

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CR No.4336 of 2007(O&M)

Date of Decision: 27.09.2019.

Ajinder Singh and others

.....Petitioners

Versus

Romesh Chander

..... Respondent

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Kartik Gupta, Advocate  
for the petitioners.

Mr. Naresh Kumar, Advocate  
for Mr. K.S.Dadwal, Advocate  
for the respondent.

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**LISA GILL, J(Oral).**

Petitioners-landlords, legal representatives of Mehar Singh (original landlord), are aggrieved of judgement dated 09.06.2007, passed by the learned Appellate Authority, Hoshiarpur, whereby judgment dated 20.04.2004, passed by the learned Rent Controller, Dasuya, has been reversed.

Learned Rent Controller, Dasuya, vide judgement dated 20.04.2004, ordered ejectment of the respondent-tenant from the demised premises while the learned Appellate Authority, Hoshiarpur, has reversed the said decision, consequently, dismissing the petition filed by the petitioners-landlords.

Brief facts necessary for the adjudication of the case are that Mehar Singh, the original landlord of the demised premises i.e., a shop as described in the petition, filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, seeking ejectment of the respondent-tenant. Mehar Singh pleaded that he was the landlord and owner of the shop in dispute, which was rented out to the respondent on a monthly rent of

₹300/-. Ejectment of the respondent was sought on the ground of non-payment of rent since 01.02.2000 as well on personal *bona fide* necessity of the landlord. It is pleaded that Mehar Singh, who was working as an Office Superintendent with Punjab Roadways, Hoshiarpur, Depot, was to retire soon and he required the shop for his personal use and occupation, as he wished to start his business therein. It is duly pleaded that he was not in occupation of any other premises nor vacated any such building without sufficient cause in the said urban area. When the respondent refused to vacate the premises despite request, petition for ejectment was statedly filed.

Respondent-tenant resisted the petition. Various preliminary objections were taken. Relationship of landlord and tenant between the parties is admitted, though it is denied that the respondent was in arrears of rent. It is further denied that the landlord had any personal *bona fide* necessity due to which vacation of the premises was sought. The landlord is stated to be the owner of two other shops which were in possession of one Sohan Lal and Kewal Singh, as tenants, as well as a shop on Talwara Road, Mukerian and another one near the State Bank of Patiala, branch Mukerian. Dismissal of the petition was sought.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned Rent Controller, Dasuya:-

1. Whether the petitioner requires the demised premises for his personal use and occupation?OPA
2. Whether the tender made by the respondent is legal and valid?OPR
3. Whether the instant petition is not maintainable?OPR
4. Relief.

Evidence was led by both the parties in respect to their respective stands/claims.

Learned Rent Controller, Dasuya, on considering the evidence

on record allowed the petition and ordered ejectment of the respondent-tenant on the ground of personal *bona fide* necessity of the landlord. The ground regarding arrears of rent, it was held did not survive as the entire amount was tendered by the tenant. It is observed that the landlord was proved to be an employee with the Punjab Roadways, Hoshiarpur, Depot on the post of Superintendent, where from he would retire from service on 31.01.2001. Two other shops owned by the landlord were noticed to be occupied by other tenants. It was held that the landlord is the best judge of his own requirement and cannot be dictated by the tenant in this respect. The other two shops alleged to be owned by the landlord were proved to be belonging to his wife. Petition was accordingly allowed.

Appeal preferred by the respondent-tenant was allowed by the learned Appellate Authority, Hoshiarpur, vide judgment dated 09.06.2007, primarily on the ground that during the pendency of the appeal, the landlord had died. His widow and his sons were impleaded as his legal representations, but they did not prefer any application for substituting their own necessity in place of personal *bona fide* necessity of the deceased-landlord. Therefore, the said requirement of the landlord stood extinguished with his death. It is further observed that in any case, landlord-Mehar Singh, was an employee of the Punjab Roadways, Hoshiarpur and on attaining the age of superannuation, he would be in receipt of necessary service benefits like G.P.F, Gratuity etc., and he could earn reasonable interest therefrom. Therefore, the need and necessity as projected by him, cannot be accepted to be *bona fide* or genuine as he did not need to engage in any business. Appeal was accordingly allowed and petition filed by the landlord consequently dismissed.

Aggrieved therefrom, present appeal has been filed by the

landord/his legal representatives.

