

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Civil Revision No. 3251 of 2014(O&M)

Date of Decision: January 10 , 2019.

Sunder Sham

..... PETITIONER (s)

Versus

Rama Kapoor and another

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Parveen K.Kataria, Advocate
for the petitioner.

Mr. B.S.Jaswal, 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 14.06.2012 and 17.03.2014 passed by the learned Rent Controller, Amritsar and the learned Appellate Authority, Amritsar, respectively, whereby his eviction from the demised premises i.e., one room at the ground floor of the property in question, has been ordered.

Brief facts as pleaded in the petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act') filed by the

respondent-landlord are that the petitioner was inducted as a tenant in one room at the ground floor of the property bearing No.1601/XII, Khana Shumari, Chowk Farid, Kucha Kashmiri Panditan, Amritsar by the predecessor-in-interest of the respondent. Eviction of the petitioner was sought by the respondent-landlord on the ground of (i) non-payment of arrears of rent, (ii) change of user of the demised premises, and (iii) bonafide personal necessity of the landlord. Learned Rent Controller, Amritsar on considering the facts and circumstances of the case ordered eviction of the petitioner on the ground of change of user of the premises. Ground of non-payment of arrears of rent did not survive due to legal tender of rent by the petitioner. In respect to the personal bonafide necessity, learned Rent Controller concluded that there is a statutory bar under Section 11 of the Act, which disentitles the landlord from claiming eviction of a tenant on the ground of their bonafide need to run business of embroidery in the demised residential premises.

Appeal filed by the present petitioner was dismissed by the learned Appellate Authority, Amritsar vide impugned judgment dated 17.03.2014. Aggrieved therefrom, present revision petition has been filed.

Learned counsel for the petitioner argues that first and foremost, rent note dated 31.10.1974 does not envisage any particular manner of usage of the premises. The premises can be used in any manner by the tenant and there is no prohibition for using the premises for a godown. It is submitted that the dominant purpose or usage of the premises was commercial and the same has not been changed. Use of the premises for godown does not lead to a conclusion of change of user in the facts and circumstances of the case, therefore, it cannot be

said that there is any change of user of the premises. Learned counsel relies upon decisions of the Hon'ble Supreme Court in M/s Atul Castings Ltd. v. Bawa Gurvachan Singh, in Appeal (Civil) No.2900 of 2001 dated 20.04.2001, Mohan Lal v. Jai Bhagwan, 1988 AIR 1034, Gurdial Batra v. Raj Kumar Jain, 1989 AIR 1841, Mohinder Kaur v. Baldev Singh, (2000) 124 PLR 199 and a decision of this Court in Jagdish Chand v. Surinder Kumar, (2005) 139 PLR 509. 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 to the contrary while refuting the abovesaid averments submits that it is specifically mentioned in the rent note dated 31.10.1974 that the room given on rent to the petitioner shall be used for conducting 'radio works'. The petitioner while appearing as RW4 before the learned Rent Controller specifically stated that he is using the premises for godown. RW2 Dharam Singh, a former employee of the petitioner/tenant, admitted that the premises are being used as godown. It is further admitted by RW2 Dharam Singh that the respondents/landlords are owners of the building, a part of which i.e., a room in question was given on rent. The widow, respondent No.1 is stated to be dependant upon respondent No.2. Counsel for the respondent further submits that the petitioner is an owner of other shops where he is running his business of electronics. The petitioner, it is submitted, has also taken another shop on rent at Chowk Farid, where he was running his business of electronics. It is, therefore, submitted that change of user of premises is apparent on record and both the learned courts below have rendered well reasoned judgments based on proper appreciation of the evidence on record. 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.

Respondent-landlord filed the petition seeking eviction of the petitioner-tenant from the one room given to the tenant on rent meant for 'radio works' i.e. sale of radios and allied electronic goods. Petition filed by the landlord was allowed on the ground of change of user of the demised premises as the tenant started using the premises for a godown. The ground of personal bonafide necessity was concluded to be barred on account of Section 11 of the Act. Perusal of the file reveals that as per the rent note dated 31.10.1974 which is admitted by the petitioner-tenant, the demised premises was let out on rent for radio works. Admittedly, the tenant has converted the premises for being used as a godown. AW1 Sunil Kapoor, AW2 Anup Seth and AW3 Anil Kapoor have consistently deposed that user of the said premises was changed without written consent of the respondents by converting it into a godown. The utility and value of the demised premises was diminished to a great extent.

At this stage, it is relevant to refer to the statement of RW2 Dharam Singh, a former employee of the petitioner who has clearly admitted that the premises were being used as a godown and written consent for converting the premises into a godown were never taken by the tenants. It is further admitted by RW2 Dharam Singh that brother of respondent No.2 knew the work of embroidery but he could not carry out embroidery work as he did not have any other shop in the same market. It is admitted that sons of respondent No.1 carried out embroidery work in two rooms of building in question on the ground

floor. Petitioner-tenant himself testified as RW4. Tenant, RW4 categorically admitted that he was carrying on the business of sale of electronics including televisions, refrigerators, washing machines etc., in a showroom in the main Bazaar at Chowk Farid, Amritsar. Business was also being conducted in another shop at Chowk Farid, taken on rent by him. It is further a matter of record that the petitioner had purchased another building in the same locality while the respondent-landlords did not have any other premises in their use and occupation.

Argument raised by learned counsel for the petitioner that there is no change of user inasmuch as the premises are still being used for commercial purpose because the room is being used for a godown, is not tenable, hence rejected. To say that usage of the premises for godown instead of using the same for sale etc. of radios or electronic goods as the case may be, after the radios have become redundant would be a travesty of justice. It cannot be countenanced that the phrase 'to use the premises for radio works' would include the usage of the premises for a godown. It is rightly held by the both the learned courts below that using the premises for a godown is clearly and distinctly different from the purpose for which the premises were let out by the landlord. It is a matter of record that no consent was taken by the tenant for using the premises as a godown.

Petitioner/tenant while testifying as RW4 stated that the premises were taken on rent for the purpose of manufacturing of radios. It is proved on record that no activity for manufacture or sale of radio or any other electronic item was carried out in the said premises, which are admittedly being used as a

godown. Thus both the learned courts below have returned concurrent finding of facts after proper appreciation of evidence on record.

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 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 14.06.2012 and 17.03.2014 passed by the learned Rent Controller, Amritsar and the learned Appellate Authority, Amritsar, respectively, in exercise of revisional jurisdiction.

Petition is accordingly dismissed with no order as to costs.

January 10 , 2019.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No