

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

**Civil Revision No.490 of 2019 (O&M)
Date of Decision:11.02.2019**

Rajesh Kumar @ Baba and another

..... Petitioners

VERSUS

Amit Kumar

..... Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Ms. Khusbir Kaur Bhullar, Advocate
for the petitioner-tenants.

Mr. Harminder Singh, Advocate
for the respondent.

JAISHREE THAKUR, J.

1. The petitioners herein are aggrieved against the order of eviction dated 30.10.2017 passed by the Rent Controller, Batala as well as the order of the Appellate Authority dated 21.11.2018 dismissing the appeal and affirming the eviction of the petitioners herein.

2. In brief the facts are, that the demised shop was originally taken on rent by Raj Kumar son of Sohan Lal, father/predecessor in interest of the appellants herein at a monthly rent of ₹ 90/- on the basis of a rent note dated 11.10.1971 from its owner. After the death of said Gurcharan Singh, his sons namely Gurdeep Singh and Ajit Singh became the owners of the

residential cum commercial building complex including the demised shop and Raj Kumar became a tenant under the said Gurdeep Singh and Ajit Singh. The relationship of the landlord and tenant existed between Gurdeep Singh etc. and Raj Kumar tenant. The rent was enhanced to ₹ 600/- per month exclusive house tax. The landlords Gurdeep Singh and Ajit Singh sold the entire building complex including the demised premises in favour of the applicant and his associates Shri Kewal Krishan and Smt. Anu Suri on the basis of a registered sale deed dated 27.6.2007, thus they became owners in the possession of the building complex including the demised premises. After the sale deed, Raj Kumar tenant became tenant under applicant etc. by operation of law and the relationship of landlord and tenant came to exist between applicant etc. and Raj Kumar tenant. Raj Kumar tenant also died leaving behind the respondents, his sons, his legal heirs, who started working in the shop in dispute and were/are in actual, physical, exclusive and effective control of the demised shop having inherited the tenancy right of their father and after the death of Raj Kumar, the respondents became tenant under the applicants etc. The relationship of landlord and tenant exists between the applicant and respondents and the respondents are liable to be ejected from the rented shop on the ground of non payment of rent, non payment of house tax, bona fide requirement for personal use. Finally prayer has been made that an order of ejectment of the respondents from the demised shop be passed.

3. Upon notice, the respondents appeared and filed their written

statement raising preliminary objections that the present application filed by Amit Kumar alone is legally not maintainable under the eyes of law. It was alleged by the applicant himself in the application that he is co-owner along with his associates Kewal Krishan and Smt.Anu Suri on the basis of registered sale deed dated 27.6.2007. So, being a co-owner applicant was not entitled to file eviction petition alone, application is bad for mis-joinder or non joinder of necessary parties, the applicant had concealed the material facts from the court, the applicant being co-owner has no locus standi to file the present application. The applicant has no bona fide need warranting eviction of respondents from demised premises. On merits, it was admitted that the demised premises is under the possession of the replying respondents. It was denied that they or their father ever took the same on rent at ₹ 600/- per month. It was submitted that the father of the respondent took the demised premises on rent at the rate of ₹ 90/-per month vide rent note dated 11.10.1971. The father of the respondents was paying rent @ ₹ 90/- per month to his landlord against receipts. It was also denied that Raj Kumar ever paid ₹ 600/- per month as rent to Gurdeep Singh etc. It was also denied that the respondent was also liable to make payment of house tax as levied by Municipal Council from time to time. It was admitted that after the death of Raj Kumar, respondents are in possession of the demised premises and inherited the tenancy right of their father and they became the tenant under the owner of demised premises. The relationship of the landlord and tenant existed between the owner of the demised premises and replying

respondents. It was denied that father or the respondents have neither paid nor tendered the arrears of the rent since 27.6.2017 amounting to ₹ 43,800/-. The respondents are not liable to pay such amount as the same has been calculated @ ₹ 600/- per month. The respondents are not liable to pay the house tax of the demised premises. It was denied that applicant requires the demised premises bona fide for his own use and occupation. Rest all other averments made in the petition were denied and prayer for dismissal of the petition was made.

4. Rejoinder was filed denying the facts pleaded in the reply and reiterated the facts mentioned in the rent application.

From the pleadings of the parties, the following issues were framed:-

- “1. Whether the respondents are liable to ejectment on the ground of non payment of arrears of house tax? OPA
2. Whether the applicant bonafide requires the demised premises for his own use and occupation as claimed? OPA
3. Whether the application as brought by applicant is not maintainable? OPR
4. Whether the application is bad for non joinder of parties? OPR
5. Whether the applicant has got no locus standi to file the present application? OPR
6. Relief.”

