

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

**Civil Revision No.155 of 2019 (O&M)
Date of Decision: March 07, 2019.**

Chhatar Bhushan

.....PETITIONER(s).

VERSUS

Shakuntala Devi

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Krishan Singh Dadwal, Advocate
for the petitioner (s).

Mr. Sandeep Bansal, Advocate
for respondent.

SURINDER GUPTA, J.

Respondent-landlady Shakuntala Devi sought ejectment of petitioner-tenant Chhatar Bhushan from house situated near Town Hall, Committee Bazar, Hoshiarpur on the grounds of non-payment of rent and personal bona fide necessity. The ground of non-payment of rent was not pressed as the rent was tendered. The plea of respondent-landlady as contained in para 3 (ii) explaining her need for the demised premises is as follows:-

“That the petitioner requires the demised premises bonafide for her own requirement. The petitioner for the time being is putting up with her sons but could not adjust with them. She was earlier residing in the portion of the house situated in Lajpat Rai Road, Hoshiarpur, consisting of two rooms and old kitchen, of which she became the owner as per the registered Will dated 12.06.1992, of her husband. But the said house is unsafe

and unfit for human habitation, as the same is in dilapidated condition and is not liveable. The petitioner wants to reside in the demised premises i.e. in an independent accommodation. She could not adjust with his sons due to some family difference. The petitioner requires the demised premises bona fide for her own residence.”

Learned Rent Controller discarded the plea of the respondent on the grounds as follows:-

- (i) The roof of the house in question is made of wooden batten and the house has a temporary bathroom. The house jointly owned by respondent-landlady with her sons, has six rooms, kitchen and bathroom.
- (ii) The construction of the house situated on the Mall Road, in which respondent-landlady was given two rooms and kitchen to live therein as per will of her husband, is not older than the construction of the house in question.
- (iii) The respondent-landlady is 93 years of age and it is not plausible that she may reside in such a house, which is not having proper bathroom and she could live without the help of servant or close relative.
- (iv) Except the bald statement of respondent-landlady, there is no evidence that she does not have good relations with her sons, rather, she has admitted that she used to attend the functions with her sons.

On the above grounds, the plea of bona fide requirement of the demised premises was held as not genuine and a created one to get the house vacated.

The Appellate Authority on appraisal of evidence, reversed the findings of the Rent Controller on the issue of bona fide necessity of the

landlady for the demised premises. Regarding the house situated at Mall Road (Lajpat Rai Road), it was observed as follows:-

“She has categorically stated that she was residing in the portion of house situated on ‘Laspat Rai Road, Hoshiaprur having two rooms and old kitchen which she has inherited from her husband in lieu the Will executed by her husband. Said house is more than 70 years old and is much below the level of the road. The roofs of said house have fallen down and rainy water enters in the house as such same is not fit for human habitation. This is the reason, she wanted this demised premises for her personal use and occupation.”

Regarding observation of the Rent Controller that being 93 years of age, respondent-landlady is not in a position to live without help of a servant or her son/relative, it was observed as follows:-

“Although, in cross-examination, she admitted that she is 93 years old, but, it is a fact that she herself stood into witness box as her own witness in this age showing her mental and physical ability. Merely, on the ground that she is in advance age and cannot live alone is not correct findings of Ld. Trial Court. Ld. Trial Court cannot presume that such old aged lady cannot live alone. It is always sweet will of any person to live her/his life at her/his choice. The Court or tenant cannot dictate the terms to landlady how and where she has to live. She has categorically stated that for the time being she is putting in a house of her another son in Bank Colony, Hoshiarpur. When, any landlady particularly an old widowed lady wanted to live alone with dignity, she cannot be directed not to live in that way. Suggestion has been given that this petition has been filed for getting eviction of tenant and to sell the same which she has

denied.”

It was also observed by the first Appellate Court that the house situated in Lajpat Rai Road, Hoshiarpur, in which respondent-landlady had inherited two rooms and one kitchen as per Will of her husband, is at the level lower than the metalled Road and rainy water used to enter in the house causing lot of inconvenience. Even otherwise, it is the sweet will of the landlady to chose the house in which she wants to live.

I have heard learned counsel for the parties and have perused the paper book with their assistance.

Learned counsel for the appellant has argued that the property inherited by the respondent-landlady from her husband situated on Lajpat Rai Road is a better located property in the heart of the City which has a hospital in front of it. Respondent was earlier residing in this house but now she is residing with her younger son at Bank Colony, Hoshiarpur. The condition of the house at Lajpat Rai road has been alleged to be dilapidated but it is because this house is lying locked for the last about 15 years. Husband of respondent also owned a palatial house in village Mehlawali which is at outskirts of Hoshiarpur. In her advanced age of 93 years, respondent is not in a position to live in a house which is not having a proper bathroom. She can live with either of her sons and in case, she wants to shift, the house at Lajpat Rai road is better option. The plea put-forth by respondent that she needs the demised premises to live there, is mala fide and has been created only to get the house vacated in order to sell the same. He has argued that mere desire of the landlady to live in a house does not prove her bona fide necessity for the same, which could be ascertained from

age factor, condition of demise premises and other factor proved on record, it can be easily inferred that respondent does not require the disputed house for her living. In support of his contention, he has relied on observation of Hon'ble Apex Court in case of ***T.Sivasubramaniam Vs. Kasinath Pujari*** **1999 (7) SCC 275.**

