred to as per their status in the eviction petition. The land-lord would be referred to as the 'petitioner' and the tenant as 'respondent no.1'.

The petitioner filed the eviction petition under Section 13 of the East Punjab Urban Restriction Act, 1949 (for short 'the Act') seeking eviction of respondent no.1 from the tenanted shop forming part of property No.685 Bhargo Nagar, Jalandhar. It was his case that respondent No.1 was a tenant in the shop at a monthly rent of Rs.1700/-. The rent was to be

enhanced on the seventh day of May every year by Rs.50/- per month. The ejectment was sought on the following grounds:-

- (i) the petitioner bona fide required the premises for his own use and occupation and for the use and occupation of his son Dr. Gaganpreet Singh and daughter-in-law, Dr. Manpreet Kaur for opening a medical clinic. The shop in question was the most suitable to the petitioner for running the medical clinic of his son and daughter-in-law as the petitioner had no other place to run the clinic.
- (ii) Respondent no.1 had sublet the shop in question to respondent no.2 without written consent of the petitioner.

It was pleaded that the petitioner did not own and possess any other commercial building within the urban area of Jalandhar except his own clinic where he was doing his medical practice independently. It was also pleaded that he had not vacated any such building after the enforcement of the Act. As the respondent refused to vacate the shop despite requests, the eviction petition was filed.

The case of respondent No.1-tenant was that the petitioner was not the landlord/owner of the premises and that there was no relationship of landlord and tenant between them. It was pleaded that he was a tenant under one Vipin Kumar on the basis of rent deed dated 7.5.2002 and the said Vipin Kumar had already filed ejectment petition against him. During the pendency of the ejectment petition, Vipin Kumar sold the property to Tajinderpal Singh and Harpreet Singh. Tajinder Pal Singh had moved an application before the Rent Controller for making him a party which was accepted. An amended petition had also been filed by Tajinder Pal Singh

which was being contested by respondent No.1. Provisional rent had been assessed in that petition at Rs.1200/- per month which had been accepted by the legal heirs of Tajinder Pal Singh. The said petition was pending. But the petitioner had not disclosed this fact.

In order to prove his case, the petitioner appeared as PW 1 and reiterated the averments in the petition. He also placed on record the site plan Ex.P1. Petitioner also examined Ashwani Kumar as PW 2 who also supported the petitioner.

Respondent No.2 was proceeded against ex parte. Respondent No.1 appeared as RW1 and reiterated the facts as per the written statement. He placed on record documents Ex D1 to Ex D3.

On the issue of relation of tenant and landlord, the Ld. Rent Controller held that it had been proved that the demised premises had been purchased from the original landlord Vipran Kumar by Tajinder Pal Singh, the son of the petitioner. After the death of Tajinder Pal Singh a compromise deed dated 16.03.2012 was entered into between his legal heirs, whereby, the property was agreed to be settled under the ownership of the petitioner. The petitioner had filed a civil suit for declaration that the compromise was genuine and binding. The suit was decreed. It was held that the petitioner had thereby become the owner of the property and, thus, the respondents could not deny the relationship of landlord and tenant between them.

On the issue of the bona fide need of the landlord, the Ld. Rent Controller held that the petitioner had examined himself as PW 1. PW 2 Ashwani Kumar was also examined who had stated that the demised

premises was required by the petitioner and his son and daughter-in-law , who were both doctors, for opening a medical clinic. The contention of the respondents that the shop was inadequate in size for the said purpose as it was measuring only 5 feet x 7 feet was rejected by holding that the court could not go into the sufficiency or insufficiency of the premises for the need of the petitioner. Moreover, there is no prescribed size for a medical clinic. It may be opened in single room or may be a large area with multiple facilities.

The other argument of respondent No.1 was that the petitioner had concealed the facts in his petition and had not disclosed that he owned other commercial property. Reference was made to the cross examination of the petitioner where he admitted that he was running his clinic comprising of two rooms in the name of 'Paul Clinic'. The Rent Controller held that there was no concealment as the petitioner in paragraph 3 of the petition had stated that he did not own or possess any other commercial building except his own clinic where he was doing his medical practice independently. The mandatory requirements of the Act had been complied with. However, the issue of sub- letting to respondent No.2 was held to be not proved.

Accordingly the petition was allowed.

The Ld. Appellate Authority has affirmed the findings of the Rent Controller.

Ld. Counsel for respondent No.1 has again argued that the landlord in his cross examination identified the photographs Ex.D1 and Ex.D2 where he has his clinic and they do not abut each other. It is

thereby argued that he is in possession of two clinics and he has not disclosed this fact.

This question has already been considered by both the Rent Controller and the Appellate Authority. It has been held that the petitioner in his petition had specifically pleaded that he did not own or possess any other commercial building except his own clinic where he was doing his medical practice independently. The petitioner in his cross examination had clearly stated that only Ex.D2 was owned by him and that Ex.D1 was not his ownership though it was possessed by him. On both the photographs Ex.D1 and Ex.D2 the name 'Paul Clinic' is mentioned. Ld. Counsel for the petitioner states that though they may not be exactly abutting each other, but they are adjacent to each other. Evidently, it is only one clinic comprising of two small rooms. The respondent has not stated and proved that they are at different locations in Jalandhar so as to constitute two different clinics.

Thus, there is no merit in this petition and the same is dismissed.

May 25, 2018

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No