

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

Civil Revision No. 3145 of 2017(O&M)

Date of Decision: February 21 , 2019.

M/s Shoban Lal and Sons

..... PETITIONER

Versus

Deepak Khera

..... RESPONDENT

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. C.M.Chopra, Advocate
for the petitioner.

Mr. Vinod S.Bhardwaj, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Petitioner-tenant is aggrieved of judgments dated 12.01.2016 and 18.02.2017 passed by the learned Rent Controller, Ludhiana and the learned Appellate Authority, Ludhiana, respectively, whereby his eviction from the demised premises i.e., a shop has been ordered.

Brief facts necessary for the adjudication of the case are that, respondent-landlord Deepak Khera filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act') seeking ejectment of the petitioner from the demised premises i.e., a shop as detailed in the petition.

It was pleaded that the shop in question was purchased by Deepak Khera vide registered sale-deed dated 29.09.2009/05.10.2009. Present petitioner was stated to be a tenant under the previous landlord. After purchase of the premises, the present petitioner was stated to have become a tenant under the subsequent purchaser by operation of law. Tenancy was recreated in the month of September 2009 and rent was settled at the rate of ₹6,500/- per month, besides, house tax and electricity charges. The same was an oral tenancy. Ejectment of the present petitioner was sought on account of non-payment of arrears of rent as well as personal bonafide necessity of the landlord for his own use and occupation as he wanted to set up his own office in the tenanted premises. Respondent-landlord claimed to be working as a Rice Agent and desirous of expanding his business. It was further stated that he did not own or possess any other such commercial building within the concerned urban area neither had he vacated such property after the commencement of the Act.

Petition was resisted by the petitioner-tenant. Various preliminary objections were raised in the reply. Averments on merits were controverted. It was however admitted that the premises were taken on rent at the rate of ₹225/- per month inclusive of house tax from the previous landlords, namely, Tirath Ram, Parkash Chand, Kanwar Lal, Prem Sagar and Janak Gupta. Rent upto 30.09.2009 stood paid at the rate of ₹225/- per month to one of the landlords, namely, Prem Sagar on behalf of all the landlords against proper receipts. It was stated that no notice regarding change of ownership on the basis of the alleged sale-deed was ever given to him. Claim of oral tenancy at the rate of ₹6,500/- was denied. It was denied that the respondent-landlord required the premises for

his own bonafide personal necessity. It was claimed that the respondent did not disclose that he was already running his office alongwith his father Subhash Chander in the portion at the backside of the demised shop, which was sufficient for him. The respondent-landlord was stated to be a mere agent, not a trader of rice and therefore, he did not require any office or godown. Dismissal of the petition was prayed for.

Replication to the written statement was filed. On the basis of pleadings of the parties, following issues were framed by the learned Rent Controller:-

1. Whether the respondent is liable to be ejected from the tenanted premises on the ground of non-payment of arrears of rent alongwith house tax? OPP
2. Whether the petitioner requires the property in dispute for his own use and necessity? OPP
3. Whether the petition is not maintainable? OPR
4. Whether the petitioner has not come to the court with clean hands and have suppressed the material facts from this court? OPR
5. Relief.

Evidence was led by both the parties in support of their respective claims/stands.

Learned Rent Controller, Ludhiana on considering the facts, circumstances of the case and evidence on record concluded that rent at the rate of ₹6,500/- per month was never agreed upon. The ground of the tenant being in arrears of rent, did not survive as provisional rent was duly tendered by the petitioner-tenant. Petition was however allowed on the ground of personal necessity of the landlord. Eviction of the present petitioner was ordered.

Appeal filed by the present petitioner was dismissed by the learned Appellate Authority, Ludhiana vide impugned judgment dated 18.02.2017. Aggrieved therefrom, present revision petition has been filed.

Learned counsel for the petitioner-tenant vehemently argues that Section 13(3) of the Act has not been complied with inasmuch as the landlord did not disclose about his possession over the property owned by his father where both father and son were conducting their business. The respondent was specifically using the premises owned by his father and running his office therefrom. It is further submitted that the respondent had purchased the property for speculative reasons and not for running his own business. Even an offer had been made by the respondent to the present petitioner for purchase of the shop in question. RW2 Swatantar Jain, it is submitted, clearly stated that an offer was made by the landlord in this respect which proves that the premises are not required for personal bonafide necessity of the respondent. It is further submitted that this Court in exercise of revisional jurisdiction would interfere when it came to light that there is misappreciation of the evidence on record which led to manifest miscarriage of injustice. Therefore, both the learned courts below have grossly erred in ordering eviction of the petitioner from the demised premises. It is thus prayed that this petition be allowed, impugned judgments be set aside and the petition filed by the respondent seeking the petitioner's eviction be dismissed.

Learned counsel for the respondent-tenant while refuting the arguments on behalf of the petitioner, submits that well reasoned and logical judgments have been rendered by both the learned courts below after proper appreciation of evidence, which do not call for any interference. It is submitted

that the respondent is not the owner of the premises behind the shop in question nor any of the averments in the pleadings are incorrect. There is no misrepresentation or concealment on the part of the respondent. Merely because the respondent was found present in his father's premises/office, does not lead to an inescapable conclusion that the respondent was in possession or in occupation of the said premises. It is specifically pleaded by the respondent that he requires the premises for his own personal use or occupation. As the respondent was working as a Rice Agent, he wanted to expand his business and for this purpose, he wanted to set up his own office at Ludhiana. The premises in question are most suitable for carrying on his business. It is clearly stated that the demised premises are the only available premises for running his business and the respondent does not own or possess any such premises or building in the urban area of Ludhiana and had not vacated any such building without sufficient cause after the commencement of the Act. Learned counsel for the respondent argues that non mentioning the details of the property owned by his father cannot be a reason to non-suit the respondent, especially when it is proved on record that the respondent does not own any other property and neither is he occupying any such property for carrying on his business. It is thus prayed that this petition be dismissed and the impugned judgments be upheld.

