

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

CR No.1107 of 2017 (O&M)

Date of Decision: October 04, 2019

Gurpreet Singh

.... Petitioner

Versus

Harmeet Singh & Anr.

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. P.S.Khurana, Advocate for the Petitioner.

Mr. Jaideep Verma, Advocate for Respondent No.1.

SUDIP AHLUWALIA, J.

This Revisional Application is directed against the order dated 24.01.2017 passed by the Ld. Rent Controller, Ludhiana in Rent Petition, vide which, he had issued a direction upon the Petitioner/Landlord to open the lock of door of Bathroom on the 4th floor of the demised Building for use of Respondent No.1.

2. Vide the impugned order, the Ld. Rent Controller had partially allowed the Application filed on behalf of Respondent No.1, in which, he had prayed for appointment of a Local Commissioner with a direction to open the lock of the door of the Bathroom situated on the 4th floor of the demised Building, which according to him, had been locked by the Petitioner/Landlord with an intention to restrain the Applicant from using the basic amenity.

3. The relevant observations of the Ld. Rent Controller in allowing the Respondent's Application seeking to direct the present Petitioner/Landlord to open the lock of the door of the disputed

passage/stair case as well as Bathroom are set out as below -

“7. After hearing the contentions of Ld. counsel for the parties, this court is of the opinion that the respondent alleged in his reply of the main petition that the petitioner entered into rent deed dated 23.05.2000 with the father of the applicant. As per column 2 of the rent deed, it was mentioned that the father of the applicant will use the stairs leads to the 4th floor and he will not create any obstruction in the use of the stairs in the building. Even though, the respondent/applicant has filed suit for permanent injunction and in that suit, it is admitted by him that he has taken on rent only shop in question from the petitioner and he was not took any bathroom situated at 4th floor on rent from the petitioner. But as per the provisions of Rent Restrictions Act, the proceedings initiated in the Rent Restrictions Act is totally different from the proceedings initiated in civil suit between the parties. This case is fixed for evidence and petitioner has tendered his affidavit on 14.03.2016. But till today he has not been cross examined by the respondent. So this case is to be decided only after leading the evidence by the parties. As per the provisions of Rent Restrictions Act, the building includes the basic amenities required to be used by the tenant is to be provided by the landlord. As the bathroom is basic amenity and without bathroom the existence of human

*being is highly impossible. The Hon'ble Punjab and Haryana High Court in case titled as **Bhal Singh Malik Vs. Dr. Nazar Singh and another, 1976 RCR (Rent) 145 (P&H) High Court** “construing the rent note in respect of a single storey house opined that the roof would be part of the tenancy and the tenant could not be deprived of his right to use the roof on the pretext that the landlord wanted to construct second floor.” So in these circumstances, unless and until the eviction petition has not been decided on merits till then the applicant has right to use the bathroom situated on 4th floor of the building in question. However there is no need to appoint Local Commissioner as prayed in application dated 16.04.2016. Because the petitioner/respondent himself admits the existence of bathroom on the 4th floor of the building. So with these observations, both these applications are disposed of and the petitioner is directed to open the lock of the door of the bathroom situated on 4th floor of the building for the use of the respondent/applicant.”*

4. It has been stressed on behalf of Petitioner/Landlord that in the Injunction Suit filed by the Respondent/Tenant, there was no averment to the effect that the Bathroom on the 4th floor of the Suit Building was at all a part of his tenancy, and at any rate even in Column 2 of the Rent Deed (Annexure P-5), there was no mention of his right to use the Bathroom as it was only agreed that the

Tenant would have no concern with the roof of the Building and would go up by stairs and not put any obstacles in the stairs. However, notwithstanding the Respondent's omission of claiming the Bathroom as part of his tenancy or of any reference to such user in the Rent Agreement itself, the Ld. Rent Controller was of the view that *“Bathroom is basic amenity and without Bathroom the existence of human being is highly impossible”*. Such observation was in the backdrop of the provisions of the Rent Restrictions Act, according to which, even 'Building' includes the basic amenities required to be used by the Tenant, and which ought to be provided by the Landlord.

5. This Court is in agreement with the view taken by the Ld. Rent Controller. By now, it is virtually the settled law that Toilet facility is a part of basic amenity, to which, the Tenant would be entitled in spite of the fact that there is a physical separation between the Building and nearest Toilet (**Sita Ram and another Vs. Usha and others, 2013(2) R.C.R. (Rent) 86**). The Karnataka High Court in **“Nanjamma Vs. Subbanna @ Subbaraya” 1986(sup) R.C.R. (Rent) 274** went on to observe that *“bathroom and latrine is an essential service which cannot be withheld by landlord and no matter that they did not form part of leased premises.”*

6. Needless to add, the Ld. Rent Controller had also correctly relied upon the decision of this Court in **“Bhal Singh Malik Vs. Dr. Nazar Singh and anr.” 1976 R.C.R. (Rent) 145** while passing the impugned order in favour of the Respondent/Tenant. In **“Ashwani Kumar Vs. Parveen Atwal” 2016(1) R.C.R. (Rent) 397**, this Court in directing the Landlord to restore/provide water supply to the

Tenant had observed that *“the Tenant cannot be allowed to die of thirst because the main case cannot be decided for years and the Landlord would obliquely achieve his purpose of getting his premises vacated by cutting off the water supply of rented premises.”*

7. The Ld. Counsel for Petitioner has been unable to cite any decision, in which, denial of facility of Bathroom/Toilet to the Tenant more particularly in a commercial Building has ever been held to be justified or permissible. On the contrary, his reliance has been on the affidavit of his another Tenant namely Munish Goyal, who apparently runs his business from the Basement of the demised premises and who in his affidavit stated that the Bathroom on the 4th floor is not a part of his tenancy, and that he has never had any occasion to use the same as such. But this bald assertion of another co-Tenant was sought to be controverted by the Respondent No.1, who has placed on record a Video recording showing the said co-Tenant to be emerging out of the common stair case at its First Floor level, which otherwise is the approach to the Bathroom on the 4th floor. While this Court is not inclined to speculate as to why or for what purpose the said co-Tenant had gone up the stairs beyond the First Floor, even though his own tenanted portion happens to be situated well below in the Basement, but considering the overall settled law that Bathroom/Toilet facility amounts to a basic amenity, which the Landlord is obliged to provide and which he should do particularly in the case of commercial Building where apparently no privacy of any family member stands to be disturbed or violated, this Court finds no justification to interfere with the impugned order.

8. The Revision is, therefore, dismissed. However, the Ld. Rent Controller is requested to finally dispose off the Eviction Petition pending before him as expeditiously as possible, and prefereably withn three months from the date of communication of this order.

(SUDIP AHLUWALIA)
JUDGE

October 04, 2019
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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |