

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 8765 of 2017 (O&M)
Date of Decision : 26.04.2018

Darshan Kumar and another

....Petitioners

Versus

Wazir Chand (deceased) and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Bhoop Singh, Advocate
for the petitioners.

Mr. Gurmeet Singh Guri, Advocate
for respondents.

Surinder Gupta, J.

This is revision against order passed by the Appellate Authority, Ludhiana whereby ejectment petition filed by landlord-Wazir Chand seeking ejectment of revision-petitioners from the demised premises on the ground of personal *bona fide* necessity of landlord-respondents was allowed and order passed by learned Rent Controller dismissing the petition was set aside.

2. Before proceeding further, it will be relevant to have a look on grounds on which ejectment of revision-petitioners was sought from the demised premises. This petition was originally filed by landlord-Wazir Chand (since deceased), now represented by his son Naveen Nanda and his nephew Rakesh Nanda, seeking ejectment of revision-petitioners from the demised premises on the ground of non-payment of rent from July, 2013 till the date of filing of petition and for his personal *bona fide* necessity of the demised premises to start joint business of his

son Naveen Nanda and nephew Rakesh Nanda. As the rent was paid, the ground of non-payment of rent became non-existent.

3. The plea that demised premises is required for the *bona fide* need of the landlord as explained in para 6 (b) is reproduced as follows:-

“6(b) The shop & godown in question is required by the son of petitioner no. 1 namely, Naveen Nanda (who is unemployed) and petitioner no. 2 jointly for the personal necessity to start the business, since then the petitioners are requesting the respondents to vacate the shop for the use of son of petitioner no. 2 and for petitioner no. 2 but the respondents paid no heed to the genuine requests of the petitioners.”

4. The revision-petitioner contested the claim of landlord-respondents on the ground that landlord has filed this petition with *mala fide* intention to let out the same after vacation at higher rate of rent. The plea of landlord that demised premises is required for his personal *bona fide* necessity was denied *inter alia* pleading that both Naveen Nanda and Rakesh Nanda are firmly settled in their business/occupation and have got handsome income and the demised premises is not required for their personal use to start new business.

5. In support of his case Wazir Chand appeared as PW-1 and he examined Naveen Nanda, his son, as PW-2 and Gurmit Singh as PW-3 while revision-petitioner no. 2 appeared as RW-1.

6. Learned Rent Controller dismissed the petition with observations as follows:-

- (i) It is pertinent to mention that the petitioner has mentioned in the petition that shop in question is required for son of petitioner No.1 and by petitioner no.2. However, PW1 Wazir Chand has stated in his examination in chief that the property in question is required by him for his business meaning thereby the shop in question is required by PW1 Wazir Chand, who wants to do tyre and cycle puncture work in it. As respondent has not sought ejectment of revision petitioner from shop in question on the ground that he himself wants to start a business therein, plea taken by PW1 in his examination in chief and in his cross-examination that he also wants to run a business in the shop in question is beyond pleadings and cannot be legally looked into.
- (ii) Naveen Nanda, son of Wazir Chand was doing job in a Soda factory and was also filing income tax returns pertaining to his job while Naveen Nanda in his affidavit has stated that he is unemployed for the last 4/5 years and admitted in his cross-examination that he was employed. This amounts to concealment of material facts.
- (iii) Wazir Chand stated in his petition that his nephew Rakesh Nanda was also unemployed but admitted in his cross-examination while appearing as PW-1 that

Rakesh Nanda was running a business of crockery, which has failed. PW-3 Gurmit Singh has admitted in his cross-examination that Rakesh Nanda is also having his separate business at Moga. Rakesh Nanda has not appeared as witness to project his need.

7. With above observations, learned Rent Controller rejected the plea of landlord that he required the demised premises for his personal *bona fide* use with observations in para 18 of the order, which is reproduced as follows:-

“18. After going through the evidence adduced by both the parties, I am of the considered view that the petitioners have concealed the material facts regarding job of son of petitioner No.1 Naveen Nanda and running of business by petitioner No.2 Rakesh Nanda which goes to root of the case. It clearly shows that petitioner does not require the demises premises for their bonafide need. Had the petitioner mentioned in his petition as well as in the evidence regarding present job of son of the petitioner No.1 and running of business by petitioner No.2 and now they want to start a new business , the position would have been different. But the petitioner has tried to seek the relief from the court by concealing the material facts. It clearly shows that there is no bonafide need on the part of petitioners for eviction of the respondent from

the shop in dispute. Accordingly, I am of the considered view that shop in question is not required bonafidely by the son of petitioner No.1 and petitioner No.2 and issue No.2 is decided against the petitioners and in favour of the respondents.”

