

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR No. 2058 of 2004 (O&M)

Date of Decision: 27.02.2019

Ashwani Kumar

....Petitioner

VERSUS

Madan Lal

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. G.L. Bajaj, Advocate
for the petitioner.

Mr. Sandeep Khunger, Advocate
for the respondent.

SURINDER GUPTA, J.

Revision-petitioner sought ejectment of respondent from the shop measuring 11' x 14' situated in Dheri Bazar, Ferozepur City on the following grounds:-

- (i) That from 02.06.1994 onwards the respondent has not paid any rent to the applicant;
- (ii) That the shop in question is unsafe and unfit for running any business;
- (iii) That the applicant is a young man of 35 years of age and require the shop for his personal *bona fide* necessity to start some business.

2. Arrears of rent were tendered and the respondent contested the plea of petitioner that the shop is unfit and unsafe for running the business and that the petitioner required the demised premises for his personal *bona fide* need. It was averred that the petitioner is in service as Librarian in D.C.

adjoining shop and the godown as co-tenant after death of his father Prince Raj.

3. Pleadings of parties led to framing of the issues as follows:-

- (i) Whether the tender made by respondent is legal and valid? OPA
- (ii) Whether the shop in question is unsafe and unfit for carrying business? OPA
- (iii) Whether the appellant requires the shop in question for his personal use? OPA
- (iv) Relief.

4. Issue no. 1 was held as redundant after tender of rent. On issue no. 2, learned Rent Controller on appraisal of evidence recorded the finding that the shop in question has not become unfit and unsafe for running the business. It was also held that the shop in dispute is not required by the petitioner for running his own business.

5. While recording finding that the shop in question is not required by the petitioner for his personal *bona fide* need, learned Rent Controller took note of the followings facts:-

- (i) The petitioner has not pleaded and proved ingredient as per provisions of Section 13 (3) (a) (ii) of the East Punjab Urban Rent Restriction Act, 1949 (later referred to as 'the Act'). While reaching this conclusion, learned Rent Controller observed that after death of his father, petitioner has inherited the tenancy right of shop and godown in his (father's) possession where his other two brothers, namely, Vipin Kumar and Sanjiv Kumar were

doing business;

- (ii) He started business of wholesale shoe store in Ferozepur Cantt, an adjoining city, with his uncle but later on closed that business in the year 1992 and left the possession of that shop in favour of his uncle, as such, he had vacated the non-residential building, a fact not pleaded in the petition;
- (iii) He had admitted that he was working as librarian in a school at Ferozepur and till the date of his statement had not decided as to what particular business he will start in the shop after eviction of respondent or that he had taken any steps to start his own business.

6. The above findings of learned Rent Controller were also affirmed by learned Appellate Authority while dismissing the appeal filed by the petitioner.

7. Before proceeding further, it will be relevant to have a look on the observations of Hon'ble Apex Court in case of **Hindustan Petroleum Corporation Ltd vs. Dilbahar Singh, 2014(9) SCC 78**, wherein Hon'ble Apex Court has defined the scope of interference with the orders of Courts below in revision petition. Observations of Hon'ble Apex Court relevant on this point are reproduced as follows:-

“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.”

8. The question to be seen in this revision petition is as to whether the conclusion drawn by learned Rent Controller are based on proper appreciation of fact and law on the issue and can be sustained in the eyes of law.

9. Firstly, I take observations of learned Rent Controller and Appellate Authority that petitioner has not pleaded or proved that he is not in possession or has not vacated any non-residential premises.

10. Respondent-Madan Lal appeared as RW-2 and has categorically admitted that petitioner is not owning nor vacated any shop in the urban area of Ferozepur City. Admission of respondent in his statement to this effect is reproduced as follows:-

“.....It is correct that applicant is not owning and has not vacated any shop in the urban area of Ferozepur City during the past 15/16 years i.e. after the enforcement of the Rent Act. It is incorrect that applicant has never worked in the shop of his father during the life time of Prince Raj. It is correct that I have not got incorporated in my reply in these proceedings that applicant used to work in the adjoining shop being run by his father Prince Raj during the life time of Prince Raj. It is correct that the other two brothers of the applicant, namely, Vipin Kumar and Sanjiv Kumar are running the karyana business only in the said shop on rent with their father Prince Raj.....”

