

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

**Civil Revision No.76 of 2019 (O&M)  
Date of Decision: March 25, 2019.**

Satish Gautam

**.....PETITIONER(s).**

**VERSUS**

Anita Kanda and another

**....RESPONDENT(s).**

**CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Kanwaljit Singh, Senior Advocate with  
Mr. Abhishek Bajaj, Advocate  
for the petitioner (s).

Mr. Sarju Puri, Advocate  
for caveator-respondents.

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**SURINDER GUPTA, J.**

Heard.

This is revision against the order dated 31.08.2016 passed by the Rent Controller, Shaheed Bhagat Singh Nagar allowing petition filed by the respondents seeking ejectment of petitioner from the demised premises i.e. shop situated at Railway Road, Nawanshahr on the ground of personal bona fide necessity of the respondents and judgment dated 05.12.2018 passed by Appellate Authority affirming the order of Rent Controller.

Brief facts of the case are that respondents Anita Kanda and Amit Kanda filed petition seeking ejectment of petitioner from the demised premises on the ground of non-payment of arrears of rent and bona fide need of respondent No.1 for her son respondent No.2 for starting his

business. The plea of landlord seeking ejectment on the ground of non-payment of arrears of rent was discarded by the Rent Controller but the plea of bona fide need for shop in question to start the business of respondent No.2, was upheld.

Learned counsel for the petitioner has assailed the order of learned Rent Controller and the Appellate Authority on the sole ground that Amit Kanda, for whom personal bona fide necessity for shop in question was propounded, has gone to Australia and keeping in view the subsequent event, the need of the respondents for the demised premises, no more exists.

This point was also raised before the learned Rent Controller and Appellate Authority. It was observed by learned Rent Controller as follows:-

“On conclusion of his evidence, respondent filed an application for leading additional evidence, that was allowed vide order dated 19.04.2016 passed by my learned Predecessor court. In his additional evidence, respondent examined Varinder Chopra, Municipal Councilor being RW6, who has deposed vide his affidavit Ex.RW6/A as discussed above that petitioner no.2 has gone to Australia about 1-1/2 years back and has not returned from the foreign country. He has admitted that he has not seen any document/visa/ticket/passport belonging to Amit Kanda or his mother. He has admitted that he had not accompanied him to Airport for boarding flight. He has stated that he never talked to the family members of Anita Kanda. He has stated that he got the said knowledge from the maternal uncle of Amit Kanda. But, merely on the basis of oral statement of RW6, it can not be concluded if the petitioner no.2 has gone abroad. It is

contended by learned counsel for the respondent that no evidence to rebut the statement of RW6 has come on the record. That being so and even if for the sake of arguments, it is presumed that petitioner no.2 has gone abroad, but merely on that account the personal necessity as projected by the petitioner before the court does not come to an end. At the time of alleged departure of petitioner no.2 to Australia, the petition in hand was still pending for adjudication. The respondent has not handed over the vacant possession of the shop to petitioner, so that her son might have returned to India to start his business. Moreover, in case petitioner no.2 does not return back to India to start his own business as projected before this court, in that eventuality the respondent would be having appropriate remedy to get the recourse of law for getting the possession of the shop in question as per the Act. Merely on the ground that petitioner no.2 has gone abroad without any evidence, that he has permanently shifted to Australia, the petition filed by the petitioners can not be discarded.”

The first Appellate Court also took note of the plea raised by the appellant and observed in para 13 of the judgment as follows:-