8. Not satisfied, the landlord filed appeal before the Appellate Authority, which was allowed.

9. Learned counsel for revision-petitioners has argued that Appellate Authority while upholding the personal *bona fide* need of landlord-respondents has ignored the evidence on record, which clearly depicts that the respondents-landlords have sought ejectment of revision-petitioners from the demised premises only with a view to enhance the rent. Landlord-Wazir Chand while appearing as PW-1 has categorically stated that before death of his father, revision-petitioner was asked to increase the rent by ₹1000/- but he did not agree. Father of Wazir Chand had died only few months before filing of this petition. Need projected by landlord-respondents for the demised premises is for the business of his son Naveen Nanda and nephew Rakesh Nanda. When cross-examined, landlord-Wazir Chand stated that he requires the demised premises for his own need to start tyre and cycle puncture business. He also admitted that his son was employed in Soda factory and his nephew Rakesh Nanda was having a crockery business. This fact was not disclosed by landlord-Wazir Chand in his petition. Naveen Nanda in his affidavit has stated that he was unemployed but in cross-examination he admitted that he (Naveen Nanda) is employed and filing his income tax

returns. He has stated that at the time of filing of petition his counsel was told that Wazir Chand also wants to start business of tyres and cycle puncture in the demised premises. In view of above evidence on record, findings recorded by learned Rent Controller were based on proper appraisal of evidence, which have been upset without application of mind and order of Appellate Authority is perverse and not sustainable in the eyes of law.

10. Learned counsel for respondents has argued that landlord-respondents sought ejectment of revision-petitioners from the demised premises for his personal *bona fide* need to settle his son and nephew in the business. The need of landlord-respondents cannot be doubted for the fact that after filing of ejectment petition in the year 2014 son of the landlord had got employment with soda water factory. It is not required that landlord or his son will sit idle and wait for the outcome of ejectment petition filed by them. They have to take care and earn for their families. The employment of son of landlord with a soda water factory, in no manner dilutes the need of the demised premises for his business as projected by the landlord. Rakesh Nanda, nephew of the landlord is also engaged in crockery business where he had failed and intends to start business in the demised premises with son of the landlord. Merely because he was already in business is no reason to doubt *bona fide* of the landlord. In normal course, landlord could seek ejectment of the revision-petitioner for the personal *bona fide* need of the demised premises for his son without impleading need of his nephew. The fact that he has impleaded the need of his nephew shows that the landlord

intended to start joint business of his son and nephew in the demised premises. Statement of landlord-Wazir Chand while appearing as PW-1 that before death of his father there were talks to enhancement of rent by ₹1000/- in no manner affects the case of landlord as a landlord always intends that with the increase in price index, the tenant should enhance the rent. If a tenant does not agree to enhance the rent despite demand by the landlord and at later stage the landlord files petition seeking ejectment of the tenant on the ground available to him as per provisions of East Punjab Urban Rent Restriction Act, the plea of landlord so raised cannot be doubted merely on the ground that at one point of time he had sought enhancement of rent. Learned Rent Controller has discarded the need for the demised premises projected by the landlord on flimsy and unsustainable grounds ignoring the fact that in order to survive, sustain himself and his family, a person has to engage himself in some vocation, business or profession. The mere fact that son of the landlord was employed with soda water factory and his nephew was also doing a business, could not be a reason to doubt *bona fide* necessity of the landlord-respondents for the demised premises. Statement of landlord-Wazir Chand that he intended to start tyre and cycle puncture job in the shop in question also does not dilute his need for the demised premises. He had stated that he required the shop for his son and nephew. Even if he also wanted to start some business in that shop, the need as projected in the ejectment petition in no manner is diluted. Even otherwise after death of landlord-Wazir Chand, his wish to start a tyre and cycle puncture business in the shop in dispute no more subsists. Learned Appellate

Authority has rightly looked into the need of landlord and ordered ejectment of the revision-petitioner from the demised premises.

11. Learned Rent Controller while doubting the *bona fide* need of the landlord has taken note of the fact that son of the landlord was employed in soda water factory; his nephew was running a business of crockery and landlord-Wazir Chand (since deceased) had stated that he wants to start tyre and cycle puncture job in the shop. On the basis of above evidence learned Rent Controller observed that there is no *bona fide* need on the part of respondents for eviction of revision-petitioner from the shop in question. Learned Rent Controller has taken note of the part statement of landlord-Wazir Chand and ignored his statement that crockery business of his nephew has failed and he wants to start new business at Khanna. It has also come on record that Rakesh Nanda was residing at Moga and was carrying on business of “tent house in a rented accommodation”. On appraisal of evidence, learned Appellate Authority in para 18 of the judgment has observed as follows:-

