

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

CR No. 1960 of 2008 (O&M)

Date of Decision: November 29, 2019

Dr. Jai Dev Mahajan through his LRs

..... Petitioner(s)

Versus

Nanu Ram

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sumeet Mahajan, Senior Advocate with
Mr. Sharan Sethi, Advocate and
Ms. Ramneeq Kaur, Advocate
for the petitioner.

Mr. Chetan Mittal, Senior Advocate with
Mr. Kunal Mulwani, Advocate
for the respondent.

LISA GILL, J.(oral)

The petitioner is the landlord who is aggrieved of the judgment dated 30.01.2008, passed by the learned Appellate Authority, Chandigarh, whereby order dated 08.12.2004, passed by the learned Rent Controller, Chandigarh in the petitioner's favour has been set aside, consequently, dismissing the petition under Section 13(3)(a)(i) and 13(3)(a)(iv) of the Rent Restriction Act filed by the petitioner-landlord.

Brief facts necessary for the adjudication of the case are that the present petitioner-landlord sought ejectment of the respondent-tenant from the premises in question i.e. SCF No. 26, Sector 18/D, Chandigarh on the ground of personal bonafide necessity of the demised premises for his own use and

occupation besides requirement of the premises for his son for residential purpose as the residential use of the premises on the first and second floor was permitted. It is further pleaded that the premises in question was required by the petitioner for use as a consulting room by his son, who had qualified his B.A.M.S. and who intended to start his practice as a registered practitioner. The petitioner claimed to be the owner of the demised premises, which was admittedly on rent with the respondent. Respondent, it is pleaded, had not deposited the rent w.e.f. 01.04.1998. Petitioner himself claimed to be running a chemist shop. The petitioner – Dr. Jai Dev Mahajan being a medical practitioner was carrying on his practice in SCF NO.17, Sector 23-C, Chandigarh besides running a chemist shop from the premises. It is further pleaded that the petitioner's son Vijay Mahajan had cleared his D.Pharm in December 1986 and was registered as a Pharmacist on 09.06.1987. The petitioner's son thereafter cleared his BAMS in 1991 and was assisting the petitioner in medical practice as well as running a chemist shop. Vijay Mahajan got married in 1993 and was blessed with two daughters. The premises from where the chemist shop and clinic was being run in Sector 23, Chandigarh, it is stated, was not promising of a better lucrative practice, as there were many other chemist shops in the vicinity. The petitioner wanted to start a chemist shop in the demised premises and required the same for setting up a clinic and chemist shop for his son as well. It is further pleaded that the ground floor would be used for setting up the clinic and chemist shop while the first floor of the shop would be used for the purpose of residence of the petitioner's son who at that time was living as a licensee in house no. 32, Sector 8A, Chandigarh. It

is stated that despite requests, the respondent refused to admit the petitioner's claim due to which the petition was filed.

Petition was contested by the respondent-tenant taking various preliminary objections. It is pleaded that earlier a petition was filed on 11.08.1988 on the ground of personal necessity by the petitioner but the same was withdrawn on 21.04.1989. Therefore, the subsequent petition on the ground of personal necessity is barred. It is further stated that the petitioner was residing at his own residence in house No.32, Sector 8A, Chandigarh alongwith his son and his family. The house is stated to be measuring 4 Kanal. The petitioner's son was alleged to be controlling the entire affairs of the clinic as well as the shop being run in Sector 23, Chandigarh and the petitioner himself was carrying on his practice from his residence at Sector 8A, Chandigarh. Therefore, the personal *bonafide* necessity of the landlord did not exist. Dismissal of the petition was sought.

Replication was filed controverting the pleas taken by the respondents.

Following issues were framed by the learned Rent Controller on the basis of the pleadings:-

- i) Whether the requirement of the petitioner with regard to the tenanted premises for his own use and occupation, is bonafide ?OPP.
- ii) Whether the petitioner has concealed true and material facts from the court ?OPR
- iii) Whether the eviction petition is not legally maintainable? OPR
- iv) Relief.

Evidence was led by both the parties to substantiate their respective stands.

Learned Rent Controller while not finding favour with the ground of personal necessity of the petitioner himself for occupying the premises in question or of the use of the premises for the residential purpose of his son allowed the petition on the ground of personal bonafide necessity for the use and requirement of the premises for the petitioner's son for running a clinic or consulting room therefrom.

Appeals were filed by the respondent-tenant as well as the petitioner-landlord. Learned Appellate Authority, Chandigarh while dismissing the appeal filed by the present petitioner challenging the finding against him allowed the appeal filed by the tenant, consequently dismissing the petition filed by the petitioner. Aggrieved therefrom present petition has been filed.

Learned counsel for the petitioner vehemently argues that the personal bonafide necessity of the petitioner is duly proved on record. It is contended that requirement of the premises for use by the petitioner's son is a bonafide requirement. It is submitted that the learned Appellate Authority has grossly erred in dismissing the petition seeking ejectment of the tenant. It is contended that learned Appellate Authority has wrongly concluded that it is only a mere wish of the landlord which existed and not the personal bonafide necessity. The Court, it is submitted, is not to proceed on the presumption of absence of bonafide necessity of the landlord. It is, thus, prayed that the present revision petition be allowed and order of the learned

Appellate Authority in respect to dismissing the petition of the petitioner-landlord be set aside and possession of the demised premises be restored to the petitioner.