Learned counsel for the petitioners submits that the learned Appellate Authority, Hoshiarpur, has grossly erred in reversing a well reasoned and logical decision dated 20.04.2004, passed by the learned Rent Controller, Dasuya, whereby ejectment of the respondent-tenant has been directed. It is contended that the learned Appellate Authority, Hoshiarpur, has wrongly concluded that the need or necessity of the petitioner-landlord is not *bona fide* or genuine. It is further wrongly observed by the learned Appellate Authority, Hoshiarpur that as the original landlord passed away during the pendency of the appeal and as his widow and sons, did not prefer any application for substitution of their own necessity, petition seeking ejectment of the tenant on the ground of personal *bona fide* necessity of the landlord has to be dismissed. It is contended that the personal *bona fide* necessity of the landlord has to be considered as on the date of the filing of the petition. Merely because the landlord died during the pendency of the appeal filed by the tenant, cannot be a ground to non-suit the present petitioners i.e. the legal representatives of the original landlord-Mehar Singh. It is thus prayed that the present petition be allowed.

Per contra, learned counsel for the respondent submits that the learned Appellate Authority, Hoshiarpur has passed a well reasoned order after proper appreciation of the evidence on record. The landlord, it is submitted, has five shops i.e. three in Badal Market Mukerian, including the demised shop and two shops at Talwara Road and he does not require the premises for running a business. No details of any such business have been set-forth. Therefore, alleged necessity of the petitioner-landlord is not *bona fide* or genuine. Moreover, once the original landlord-Mehar Singh has died, his personal *bona fide* necessity, in any case, does not survive. It is thus

prayed that the present revision petition be dismissed and judgement dated 09.06.2007, passed by the learned Appellate Authority, Hoshiarpur, be upheld.

I have heard learned counsel for the parties and have gone through the record with their assistance.

The original landlord-Mehar Singh in this case is proved to be an employee with the Punjab Roadways. It is further proved on record from the testimony of AW-1-Sarwan Singh, that Mehar Singh would retire from the post of Superintendent with the Punjab Roadways, on 31.01.2001. Two shops, situated on Talwara Road, Mukerian, are duly proved to be under the ownership of the wife of Mehar Singh. Furthermore, RW-1-Amrik Singh, Tax Clerk, M.C. Mukerian, has clearly stated that the site plan for raising construction had been submitted and had not been sanctioned as yet. No tax had yet even been assessed qua the said property as per his record. Learned Rent Controller, Dasuya, has rightly dealt with the issue regarding personal *bona fide* necessity projected by Mehar Singh. It is rightly observed that merely because the petitioner-landlord did not give the details regarding the type of business he sought to run from the demised premises, cannot be sufficient to hold that his need is not genuine or *bona fide*. Evidence on record proved that Mehar Singh would receive sufficient amount or funds as retiral benefits, which would suffice for starting his own business. RW-3-Satish Kumar, has candidly stated that in order to meet the requirements of present day life, one has to engage in some business for which one's shop is needed or one would have to take it on rent. The landlord, it is not denied would be in receipt of ₹5000/- per month as pension. Learned Rent Controller, Dasuya, further correctly observed that the evidence on record does not in any manner suggest that the landlord sought eviction of the

tenant only with a view to sell the shop in dispute or to let it out again on a higher rent. It is a settled position that the landlord is obviously the best judge of his requirement. It is not for the tenant to dictate as to which are the premises from where the business should be run by the landlord or as to which of the property which is under tenants, should be got vacated in order to enable the landlord to start his business. Therefore, there is no merit in the plea raised by the tenant that the landlord should have got vacated the other two shops in Badal Market which are admittedly with other tenants. The two shops at Talwara Road are proved to be owned by Mehar Singh's wife and in any case the evidence on record indicates the stage of development in that area. Similarly, non disclosure of the type of business to be run from the premises, cannot detract from the personal bona fide necessity set-forth by the landlord.

