

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 10 of 2019(O&M)

Date of Decision:26.2.2019

Har Lal

---Petitioner

vs.

Ram Kishan deceased through LRs

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.S.K.Aggarwal, Advocate
for the petitioner

Rekha Mittal, J.

The present petition directs challenge against concurrent findings of fact whereby eviction application filed under Section 13 of the Haryana Urban (Control of Rent and Eviction), 1973 (in short “the Act”) by Ram Kishan (since deceased) now represented by his Lrs on the ground of personal necessity was allowed by the Rent Controller, Narnaul and appeal preferred by unsuccessful tenant was dismissed by the Appellate Authority, Narnaul.

There is no dispute between the parties with regard to relationship of landlord-tenant in respect of shop, detailed in head note of the eviction application. The tenancy was created way back in the year 1973. The landlord sought eviction on the ground of non-payment of rent and personal necessity. However, the order of eviction has been made only on the ground of personal necessity of sons of landlord namely Rajender

Kumar and Pardeep.

A relevant extract from sub para (b) of para 7 of the eviction application, reads as follows:-

“Family of the petitioner has enlarged and petitioner is having four sons, who have grown up. The petitioner himself is unemployed and now, petitioner wants to start his own business and petitioner is having no suitable vacant shop or commercial place in his possession, where he could start his own business. It is pertinent to mention here that the petitioner is owner of three shops within the Municipal area to Town Narnaul and one of the shop, out of the above mentioned three shops, is the present disputed shop, which is being in possession of respondent as statutory tenant. Whereas out of the two remaining shops, one shop is totally in a dilapidated condition and the said shop is being presently used by the son of present petitioner, namely Pawan Kumar by installing a Bhathi and for storing other goods and vessels including fire woods, kadhai and other sweets preparing vessels. Pawan Kumar is doing the business of 'Sweets & Halwai' and restaurant, at the remaining third shop. Thus, all the three shops owned by present petitioner is pre occupied and there is no other suitable premises available within Urban Area, Narnaul for starting the business of present petitioner. It is also pertinent to mention here that earlier one son of the present petitioner namely, Rajender Kumar was working on a rented shop, situated at New Mandi, Narnaul, which was on rent in the name of present petitioner. But, now the present petitioner has been evicted from the said shop by its landlady by filing a suit for possession, which was decreed and the appeal filed by the present petitioner was dismissed and in the execution of the said decree, the possession of the said shop was taken by the

landlady with the help of 'Bailif' of the Court in pursuance of warrant of possession. Thus, now petitioner's son Rajender Kumar is having no suitable place or shop to carry on his business. It is also pertinent to mention here that petitioner's another son namely, Pardeep Kuamr is unemployed and he is also having no other suitable place or shop to start his business and therefore, petitioner wants to start his own and for his two above named sons business in the disputed tenanted premises, which is situated in main bazaar and is very suitable for the aforesaid purposes. The petitioner is having sufficient capital to start his own business. Petitioner is having no other suitable or sufficient vacant commercial premises available with him. Thus, petitioner is not in occupation of any other suitable or sufficient accommodation for starting his own and his son's business within Urban Area, Narnaul, nor he had voluntarily vacated any such premises without sufficient reason since, 1949 and after the commencement of Rent Act.

Counsel for the petitioner has assailed concurrent findings by raising three fold submissions namely (i) the respondent is guilty of concealing material fact of sale of one shop in the year 2007, situated within the urban area of Narnaul (ii) there are no averments raised in the eviction application that sons of the respondent are not in possession of any such building in the urban area concerned nor they have vacated the same after commencement of the Rent Act in compliance with judgment of Hon'ble the Supreme Court **Ajit Singh vs. Jeet Ram and another 2008(2) RCR (Rent) 328** and (iii) Rajender Kumar, one of the sons whose necessity has been projected did not appear in the witness box when otherwise he is running his business in a shop that has been purchased in the name of Usha Rani

wife of Rajender Kumar vide sale deed No. 41 dated 7.4.2010.

To being home his contention with regard to concealment of material fact, it is argued that in the eviction application, there is no reference to sale of one of the shops by the respondent in the year 2007. When the petitioner highlighted the said fact in his reply/written statement, the respondent in replication had raised a plea that the said shop was a *Khandhar* (dilapidated condition) and plain area under the shop was sold vide sale deed No. 2583 dated 3.10.2007. It is vehemently argued that as the respondent in the eviction application did not disclose this fact of sale of shop in October 2007, he is guilty of approaching the court with uncleaned hands and by concealing material fact which is sufficient to reject his plea of bona fide personal necessity. It is further argued that Rajender Kumar did not appear in the witness box to substantiate plea of the respondent that demised shop is required for his personal use and occupation as well. Pardeep, another son of the respondent was examined and he has not specifically denied that Rajender Kumar is doing business of spare parts in the shop that has been purchased in the name of Usha Rani wife of Rajender Kumar.

I have heard counsel for the petitioner, perused the paper book and records.