“13. Further, as argued by the counsel for the appellant that the demised shop is not bona fide required by the respondent no.1 for setting up of the business for respondent no.2 Amit Kanda, as respondent no.2 Amit Kanda has gone to Australia permanently, in view of the statement of PW-6 Varinder Chopra, Municipal Councilor and in this regard the counsel for the appellant had also cited the authority of Hon’ble Punjab and Haryana High Court 2009(1) RCR(Rent) page 386 (supra), this Court is of the view that the above

submissions raised before this Court are baseless because the need, as pleaded by the landlord i.e. respondent no.1 Anita Kanda has to be seen at the time of filing of the petition. The Hon'ble High Court of Punjab and Haryana in the authority **2018(2) RLR page 291** in the case titled as ***Sadhu Ram v. Darshan Singh***, has categorically held that crucial date for deciding the bona fide requirement of the landlord is the date of application for eviction. Even the Hon'ble Apex Court in the case titled as ***Gaya Prasad v. Pradeep Srivastava, AIR 2001 SC page 803***, had categorically observed that the crucial date for deciding the bona fide requirement of the landlord is the date of application for eviction. Moreover, this Court is of the view that though much emphasis was laid by the Ld. Counsel for the appellant to the statement of RW-6 Varinder Chopra that present respondent no.2 Amit Kanda has gone to Australia (abroad), permanently, but record reveals that in case in hand respondent no.2 Amit Kanda has himself stepped into the witness box as AW2 and he has categorically deposed that he wants to set up business of artificial jewellery in the demised shop. So, since AW-2 Amit Kanda has undergone training of artificial jewellery from Jalandhar and he wants to run the business of artificial jewellery in the demised shop, as there is no other shop of the respondents in the vicinity of the Nawanshahr, as such, the bona fide requirement of the demised shop stands duly proved on the record and hence the authority of **2009(1) RCR(Rent) page 386 (supra)** is also not applicable in the case in hand. Further for argument's sake, if it is taken that respondent no.2 Amit Kanda has gone to Australia (abroad), during the pendency of the present appeal, this Court is of the view that there cannot be any thumb or unexceptional rule that a person who is

well settled abroad would never wish to come back to India and wants to set up his business. On this point, this Court is supported by the authority of Hon'ble Delhi High Court 2018(1) RLR page 323 in the case titled as ***Sun N.Shade Opticians & Ors. v. Shyam Sunder Budhiraja***. Thus, this Court feels that in case respondent no.2 Amit Kanda has gone to Australia, it will not amount that he has settled permanently in Australia. Rather, this Court is of the view that if Amit Kanda being son of respondent no.1 Anita Kanda is ready and willing to fulfill demands and needs of his aged mother (Anita Kanda) at this stage of her life to set up his business, the requirement of the demised shop is bona fide. Thus, the counsel for the appellant cannot agitate before this Court that in case on summons report has come that respondent no.2 Amit Kanda had gone abroad, it will not amount that the demised shop is not required bona fide by respondent no.1 for setting up the business for her son, i.e. respondent no.2, because, as discussed above the crucial date for deciding the bona fide requirement of the landlord is the date of application for eviction and accordingly, this Court is of the considered opinion that the Ld. Rent Controller had rightly passed the eviction order of the present appellant from the demised shop, after proper appreciation of the evidence available on the file in a right perspective manner.”

From the above observations, it is clear that both the Courts below have discussed the plea raised by the petitioner in detail and have committed no error while rejecting the same.

Learned counsel for the petitioner has argued that Amit Kanda has not returned to India so far, which shows that he is permanently settled

there and this subsequent event dilutes the plea of bona fide necessity raised

by respondent No.1 for the demised shop to start business of respondent No.2.

I do not find any reason to agree with the submission of learned counsel for the petitioner as respondent No.2 has stepped into the witness box and stated that he intends to start his business in this shop. If he has gone to Australia to have some advance training or even to earn his livelihood, it does not mean that his need for the shop no more subsists. A person is not supposed to sit idle till he gets the possession of the tenanted premises. Everyone has right to rise in life, earn livelihood to take care of his family and if Amit Kanda has also opted to diversify his activities even by going to Australia, it cannot be said that he no more intends to start his business in the shop in question. The plea to this effect raised by learned counsel for the petitioner has rightly been looked into and rejected by the Rent Controller and Appellate Authority and call for no interference.

This revision petition has no merits.

Dismissed.

**March 25, 2019.**

*Sachin M.*

**( SURINDER GUPTA )  
JUDGE**

***Whether speaking/reasoned:***

***Yes/No***

***Whether Reportable:***

***Yes/No***