“18. Learned counsel for the respondent has vehemently argued that since Naveen Nanda is not unemployed, therefore, ground of necessity is not proved. However, this contention of learned counsel for the respondent does not appear to be tenable considering the fact that it has come in evidence that Naveen Nanda is employed with a Soda Water factory. It has also been stated by AW1 Wazir Chand in his cross-examination that some times his son is retained by the company or

some time his services are dispensed with. It means that Naveen Nanda is not well settled in his job nor in this regard any evidence has been led by the respondent that the job of Naveen Nanda is permanent or that he is drawing a handsome salary from the job. In the considered opinion of this court, merely because Naveen Nanda is doing a temporary/casual job in a soda water company, it cannot be said that he is gainfully employed or is well settled in life nor can it be said that he does not require the demised shop for his personal use and occupation.”

12. Learned Appellate Authority also took note of the fact that in his examination-in-chief PW-1 Wazir Chand (landlord) categorically stated that his son and nephew require the shop to start their business. Even Naveen Nanda, son of landlord-Wazir Chand has stated that he and his cousin want to start new business in the demised premises. In these circumstances even if landlord-Wazir Chand also wanted to start a tyre and cycle puncture job in the demised premises, it in no manner dilutes the need of the landlord for the demised premises. From the fact that Naveen Nanda was employed in soda factory and was also filing returns, an inference cannot be drawn that he was well settled in life and never intended to start his business. A person is not expected to sit idle till ejectment petition propagating the need of demised premises for his business is finally decided. One has not only to maintain himself but also

his family and for earning livelihood for himself and his family, he has to get himself engaged in some vocation, business or profession. If Naveen Nanda and Rakesh Nanda are doing some job/business, this does not reflect adversely on the *bona fide* need of the demised premises as projected by landlord-respondent and learned Appellate Authority has rightly taken note of the fact that business of Rakesh Nanda has collapsed and respondent-Wazir Chand wished to settle him in business with his son Naveen Nanda. The mere fact that there were some talks about enhancement of rent at one point of time is no reason to discard the plea of landlord-respondent that the demised premises is required for personal *bona fide* need to start business for son and nephew of landlord-Wazir Chand. It is quite common that landlord periodically asks the tenant to increase the rent and his demand is sometime acceded and sometime contested by the tenant. In view of statement of landlord-Wazir Chand and his son Naveen Nanda, it is amply proved that shop in question is required for the personal *bona fide* necessity of landlord and talks of increase of rent have no impact on the need so projected in the ejectment petition. Learned Appellate Authority has rightly appreciated evidence while observing in para 20 of the judgment as follows:-

“20. Much stress has been laid by the learned counsel for the respondents that petitioner no.2 Rakesh Nanda is well settled in life at Moga and there is no reason that he would like to shift to Khanna to start a new business. It has also been argued by the counsel for the respondent that petitioner no.2 Rakesh Nanda has

not been examined as witness by the petitioners and on this ground also, his personal necessity cannot be said to have been proved on record. Even this contention of the learned counsel for the respondents seems to be devoid of any force or substance. In this connection, it is worth pointing out that it has been stated in his cross-examination by AW1 Wazir Chand that crockery business of Rakesh Nanda has collapsed and he has closed his shop though Rakesh Kumar continues to sit in the shop and some goods are still lying in the shop. Even if it is presumed for the sake of argument that petitioner no.2 is running a crockery shop at Moga, this by itself does not debar AW2 Naveen Nanda from starting a new business at Khanna with his cousin nor on this ground it can be said that his necessity is not bonafide. Similarly, even if it is taken into consideration that petitioner no.2 is a permanent resident of Moga, where he owns a house or lives with his family, but again it cannot by itself preclude him from thinking in terms starting a business at Khanna with his cousin. It is a well settled proposition of law that it is not within the preview of the tenant to dictate to the landlords as to in what manner they should use the property in question. Therefore, simply because petitioner no.2 is residing

at Moga or that he himself did not enter into the witness box, it cannot be said that qua him the ground of personal necessity has not been proved on the file. Moreover, it is the define case of petitioner Wazir Chand that he requires the disputed shop for his son and nephew who are not employed. As discussed above, it has come in evidence that his son is not well settled and is only doing a casual job with a private company while the business of his nephew has failed.....”

13. The above observation of Appellate Authority are based on proper appreciation of evidence, facts of the case and calls for no interference. Learned Appellate Authority has rightly set aside conclusions drawn by learned Rent Controller, which were not based on proper appreciation of the plea, evidence and facts proved on record.

14. Consequently, the instant petition has no merit and the same is dismissed.

April 26, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No