It is relevant to note that while discarding the requirement of the landlord to be *bona fide* or genuine, learned Appellate Authority, Hoshiarpur, has peculiarly observed as under:-

“I am of the view that he has failed to prove on record that his requirement is *bona fide*, genuine or honest. It has come on the record that he was earlier an employee of Punjab Roadways and in that eventuality he must have attained superannuation at the age of 58. He, as per service rules must have received the service benefits including the General Provident Fund. Death cum retirement Gratuity etc. and by depositing that amount in the bank, he could have earned reasonable interest. He after his retirement must be getting pension. He has not adduced any evidence if his children are dependent upon his income. There is no evidence if the respondent at the time of filing of the ejectment petition had any financial liability towards any of his child. In that eventuality the need of the respondent cannot be termed *bona fide* or genuine. Moreover, respondent Mehar

Singh has since died.”

It is indeed strange reasoning, that as the landlord would have sufficient funds and that he can earn reasonable interest from his retiral benefits; besides not having any financial liability, makes his requirement whimsical or not genuine.

At this stage, it is useful to refer to the judgement of this Court in **Jasbir Singh Vs. Jalandhar Ex-servicemen M/T Cooperative Ltd. 2009(4) R.C.R (Civil) 377**. Contention regarding the landlord in Jasbir Singh's case (*supra*), having an income of ₹2,00,000/- per year, therefore having no need to start a business was repelled by the Court. It is specifically observed that:

'it is not for a Court to set that what was the adequate income for a person in order that a person should venture into entrepreneurship. The entire worlds of business come to an end, if there was never a limit for what a human reckoning could consider as sufficient.'

Reasoning adopted by the learned Appellate Authority, Hoshiarpur, to upset the finding regarding personal *bona fide* necessity of the landlord is thus clearly flawed.

Learned Appellate Authority, Hoshiarpur, further observed that as the widow and the sons of Mehar Singh, did not opt to prefer any application to substitute their necessity in place of the necessity of the deceased Mehar Singh, the plea regarding personal *bona fide* necessity stood extinguished. Learned Appellate Authority, Hoshiarpur, has clearly erred in holding so.

It is pertinent to note that the Hon'ble Supreme Court in **Shakuntala Bai and others Vs. Narayan Dass and others 2004(5) SCC 772**, has observed that the *bona fide* need of the landlord has to be examined

as on the date of institution of the proceedings and in case a decree for eviction is passed, death of the landlord during the pendency of the appeal preferred by the tenant, shall make no difference as legal heirs of the landlord are fully entitled to defend the estate. Reliance was placed on earlier decisions of the Hon'ble Supreme Court in **Shantilal Thakordas Vs. Chmanlal Maganlal Telwala, 1976(4) SCC 417** and **Smt. Phool Rani Vs. Naubat Rai Ahluwalia, 1973 RCR (Rent) 364**. 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 land lord occurred after the decree of eviction was passed and where death of the landlord occurred prior thereto. The Hon'ble Supreme Court referred to its earlier decision in **Gaya Prasad Vs. Pradeep Srivastava, 2001(1) R.C.R (Rent) 221**, wherein it is 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.”

It is specifically held in the abovesaid decision that death of a landlord after the passing of the order of eviction, does not *ipso facto* destroy the accrued right under the decree. Reference in this regard can gainfully be made to the judgements of this High Court in **Smt. Darshna Devi Vs. Kewal Krishan 2015(4) R.C.R (Civil) 230**, **Brinderjit Singh Vs. Harjit Singh 2017(4) R.C.R (Civil) 471** and **Sadhu Ram Vs. Darshan Singh,**

**2018(2) R.C.R (Rent) 101**, wherein it is held that the need projected by the landlord at the time of filing of the petition is to be seen and that death of the landlord or son for whom the premises were required, shall not effect the *bona fide* need as projected at the time of filing of the petition. Thus, merely because the original landlord-Mehar Singh died during the pendency of the appeal preferred by the tenant, cannot be a ground to non-suit the legal heirs.

Keeping in view the facts and circumstances of the case as discussed above, it is apparent that the learned Appellate Authority, Hoshiarpur, has erred in setting aside the judgment dated 20.04.2004, passed by the learned Rent Controller, Dasuya.

Accordingly, judgment dated 09.06.2007, passed by the learned Appellate Authority, Hoshiarpur, is set aside and judgment dated 20.04.2004, passed by the learned Rent Controller, is upheld. However, respondent-tenant is allowed a period of two months for handing over the vacant, peaceful possession of the demised premises to the petitioners.

Petition is accordingly allowed.

**27.09.2019**  
s.khan

**[LISA GILL]**  
**Judge**

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.