Per contra, learned counsel for the respondent-tenant submits that during the pendency of this petition the petitioner has passed away, therefore, personal bonafide necessity of the landlord ceases to exist. The very basis of the petition, it is contended, falls to the ground. The petitioner's son Vijay Mahajan has succeeded to the property of his father and clearly has sufficient premises in Sector 23, Chandigarh to run his clinic. Furthermore, once both the learned Courts below have held that the necessity regarding the residential use of the premises is not proved, there can not be any order of ejectment from the entire premises on the ground of requirement of the premises for running a clinic/consultancy. It is thus prayed that the present petition be dismissed and the judgment dated 30.01.2008, passed by the learned Appellate Authority, Chandigarh be upheld.

I have heard learned counsel for the parties at length and have gone through the file with their able assistance.

It has been vociferously argued that the present petition is barred by the principle of *res judicata*. However, I do not find any merit in this argument and the same is rejected. This is so for the reason that admittedly, the earlier petition seeking ejectment of the respondent was dismissed as withdrawn on 21.04.1989. The present petition was filed after

about 10 years on 08.01.1999. In the meantime, the landlord's son had completed his BAMS in the year 1991. He started assisting the petitioner in the practice as well as running the chemist shop and acquired a good clientele in the meantime. It is thereafter, that the necessity of starting his own independent clinic arose and the petition was filed. Therefore, it cannot be said that the present petition is barred. Both the learned Courts below have returned a correct finding in this regard.

Contention of the learned counsel for the respondent-tenant that as the petitioner-landlord himself passed away, the ground of personal bona fide necessity is no longer available, is also rejected being untenable. It is a settled position that death of a landlord during the pendency of the proceedings will not be relevant especially once ejectment of the tenant had been ordered. The Hon'ble Supreme Court in ***Gaya Prasad Vs. Pradeep Srivastava, 2001(1) RCR (Rent) 221*** observed as under:-

“15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.”

The Hon'ble Supreme Court in ***M/s. Speedline Agencies Vs.***

M/s. T. Stanes & Co. Ltd. 2010 (2) SCC (Civil) 670, has again drawn a clear distinction between the cases where death of the landlord occurred after the decree of eviction was passed and cases where the landlord's death occurred prior thereto. In the present case, ejectment of the respondent-tenant was ordered by the learned Rent Controller on 08.12.2004 on the ground of requirement of the premises for the use of the petitioner's son. Though the said order was set aside in appeal, the petitioner-landlord Jai Dev Mahajan died during the pendency of the present revision petition challenging the order of the Appellate Authority and his legal representatives were impleaded on 08.08.2016 in this petition. Thus, the subsequent death of the landlord by itself is not a ground to dismiss this revision petition. The existence of the personal bona fide necessity has to be examined as on the date of institution of the proceedings.

Learned counsel for the respondent has also argued that the personal bonafide necessity no longer exists as the premises at Sector 23, Chandigarh are available to the petitioner's son for running his practice independently as the original landlord has admittedly died. There is again no merit in this argument for the reasons recorded in the foregoing paras as well as for the fact that it is specifically pleaded in the petition that the premises at Sector 23, Chandigarh are not conducive for a lucrative and prosperous practice and it is due to this reason that the landlord and his son wanted to shift practice to Sector 18, Chandigarh. It is a settled position that the landlord is the best judge of his own requirement. The landlord is not to

be dictated in this respect. There can be no denial that the difference in the location and other factors of two Sectors is a valid ground for wishing to shift the practice. It is a matter of record that the income-tax returns of the petitioner's son Ex.R1 to Ex.R5 show an increase in his income. This fact in itself reflects that the desire to expand his practice is indeed bonafide and not a mere fancy or a whimsical desire. Learned Appellate Authority has clearly erred in presuming that it is not believable that the landlord's son would set up his own clinic and the chemist shop in the demised premises. Such a presumption is unsubstantiated by the evidence on record. I also do not find any merit in the argument raised by learned counsel for the respondent that there can be a splitting of tenancy. It has been argued by learned counsel for the respondent that ejectment of the respondent from the entire premises in any case cannot be ordered. I do not find any merit in this argument. Tenancy cannot be split. The demised premises were leased out as a whole by a single lease deed. There cannot be any partial ejectment. Reference in this regard can gainfully be made to the judgment of Hon'ble Supreme Court in ***Habibunnisa Begum and others Vs. G. Doraikannu Chettiar and others (2000) 1 SCC 74*** and the Division Bench judgment of Kerala High Court in ***Tellicherry W. Co-operative Society Vs. Safiya Beebi Umma 2003(1) RCR (Rent) 94.***

Keeping in view the facts and circumstances of the case, judgment dated 30.01.2008, passed by the learned Appellate Authority, Chandigarh is set aside to the extent the judgment passed by learned Rent

Controller dated 08.12.2004 has been set aside. Ejectment as ordered vide order dated 08.12.2004, passed by the learned Rent Controller is upheld.

No other argument has been raised.

Accordingly, this civil revision petition is allowed.

November 29, 2019

Sunil

**(Lisa Gill)
Judge**

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