Before adverting to the submissions made by counsel, it is pertinent to recapitulate the legal position with regard to scope of intervention in concurrent findings recorded by the courts, in exercise of limited revisional jurisdiction. Hon'ble the Supreme Court in **Hindustan Petroleum Corporation Limited vs. Dilbahar Singh 2014(4) RCR (Civil)**

162 has held, quoted thus:-

“We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re- appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for

coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

Reverting to the case at hand, eviction application cannot be rejected on technical considerations unless the tenant is able to prove that a prejudice has been caused to him on account of failure of the landlord to plead the ingredients of Section 13(3)(a)(ii) (b) and (c) of the Act. In the present case, the respondent landlord has raised specific averments in the eviction application that neither he is in possession of any other suitable accommodation in the urban area of Narnaul nor had vacated the same after commencement of Rent Act. Pardeep, one of the sons of the respondent for whose necessity as well the eviction has been sought, appeared in the witness box. He tendered into evidence his affidavit Ex. PW10/A by way of examination in chief. He has reiterated the averments raised in support of sub para (b) of para 8 of the eviction application, reproduced hereinbefore. In the concluding lines of his affidavit, he has deposed in compliance with the requirements of Section 13(3)(a)(ii) (b) and (c) of the Act, quoted thus:-

“Thus, father of the deponent was not in occupation of any other suitable or sufficient accommodation for starting his own and his son's business within urban area, Narnaul, nor he had voluntarily vacated any such premises without sufficient reason since 1949 and after the commencement of Rent Act. Father of deponent was in dire bonafide need of demised shop for his and

his family member's personal necessity at the time of filing of the present petition and now after his death, the present deponent and his brothers are neither in occupation of any other suitable of vacant premises nor have vacated any such premises without any sufficient reason. The personal need of the landlords is most genuine and respondent is liable to be evicted on this score also.”

Counsel for the petitioner has not disputed that even if the landlord is able to prove the essential ingredients of Section 13(3)(a)(ii) (b) and (c), the same is considered as sufficient compliance with the requirements of the aforesaid provision. In view of averments made in the affidavit of Pardeep, it is difficult to accept contention of the petitioner that the respondent has failed to prove essentials of the aforesaid provision in consonance with judgment of Hon'ble the Supreme Court in **Ajit Singh's case (supra)**.

The plea of the petitioner that the respondent is guilty of concealing a material fact with regard to sale of one shop is patently misconceived in the light of discussion made hereinbefore that the factum of sale was clearly admitted by the respondent in replication wherein he had raised the plea that the said shop was a *khandhar* and plain site was sold. Perusal of the sale deed of said shop executed in the year 2007 prior to initiation of eviction proceedings in the year 2011, makes it apparent that it has been specifically recorded therein that the said shop is a *khandhar* (dilapidated condition). That being so, the petitioner cannot derive any advantage to his contention from the factum of sale of a *khandhar* shop nor such dilapidated shop can be termed as vacation of such a building without

any sufficient cause after the commencement of Rent Act.

Counsel has referred to statement of Ram Kishan Ex. DW5/A recorded in proceedings for fixation of fair rent under Section 5 of the Act. The statement of Ram Kishan was recorded on 7.2.2013. He had stated that he sold the shop to Naveen Jain son of Nemi Chand for marriage of his daughter performed five years ago. The fact that the said shop was a dilapidated shop (*khandhar*) and sold to perform marriage of his daughter by Ram Kishan, goes a long way to negate plea of the petitioner that the respondent had vacated a shop in urban area concerned without any sufficient cause after commencement of Rent Act and the same can be a ground to reject his claim for eviction from the shop in question.

The respondent sought eviction for the purpose of starting his own business and business of his sons Rajender Kumar and Pardeep. The respondent died during pendency of proceedings before the Rent Controller, Narnaul. Pardeep, one of the sons of the respondent appeared in the witness box. Counsel has failed to point out any materials elicited in cross examination of Pardeep that he is in possession of any other shop in the urban area concerned for starting his business. As per the settled position in law, the requirement not only of the landlord himself but also of the normal 'emanations' of landlord is included therein. In this context reference can be made to judgment of Hon'ble the Supreme Court **Joginder Pal vs. Naval Kishore Bahgal 2002(1) RCR (R) 582**. In this view of the matter, even if it is assumed that Rajender is doing business of spare parts in some other property that itself cannot be a ground to interfere in findings of the courts in view of the fact that shop in question is required for the

business of Pardeep, one of the sons of Ram Kishan.

Rajender Kumar did not appear in the witness box. The petitioner in the written statement has raise a plea that in the shop purchased in the name of Usha Devi wife of Rajender, Om Parkash another son of Ram Kishan is doing business. The petitioner never filed an application for making amendment in the written statement, thus, his contention that name of Om Parkash is the result of typographical error can not be entertained. This apart, the courts have rightly noticed that in the testimony of Pardeep, it has come on record that it is the son of Rajender and not Rajender who is doing business in the shop purchased in the name of Usha Devi wife of Rajender Kumar. Analyzed from any angle, I do not find any material irregularity much less illegality in consistent findings recorded by the courts that would call for intervention.

In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

26.2.2019
paramjit

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