

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

116

CR No.7788 of 2016 (O & M)
Date of Decision:01.08.2018

Prem Kumari

...Petitioner

Versus

Amritpal Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arihant Jain, Advocate and
Mr. Varun Jain, Advocate
for the petitioner.

Mr. Kartik Gupta, Advocate
for respondent No.1.

ANIL KSHETARPAL, J.(Oral)

Tenant-petitioner is in the revision petition against the concurrent findings of fact arrived at by the authorities below while ordering his eviction on the ground of bona fide personal necessity.

It may be noticed that during the pendency of the present petition admittedly possession of the shop in question has been handed over to the landlords in execution of the eviction decree.

Respondent-landlord filed a petition claiming that in family partition, shop in question has fallen to his share and he wishes to open a chemist shop in the aforesaid premises. He has pleaded that he has sufficient experience while working as medical representative and he is well qualified, B.Sc. (Non-medical).

Defendant-petitioner contested the petition on the ground that there are two other shops available with the landlord. It was further pleaded

that landlord was also running cycle stand and he is doing the job.

Both the Courts after examining the evidence have found that in a family partition this is the only shop, which has only fallen to the share of the landlord-respondent. The landlord-respondent is not in possession of any other shop. Vijay, who has appeared on behalf of tenant as DW-1 also admits partition between the family members.

Learned counsel for the petitioner has submitted that the previous petition filed against the husband of the petitioner was not disclosed in the pleadings. He submitted that the earlier petition was dismissed on 22.10.2001. He further submitted that in the cross-examination, landlord has admitted that one shop is lying vacant, which is bigger in size.

This Court has considered the submission. However, do not find substance therein.

As per the East Punjab Rent Restriction Act, a landlord is required to file a petition on specified ground(s). It is not in dispute that the aforesaid proceedings were initiated by father (Raghubir Singh) of the present landlord. Hence, dismissal of previous petition would not make any difference. In any case, the aforesaid petition was not for personal necessity of the respondent-landlord.

With regard to argument of learned counsel that there is a vacant shop available, it has been clarified by the landlord that the aforesaid shop has fallen to the share of his brother and since partition is not being disputed between the family members, therefore, it cannot be said that the aforesaid shop is available with the landlord-respondent.

Next argument of learned counsel is that the respondent-

landlord is at present in service. No doubt, respondent-landlord is in service but it is pleaded case that he wishes to open a chemist shop and he has sufficient experience. Landlord cannot be expected to sit at home and then wait for years, to get an eviction order.

In the present case, landlord-respondent has filed a case with pleadings that he is in service and he wishes to open a chemist shop.

In view thereof, there is no ground to interfere.

Revision petition is dismissed.

Learned counsel for the petitioner, however, pointed out that while taking possession certain goods belonging to the tenant are still lying in the shop. If that be so, petitioner would be at liberty to move an application before the learned Executing Court.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

01.08.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No