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

Relationship of landlord and tenant is clearly established on record. The premises in question were purchased by the respondent through a registered sale-deed dated 29.09.2009/05.10.2009. Respondent, therefore, stepped into the

shoes of the original landlord under whom the present petitioner was admittedly a tenant. It is rightly held by both the learned courts below that ground of arrears of rent does not survive to the respondent. In respect to the ground of bonafide personal necessity, learned counsel for the petitioner-tenant has vehemently argued that the respondent-landlord actively concealed the fact that he is already running his office in the portion at the backside of the demised shop. A perusal of the record reveals that the said shop is admittedly owned by the father of the respondent. Learned counsel for the petitioner has vehemently argued that the respondent in his testimony admitted running his office on the premises owned by his father. However, a perusal of the testimony of PW1 Deepak Khera (respondent herein) does not reveal any such admission. PW1 stated that there is an office in the shop which is in possession of his father. PW1 further stated that he does work of an Agent (Dalali) by moving from here to there. His clients are shop keepers and commission agents (Arhtiyas). He denied the suggestion that he does not require the premises in question for opening his office. He further stated that he, now, would like to start the work of trading as well for which he would require the premises.

Needless to say, bonafide necessity of the landlord has to be more than a mere whim and desire. At the same time, it is the landlord, who is the sole judge of his bonafide requirement and the court is not to proceed on a presumption that the requirement of the landlord is not bonafide. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in **Sarla Ahuja v. United India Insurance Co. Ltd., 1998(2) RCR(Rent) 533**

wherein it has been held that the requirement of landlord for occupation of the

tenanted premises must be bona fide and the Rent Controller shall not proceed on the assumption that requirement is not bonafide. In the present case, the landlord has clearly proved his personal bonafide necessity. Merely because the respondent-landlord's father was having an office at the backside of the demises premises, does not preclude the landlord from claiming bonafide personal necessity, inasmuch as it is clearly pleaded and stated that he is working separately from his father and now sought to have his own independent office and start trading as well. In the case of **Rajinderpal Singh v. Mela Ram (deceased) through LRs, 2017(3) RCR(Civil) 544** it has been held by a coordinate Bench that merely because the grandson was working alongwith his grandfather who was an income tax assessee, would not take away his right to improve his status in life by running an independent business.

Similarly, I do not find any merit in the argument raised by learned counsel for the petitioner that there is concealment of material facts inasmuch as the respondent-landlord did not disclose that his father was running his office at the backside of the demised premises which were being used by the respondent. A perusal of the record reveals that there is no admission of PW1 Deepak Khera that he is using the office of his father as is sought to be projected. Merely because the respondent was found present at the office of his father cannot lead to a definite and inescapable conclusion of his using the said premises which would preclude him from seeking eviction of the petitioner from the demised premises. Moreover, there is no requirement of a declaration of the details of the property belonging to the landlord's father/parent. Reference in this regard can gainfully be made to decision of a coordinate Bench in **Shiv Kumar and another v.**

Shyam Sunder and others, 2017(2) RCR(Civil) 129. Judgments relied upon by learned counsel for the petitioner to urge that a person approaching the court with unclean hands is not entitled to any relief, are not applicable to the facts and circumstances of the present case, as the evidence on record does not reveal any such concealment or misrepresentation on the part of the respondent.

It is relevant to note at this stage that it has been vehemently argued that the property in question was purchased by the respondent-landlord for speculative purpose only. An offer was made to the petitioner-tenant to purchase the property in question. However, no detail regarding the alleged offer is forthcoming. Said averment is unsubstantiated by evidence on record. Bald assertions by RW2 without any details cannot suffice as proof of the same. Moreover, in case the demised premises are not used by the respondent-landlord for his own personal use and occupation, the rights of the tenant are suitably protected by the Act. Specific remedy is available to the tenant in such a situation.

It has been held by the Hon'ble Supreme Court in **Hindustan Petroleum Corporation Limited v. Dilbahar Singh, (2014) 9 SCC 378** that this Court while exercising revisional jurisdiction would normally not interfere in concurrent finding of fact until and unless it is shown that there is gross misreading of evidence or ignoring of material evidence on record which renders the finding of the courts below to be perverse.

Learned counsel for the petitioner is unable to point out any illegality, perversity or error of law apparent on the face of it in the findings returned by both the learned courts below.

No other argument has been raised.

Keeping in view the facts and circumstances as above, I do not find any ground to interfere in the impugned judgments dated 12.01.2016 and 18.02.2017 passed by the learned Rent Controller, Ludhiana and the learned Appellate Authority, Ludhiana, respectively, in exercise of revisional jurisdiction. Petitioner is however afforded a period of two months from today to vacate and handover vacant possession of the demised premises to the respondent/landlord.

Petition is accordingly dismissed with no order as to costs.

(**LISA GILL**)
JUDGE

February 21 , 2019.
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No