

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.7881 of 2018 (O&M)
Date of Decision: December 19, 2018

Rajinder Singh

...Petitioner

Versus

Dhiraj Mattoo

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Manish Prabhaker, Advocate,
for the petitioner.

AMIT RAWAL, J.

CM No.25092-CII of 2018

For the reasons mentioned in the application, which is supported by an affidavit, delay of 56 days in filing the revision petition is condoned.

CM stands disposed of.

Civil Revision No.7881 of 2018

The present revision is directed against the orders dated 10.05.2018 and 20.01.2016 passed by the first Appellate Authority and the Rent Controller, Amritsar, whereby the petitioner has been ordered to be evicted from the demised premises.

Respondent-landlord Dhiraj Mattoo sought the eviction of the petitioner-tenant from one shop bearing Khana Shumari No.5090/XIV-26 min fully shown red in the site plan on the following grounds:-

- a) Personal necessity;
- b) Arrears of rent;

- c) Additions and alterations; and
- d) Unfit and unsafe for human habitation.

It was alleged that as per the rent note dated 16.12.1994, which was reduced into writing between the parties, the rate of rent of the shop in dispute was fixed as ₹ 350/- per month with increase of ₹ 50/- after every five years. The petitioner though had taken the demised premises for undertaking tailoring work, but without permission started doing business of noodles. The shop outlived its age being 85 years old. As regards the personal necessity, it was stated that the respondent-landlord was in possession of one shop which was not sufficient for the purpose of running Auto Sales business, which requires space for office for the owner, employees, a workshop, showroom and also space for parking of the vehicles. The landlord disclosed about the other two shops in possession of Niranjana Singh and brother of the petitioner, namely, Suraj Mattoo and, thus, attempted to comply with the statutory provisions of the erstwhile East Punjab Urban Rent Restriction Act, 1949.

The petitioner opposed the eviction petition and affirmed that he was undertaking the tailoring work. The alleged additions, alterations and the age of the shop were emphatically denied.

The Rent Controller, on the basis of the aforementioned pleadings, framed the following issues:-

- “1. Whether the petitioner requires the demised premises for bonafide personal necessity? OPA*
- 2. Whether the demised premises has become unfit and unsafe for human habitation? OPA*
- 3. Whether the respondent is liable to be ejected from the demised premises on the ground of change of user? OPA*
- 4. Whether the respondent has materially impaired the*

value and utility of the demises premises? OPA

5. *Relief.”*

The respondent-landlord examined PW-1 Abhishek Mishra, PW-2 Kuldeep Singh Suri, PW-3 Rohit Gupta and himself as PW-4, whereas the petitioner-tenant himself appeared as RW-3 and also examined RW-1 Arvinder Singh, RW-2 Balwinder Singh and RW-4 Swaraj Singh.

The Rent Controller ordered the ejectment on the grounds of personal necessity and additions and alterations. In appeal, the first Appellate Authority reversed the findings on additions and alterations.

Mr. Manish Prabhaker, learned counsel appearing on behalf of the petitioner-tenant, in support of the grounds of revision, submitted that site plan Ex.P2 showed one shop to be possessed by the petitioner but the site plan now sought to be placed on record by way of additional evidence, depicted that in the total plot possessed by the landlord, there are number of other shops, much less open space lying vacant. On merits, he submitted that the witness of the landlord admitted ownership of four shops by the landlord, but the Appellate Authority did not take cognizance of the concealment of the open space in the site plan Ex.P1. Jamabandi Ex.RW3/D for Khasra No.100/2 shows the area measuring 3 kanals 11 marlas and landlord admitted in cross-examination regarding ownership of the land which is depicted in Annexure P-1. The attention of this Court was also drawn to the cross-examination of the landlord, which reflected pendency of the eviction proceedings pending against another tenant Niranjana Singh.

I have heard the learned counsel for the petitioner-tenant, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel, for, the landlord in the rent petition disclosed about other two shops, one in possession of Niranjana Singh and

another with brother of the petitioner Suraj Mattoo, therefore, there is compliance of provisions of Section 13(3)(a)(i)(a) and (b) of the Act. It does not lie in the mouth of the tenant to object to the maintainability of the petition regarding non-compliance. The tenant cannot test the bonafide need of the landlord until and unless it is actuated out of malice. Despite extensive cross-examination or any other documentary evidence placed on record to deny the ejectment on account of personal necessity. The courts below have to sit in the armchair of the landlord and examine the ejectment petition coupled with evidence brought on record. In other words, the tenant cannot dictate the terms to the landlord while defending the ejectment petition.

Additional evidence sought to be placed on record also would not help the tenant in differing with the concurrent findings of fact ordering eviction on personal necessity. Concededly, the demised premises is situated on the G.T.Road, i.e., commercial area. Shop being 85 years old cannot be a ground for non-suiting the ejectment. Jamabandies Ex.R1 and RW3/D reflected the ownership of residential premises in the same vicinity.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings, which are based on appreciation of oral and documentary evidence. The revision petition stands dismissed. Consequently, application for additional evidence is also dismissed.

December 19, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No