5. In order to prove his version, petitioner-respondent herein examined Suresh Chander, Draftsman Civil Courts Batala as AW.1, Ramesh

Chander Vasika Nawis, Tehsil Complex Batala as AW-2, Vinod Bhatia, Registry Clerk as AW.3. Petitioner Amit Kumar himself appeared as AW-4.

6. On the other hand, in order to rebut the evidence led by the petitioner-landlord, respondents-tenant examined Ajit Singh son of Uttam Singh as RW-1. Petitioner No.2 Vikas Kumar himself appeared in the witness box as RW-2 and also examined Darshana Rani, Registry Clerk as RW-3.

7. After hearing learned counsel for the parties and going through the documents brought on record by both the parties, the learned Rent Controller allowed the ejectment petition vide impugned ejectment order dated 30.10.2017.

8. Feeling aggrieved by the impugned order dated 30.10.2017, passed by the learned Rent Controller, appellants-tenant filed the appeal before the Appellate authority for accepting the same by setting aside the impugned order. However, in appeal the learned Appellate Authority too held the need of the respondent-landlord to be bona fide and affirmed the ejectment order passed by the Rent Controller. So far as payment of rent was concerned, the rent was paid by appellants as assessed by learned Rent Controller, Batala. Landlord-respondent herein was held joint owner of the demised premises on the basis of sale deed placed on record as Ex.A2 and further other co-owners also gave power of attorney in his favour. By relying upon the judgment rendered by Hon'ble the Supreme Court of India in case ***FGP Ltd. Versus Saleh Hooseini Doctor & Anr. Reported as 2010***

(1) *CCC 14 (SC)*, it was held that co-landlord can get the joint premises vacated from the tenants on his behalf and on behalf of the other co-owners.

9. The petitioners-tenants herein are aggrieved against the order of eviction dated 30.10.2017 passed by the Rent Controller, Batala as well as the order of the Appellate Authority dated 21.11.2018 dismissing the appeal affirming the eviction of the petitioners herein.

10. Ms. Khusbir Kaur Bhullar, learned counsel appearing on behalf of the petitioners herein would contend that both the Courts below have erred in ordering eviction on the ground of personal necessity of the respondent-landlord. It is argued that the respondent herein has two commercial plots available within the same area and despite the possession of two these plots, eviction is ordered in violation of Section 13(3)(1)(i) of the East Punjab Urban Rent Restriction Act, 1949. Learned counsel for the petitioners vehemently argues that if the two plots are available as mentioned in Annexure P-3 & P-4 i.e. the sale deed dated 08.01.2008 and sale deed dated 08.10.2012, eviction could have not been ordered.

11. I have heard learned counsel for the parties and have gone through the impugned orders.

12. I find that both the Courts below have ordered eviction of the petitioners herein on the ground of personal necessity of the landlord. Both the sale deeds that have been relied upon by the petitioners herein have been taken due note of and the same are available on the file of the case as Ex. R-8 & R-9. Both the Courts below have opined that it is not within the

purview of the tenant to dictate as which of the shops/ area would be suitable for the landlord to run his business from. It was also noted that the properties as described and relied upon by the tenant are situated at a far of place. The law in this regard is well settled that the landlord is the best judge of his own requirement and it is not for the tenant to dictate as to what would be a suitable property for the landlord to do his business from. Consequently, finding no infirmity with the orders passed by the Rent Controller as affirmed by the Appellate Authority, the instant revision petition stands dismissed.

13. At this stage, learned counsel for the petitioners submits that the petitioners be given adequate time to vacate the shop which has been under their tenancy for the last about 48 years.

14. Mr. Harinder Singh, Advocate, appearing on behalf of the respondents submits that reasonable time may be allowed to the petitioners-tenants to vacate the tenanted premises, subject to their depositing/clearing the entire arrears of rent upto date as well as regularly paying the future rent/ mesne profit as assessed by the Appellate Authority and furnishing an undertaking to the effect that they will hand over vacant possession of the tenanted premises to the the respondents-landlords.

15. In view of the above, order of eviction dated 30.10.2017 passed by the Rent Controller, which was affirmed in appeal by the Appellate Authority is confirmed, however, the revision petitioners are allowed period upto 30th October, 2019 to vacate the tenanted premises, subject to the

following terms:-

- (i) The petitioner-tenants will pay/deposit the entire due rent/ mesne profit upto March, 2019 on or before 15.03.2019.
- (ii) They will keep on paying/depositing the mesne profit as assessed by the Appellate Authority of subsequent months upto 30.10.2019 on or before 7th day of each calendar month.
- (iii) They shall file their joint affidavit before the Rent Controller on or before 15.03.2019 giving details of entire payment of rent and an undertaking to vacate and hand over vacant possession of the tenanted premises to the respondents-landlords on or before 30th October, 2019

In case, the petitioners-tenants make default of any of the above-said terms, the respondents-landlords would be entitled to execute the order of eviction forthwith.

11.02.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.