11. Learned Rent Controller as well as Appellate Authority have gone astray while observing that the petitioner has vacated a shop in the 'urban area concerned' in which he had started business with his uncle. It is

admitted case of parties that petitioner started wholesale shoe business with his uncle in Ferozepur Cantt, which is a different urban area than the urban area of Ferozepur City. Appellate Authority while taking note of this fact appeared to be not clear about the evidence that has come on record. The petitioner admitted that he started wholesale business with his uncle in Ferozepur Cantt. During the course of arguments, this fact has not been disputed by learned counsel for the respondent that Ferozepur Cantt. has a separate local body, i.e. Cantt Board, while in Ferozepur City there is Municipal Committee. As per requirement of Section 13 (3) (a) (ii) of the Act, the petitioner was not required to plead or prove about possession or vacation of non-commercial building in any other urban area. The requirement of Section 13 (3) (a) (ii) of the Act is confined to the building in possession or vacated which falls in the urban area where the demised premises is situated. In view of above, observations of Courts below are erroneous, based on misreading of evidence, as such, not tenable in the eyes of law.

12. Even otherwise if a person has started joint business with his uncle and later on withdrawn from partnership of that joint business, this does not fall within the purview of word 'vacating of non-commercial premises'. In such circumstances, possession of tenanted premises remained with uncle of the petitioner and the petitioner had simply withdrawn from the business. On this basis a conclusion could not be drawn that he had vacated the non-commercial premises.

13. Personal *bona fide* need of petitioner for demised premises was rejected by learned Rent Controller and learned Appellate Authority on the ground of non-pleading of fact that after death of his father tenancy of the

shop in his possession (father's possession) has also fallen on the petitioner. It is not disputed that in the shop where father of petitioner was doing business, brothers of petitioner, namely, Vipin Kumar and Sanjiv Kumar are doing business. Father of petitioner died after filing of this petition and no tenancy right in the shop in possession of his father had been inherited by the petitioner at the time when this petition was filed, as such, he was not required to plead any such fact and non-pleading of such fact could not be taken as adverse against him. Even as per provisions of Section 13 (3) (a) (ii) of the Act, the petitioner was not required to disclose as to whether he had inherited the tenancy right of his ancestors. The findings of Courts below on this issue are not unsustainable being wholly erroneous and perverse.

14. The other fact while non-suiting the petitioner, which prevailed before learned Rent Controller and Appellate Authority, is that petitioner has not disclosed about the business he intends to start in the shop in question or had made any preparation to start such business.

15. In case of **Kay Iron Works (P) Ltd. vs. Molar Mal, (1998 (2) RCR 404**, it was observed by this Court that landlord is not required to give details as to which business has to be carried out by him in the premises after seeking its vacation.

16. The Courts below while discussing *bona fide* of the petitioner for requirement of the demised premises have commented that he failed to plead or prove the business intended to be started by him in the demised premises, as such, it cannot be said that his need is *bona fide* one. Learned Rent Controller has gone to the extent of observing that the landlord has failed to prove any steps taken by him in order to start his own business in

the shop in question.

17. The above facts to my mind are wholly irrelevant while deciding the *bona fide* need of the landlord for the tenanted premises. A person does not require any experience or ready finances and his preparation to be disclosed at the time of filing petition seeking ejectment of the tenant. In present day scenario the finances are available through banks and other financial institutions as and when a person has to start business. A landlord cannot visualize at the time of filing petition as to what type of business he could start in the shop after its vacation. Suppose it takes 4/5 years before he is put in possession of the shop (this petition is pending for the last 22 years) he will have to study market condition and similar other factors while deciding as to what business he could start. It is quite possible that if he had thought of starting a particular business at the time of filing of the ejectment petition, the same may not be feasible or remunerative by the time he gets possession of the shop because of many competitors in that field of business who have come in the market by that time. A person does not require any experience to start a new business as we have a number of instances where a person having no experience had been very successful while a person with all expertise has failed in a particular business.

18. Hon'ble Apex Court in case of **Dattatraya Laxman Kamble vs. Abdul Rasul Moulali Kotkune, 1999 (1) RCR 508** while taking note of issue of experience required to start a particular business observed as follows:-

“11. If a person wants to start new business of his own it may be to his own advantage if he acquires experience in that line. But to say that any venture of a person in the

business field without acquiring past experience reflects lack of his bona fides is a fallacious and unpragmatic approach. Many a business have flourished in this country by leaps and bounds which were started by novice in the field; and many other business ventures have gone haywire despite vast experience to the credit of the propounders. The opinion of the learned single judge that acquisition of sufficient know-how is a pre-condition for even proposing to start any business, if gains approval as a proposition of law, is likely to shatter the initiative of young talents and deter new entrepreneurs from entering any field of business or commercial activity. Experience can be earned even while the business is in progress. It is too pedantic a norm to be formulated that “no experience no venture.”

19. It has also weighed before the Courts below that petitioner was posted as librarian in a private school and was getting salary of ₹3500/- per month at that point of time. The above fact in no manner effect the *bona fide* need of the petitioner-landlord as he has specifically stated that he intends to start his business after leaving his job. Here a question may arise whether in order to prepare for a business he should have left the job and then filed this petition? In case of **Raghunath G. Panhale vs. M/s Chaganlal Sundarji and Co., 1999 (2) RCR 485**, Hon'ble Apex Court while evaluating the need of landlord has observed as follows:-

“9.One cannot imagine that a landlord who is in service should first resign his job and wait for the

unknown and uncertain result of a long drawn litigation. If he resigned his job, he might indeed end up in utter poverty. Joblessness is not a condition precedent for seeking to get back one's premises. For that matter assuming the landlord was in a job and had not resigned it or assuming that pending the long drawn litigation he started some other temporary water business to sustain himself, that would not be an indication that the need for establishing a grocery shop was not a bona fide or a reasonable requirement or that it was motivated or was a mere design to evict the tenant. It is not necessary for the landlord to adduce evidence that he had money in deposit in a Bank nor produce proof of funds to prove his readiness and willingness as in a suit for specific performance of an agreement of sale of immovable property.....”

20. In view of the law as settled by Hon'ble Apex Court and this Court, approach of learned Rent Controller and the Appellate Authority that *bona fide* need of the petitioner for the shop be discarded on the ground that he is still in job or that he has not disclosed the business he has to start or he has not taken any step to start his business, is wholly erroneous, illegal and not sustainable in the eyes of law.

21. In view of above, I am of the considered opinion that observations and conclusion drawn by learned Rent Controller are not in accordance with law, perverse and resulted in gross miscarriage of justice, as such, are not sustainable and require to be rectified in this revision. The

findings of learned Rent Controller and learned Appellate Authority on issue no. (iii) are reversed.

22. Learned counsel for the petitioner could not put forth worthwhile argument to assail finding of learned Courts below on issue no. (ii), as such, finding of Courts below on this issue are sustained.

23. As a sequel of my above discussion, this revision petition has merit and the same is accepted. The order of learned Rent Controller and judgment passed by the Appellate Authority are set aside. The petition filed by revision-petitioner seeking ejectment of the respondent-tenant is allowed and the respondent is ordered to be ejected from the demised premises. He is directed to hand over vacant possession of the demised premises within a period of two weeks from the date of this judgment, failing which revision-petitioner will be entitled to seek possession of the suit property in accordance with law.

February 27, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No