Learned counsel for the respondent has argued that despite being in old age, respondent is leading an active life. She had not only pursued her case in court and appeared as witness but has also expressed her desire to live separate from her sons with whom she is not having cordial relations. She has expressed her reasons for not living in the house situated at Lajpat Rai road, which is in dilapidated condition. The building expert examined by her has proved condition of that house. The petitioner being a tenant cannot suggest or raise the plea that the house in question is not suitable for the respondent-landlady. When the petitioner and his family can live in that house, he cannot plead that this house is not having proper accommodation. Even the witness of respondent has admitted that the respondent-landlady is in perfect state of health. So far as the property of village Mehlawali is concerned, it is outside the urban area of city Hoshiarpur and is not suitable for the respondent-landlady. The Rent Controller had non-suited the respondent on flimsy grounds which have rightly been reversed by the Appellate Authority.

The question, which arises for consideration in this petition is as to whether the conclusion drawn by the Appellate Authority that the demised premises is required by the respondent for her personal bona fide necessity is based on proper appreciation of evidence on record.

Firstly, I have a look on the citation referred by learned counsel for the petitioner in case of *T.Sivasubramaniam Vs. Kasinath Pujari (supra)*, in that case the Hon'ble Apex Court has taken note of the deficiencies in the pleadings of landlady which find reference in para 4 of the judgement, which is reproduced as follows:-

“From the aforesaid decisions it is clear that mere desire of the landlady to live separately from his father cannot be attributed to his need for the premises occupied by the tenant. It is often seen that a desire often takes its origin from what one likes and dislikes and necessarily it is not depended upon his need. But we cannot lose sight of the fact that sometimes the desire may be outcome of ones need. **So when a landlady desires a premises, the requirement of law is that the landlady must set out his need for the premises in his petition and establish that such a need is bona fide.** The need must be bona fide, genuine, honest and conceived in good faith. **In the present case what we find is that, it was not pleaded by the landlady in his petition that he for certain compelling reasons desires to live separately from his father and for that reason he required the premises. We also do not find any evidence on record to show that the landlady required the premises and his need was bona fide.** The only material on record for eviction of the tenants before the Rent Control Authority was mere desire of the landlords to live separately from his father. Such a desire is not substitute of the need for the premises which a landlady is required to plead and establish. Thus, we are of the view that the landlords desire to live separately was not a valid ground for eviction of the tenants from the premises. We, therefore, find no substance in the submission of learned counsel

for the appellants.”

In the present case, landlady has pleaded her bona fide need for the demised premises and also led evidence to prove the same. The observations in the above-referred case are, as such, not applicable to the facts and circumstances of the present case.

There is no dispute with the principle of law that landlady is required to prove her bona fide need for the premises to get it vacated from the tenant and such need should not be based on mere whim, desire or fanciful. The respondent has alleged that she wants to live in the house in question as she could not adjust with her sons due to strained relations. No doubt, she is in advance age of more than 93 years but as stated by RW2 Rajinder Singh that she is maintaining good health and is looking after herself of her own. She cannot be taken as dependent on her sons or daughters-in-law. Even, on perusal of Will of her husband, shown during the course of arguments, I find that she has inherited land and other properties, as such, has sufficient income to hire the services of attendant for her.

The question which arises for consideration is as to whether her personal bona fide need can be discarded on the ground that she is 93 years of age and cannot live without her family. Such a conclusion, if drawn, will lead to draw adverse inference against so many landlords/landladies, who in their old age are not having cordial relations with their families and want to lead the remaining part of their life in a peaceful atmosphere by living separate.

The conclusion drawn by the Rent Controller that it is not

plausible for the landlady to reside in the house in question at this old age without the help of servant or close relative, may have a substance but is not a reason to discard her bona fide need. Once, respondent has decided to live separately in her own house, any of the relative may come to her or she may hire the services of servant but this, in no manner, is a reason to doubt her bona fide need for the house in question and the conclusion drawn by the Rent Controller to this effect has rightly been set aside by the Appellate Authority. This observation of learned Rent Controller that she has not been able to prove her strained relations with her sons is also not sustainable, as the solitary statement of respondent to this effect is to be given weight and she was not required to prove this fact by leading any other evidence. She has proved on record that the portion of the house at Lajpat Rai road given to her by her husband, is not worth living. Even otherwise, it is for the landlady to chose as to in which property she has to live. Petitioner is a tenant since long in the house in question and cannot resist the plea of respondent, who wants to live in this house, on mere ground that this house is not suitable for her living.

It is a settled principle of law that a tenant has no right to suggest the house, in which a landlord or landlady should shift to lead remaining part of his/her life. The intention of an old person, may be in his/her 70s, 80s or 90s, to live separate from his/her family cannot be doubted or termed as whimsical desire to seek the ejectment of the tenant.

The finding of fact regarding the personal bona fide need of the respondent about the demised premises, as recorded by the Appellate Authority suffers from no legal or factual infirmity, calling for any

interference in this revision petition, which has no merits.

Dismissed.

March 07, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***