

CR No. 388 of 2019 (O&M)

-1-

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

CR No. 388 of 2019 (O&M)

Date of Decision: November 05, 2019

Diwan Singh (since deceased) through LRs

..... Petitioner(s)

Versus

Karam Singh

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Inderjit Sharma, Advocate
for the petitioner.

Mr. Gagandeep Singh Sirphikhi, Advocate
for the respondent/caveator.

LISA GILL, J.(oral)

The petitioner tenant now represented by his legal representatives is aggrieved of the order dated 26.09.2017, passed by the learned Rent Controller, Batala, whereby ejectment of the present petitioner from the demised premises has been ordered as well as order dated 29.11.2018, passed by the learned Appellate Authority, Gurdaspur, whereby order dated 26.09.2017 has been upheld.

Respondent-landlord filed a petition under Section 15 of the East Punjab Urban Rent Restriction Act, 1949, seeking ejectment of the present petitioner from the shop in dispute, on the ground of non-payment of rent and personal bonafide necessity. It is pleaded that the landlord alongwith his son namely Satnam Singh was running the business of mobile

CR No. 388 of 2019 (O&M)

-2-

repair etc. in the shop marked as FGHI as reflected in the site plan Ex.A1 and he wanted to shift his business of mobile repair etc. from there to the shop in dispute, which was in possession of the petitioner-tenant. It is explained that the landlord wanted to shift his mobile repair work from the shop FGHI for the reason that he wanted to start the business of a branded store in the portion marked as BCDEFIH. The said portion is stated to be in possession of other tenants i.e. Raj Kumar etc., against whom ejectment petitions also stood filed. The learned Rent Controller while observing that the ground of non-payment of rent did not exist as the same had been tendered in Court, however, allowed the petition on the ground of personal bonafide necessity of the landlord. Appeal preferred by the petitioner was dismissed by the learned Appellate Authority, Gurdaspur. Aggrieved therefrom present petition has been filed.

Learned counsel for the petitioner submits that though possession of the shop in dispute had been taken by the respondent-landlord in execution proceedings on 16.01.2019, he has instructions to contest the matter on merits. It is submitted that both the learned Courts below have grossly erred in allowing the ejectment petition in as-much-as the landlord has not even pleaded much less proved any personal bonafide necessity in respect to the demised premises. It is vehemently argued that the necessity pleaded is in respect to the portion of the property marked as BCDEFIH and not in respect to the property YZZZ that was in possession of the petitioner-tenant. The entire pleadings, it is submitted, are in respect to the suitability

CR No. 388 of 2019 (O&M)

-3-

of the portion marked as BCDEFIH for running a branded store as the said premises abut the main Jalandhar road. There is no pleading in respect to the suitability of the shop in question of the petitioner-tenant. Therefore, the petition should be dismissed on this ground alone as the respondent-landlord has failed to set forth the necessary pleadings itself. It is further contended that the ejectment petition filed by the respondent-landlord against Raj Kumar etc. was dismissed as withdrawn way back on 11.08.2011 and the application for restoration/recalling of the record and initiation of proceedings was also dismissed by the learned Civil Judge (Sr. Division), Batala on 23.08.2018, a copy of which is attached as Annexure P1 with revision petition. Thus, once the said ejectment proceedings against Raj Kumar etc. have been dismissed, there is no question of any personal bonafide necessity available to the respondent-landlord. It is, thus, prayed that the present revision petition be allowed and orders of both the learned Courts below be set aside and possession of the demised premises be restored to the petitioner.

Per contra, learned counsel for the respondent-caveator submits that there is a specific pleading in respect to the personal bonafide necessity of the landlord. Moreover, ejectment petition which was dismissed on 11.08.2011 against Raj Kumar etc. was on the basis of non-payment of arrears of rent, subletting and change of user of the property. Thereafter, another ejectment petition filed against Raj Kumar etc. has been allowed by the learned Rent Controller, Batala on 25.07.2019 on the ground of personal

CR No. 388 of 2019 (O&M)

-4-

bonafide necessity of the respondent-landlord i.e. of running a branded store on the portion marked as BCDEFIH. Another petition seeking ejectment from another part of the premises marked as BCDEFIH is pending adjudication. It is denied that pleadings regarding personal bonafide necessity regarding the demised premises are absent or that the same is not proved on record. It is, thus, submitted that the present petition being devoid of any merit be dismissed.

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

A perusal of the petition reveals that the respondent-landlord has taken a specific ground that he along with his son intend to shift from the shop from where they are running their business of mobile repair i.e. the the portion FGHI, which is a part of BCDEFIH (where they want to run the branded store) to the shop which was in possession of the petitioner-tenant marked as YZZZ. It is not the petitioner's case that he wishes to run the branded store in the portion which was in possession of the present petitioner. The clear cut case set up by the respondent-landlord is, that he wishes to shift his business of mobile repair to the premises in question and run the branded store in the entire area marked as BCDEFIH, a part of which is/was in possession of another tenants namely Raj Kumar etc. I have perused the site plan Ex.A1, produced in Court today. The premises marked as BCDEFIH admittedly are one consolidated unit and the shop which was in possession of the petitioner is on the other end. Therefore, there is no

CR No. 388 of 2019 (O&M)

-5-

merit in the argument raised on behalf of the petitioner that the pleadings are only in respect to the portion marked as BCDEFIH and there is no personal bonafide necessity, which is projected qua the premises in dispute.

Learned counsel for the petitioner is further unable to deny that vide order dated 25.07.2019 ejectment of Raj Kumar etc. has been ordered by the learned Rent Controller, Batala on the ground of personal necessity i.e. of running the branded store in the area marked as BCDEFIH and another petition against Raj Kumar is pending adjudication. Learned counsel for the petitioner is unable to deny that both the rent petitions i.e. present rent petition, which is Number 44 and the petition which was allowed on 25.07.2019 i.e. Number 45 were presented on the same day i.e. 28.04.2014. Thus there is no merit in the argument raised by learned counsel for the petitioner that personal bonafide necessity of the petitioner has not been proved on record.

It is a settled principle that it is for the landlord to decide regarding the suitability of the premises and he is the best judge of his requirement. Learned counsel for the petitioner is unable to point out any ground what-so-ever, which calls for interference by this Court in the concurrent findings of facts returned by both the Courts below.

It is relevant to note that the Hon'ble Supreme Court in **Hindustan Petroleum Corporation Limited versus Dilbahar Singh (2014) 9 SCC 378** while examining the scope of revisional jurisdiction reiterated that power is indeed a limited one. Pure findings of fact until and

CR No. 388 of 2019 (O&M)

-6-

unless perverse and opposed to the evidence on record should not be interfered with. It is specifically observed that:

“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 reappreciate 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.”

CR No. 388 of 2019 (O&M)

-7-

Keeping in view of the facts and circumstances of the case, ejectment of the petitioner has been rightly ordered by both the learned Courts below. Both the learned courts below have rendered concurrent findings of fact against the petitioner on a wholesome and proper appreciation of evidence on record which warrants no interference in exercise of revisional jurisdiction.

No other argument has been raised.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in impugned judgment dated 26.09.2017, passed by the learned Rent Controller, Batala as well as the judgment dated 29.11.2018, passed by the learned Appellate Authority, Gurdaspur respectively, which calls for interference by this Court in this civil revision petition.

Accordingly, this civil revision petition is dismissed with no order as to costs.

November 05, 2019

Sunil

**(Lisa Gill)
Judge**

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