

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.335 of 2006 (O&M)
Date of Decision: 05.02.2019.

Harbans Kaur and another

.....Petitioners

Versus

Mohinder Singh and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sukhbir Singh, Advocate
for the petitioners.

Mr. K.S.Cheema, Advocate
for respondent no.1.

LISA GILL, J(Oral).

Petitioner-landlords are aggrieved of order dated 28.09.2005 passed by the learned Appellate Authority, Hoshiarpur, whereby judgment dated 20.09.2004, passed by the learned Rent Controller, Hoshiarpur, has been set aside and the petition under Section 13 of the East Punjab Rent Restriction Act (for short 'Act'), filed by the petitioners has been dismissed.

Brief facts necessary for the adjudication of the case are that petition under Section 13 of the Act was filed by the petitioners seeking eviction of the respondent-tenants on the ground of non-payment of rent and personal *bona fide* necessity. It was pleaded that the shop as detailed in the petition was given on rent to the respondents at the rate of ₹1200/- per month. It was explained that the shop in dispute was given to the respondents as a licensee vide license deed dated 01.02.1998 at the rate of ₹14,400/- per annum with license fee payable at the rate of ₹1200/- per month. Respondents filed a suit seeking injunction against the petitioners i.e. Civil Suit No. 118-A of 18.03.1993 which was decided by the learned Civil Judge (Jr. Division), Hoshiarpur on 05.09.1997 holding that the respondents were tenants under the petitioners. Thereafter, present petition under Section

13 of the Act was filed seeking eviction of the tenant/respondents. It was pleaded that the respondents were in arrears of rent. Moreover, personal *bona fide* necessity was pleaded. It was stated that the petitioner no.2 was a medical practitioner carrying on with his practice at Nawanshahr. He had taken a shop on rent from Rajinder Kumar Chopra. Notice dated 11.03.2000 had been served upon petitioner no.2 by Rajinder Kumar Chopra to vacate the shop at Nawanshahr. Rajinder Kumar Chopra had sought eviction of the premises for his own personal requirement. Petitioner no.1 was claimed to be a qualified midwife (LSMF- Licentiate in Medicine and Surgery). It was further stated that petitioner no.2 has his house at Mirzapur Dhaliwal near Bullowal which is about a half kilometer from Tanda Hoshiarpur road. Petitioners sought to shift their practice to Hoshiarpur i.e. near their ancestral village. It was stated that the petitioners did not own or possess any other like premises in the urban area of Hoshiarpur neither had they vacated the same.

Petition was contested by the respondents. Various preliminary objections were taken in the written statement. Averments on merits were controverted. It was pleaded that the son of petitioner no.2 was running a dental clinic at Nawanshahr. Petitioners had a residence at Rahon Road, therefore there is no question of their shifting to Hoshiarpur. It was denied that the respondents were in arrears of rent. The present petition was filed only after the suit for injunction filed by the respondents was decided. Petitioners claimed the respondents to be licensees but their said plea had been rejected in the suit for permanent injunction filed by the tenants. Rent was being offered to the petitioners, but they refused to accept the same. Dismissal of the petition was sought.

Replication was filed. Following issues were framed by the

learned Rent Controller, Hoshiarpur:-

1. Whether there exists any relationship of landlord and tenant between the parties?OPP
2. Whether the respondents are in arrears of rent since 01.07.1993 upto date?OPP
3. Whether the demised premises is required by the applicant for their *bona fide* use and occupation?OPP
4. Whether the description of applicant no.1 has not been correctly given?OPR
5. Whether the applicants are estopped by their act and conduct from filing the present application?OPR
6. Relief.

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

Learned Rent Controller, Hoshiarpur, on appreciation of the evidence on record and considering the facts and circumstances of the case, concluded that the relationship of tenant and landlord stood established. While holding that the ground of nonpayment of rent did not survive, it was held that personal *bona fide* necessity of the landlord was duly proved on record. Accordingly, petition was allowed. Ejectment of the respondents was ordered.

Appeal filed by the respondents was however allowed by the learned Appellate Authority, Hoshiarpur vide decision dated 29.08.2005 while setting aside the judgment dated 20.09.2004 passed by the learned Rent Controller, Hoshiarpur. It was observed that there was no question of the landlords shifting from Nawanshahr to Hoshiarpur when their son was practicing at Nawanshahr. Brother of petitioner no.2 was a chemist at Nawanshahr and two of his other brothers were settled at Delhi.

Aggrieved therefrom, present petition has been filed by the landlords.

Learned counsel for the petitioners vehemently argues that bona fide necessity of the petitioners is duly proved on record. It is a matter of record that the ancestral village of petitioner no.2 is near the demised premises. Merely because petitioner no.2 is carrying on his medical practice at Nawanshahr does not mean that he is estopped from shifting his practice to Hoshiarpur. Learned Appellate Authority has wrongly assumed that requirement of the petitioners is not *bona fide*. The landlord is the best judge of his own requirement. It is not for the tenant to dictate the usage of the property in question. Moreover, learned Appellate Authority, Hoshiarpur has misdirected itself while observing that once the son of the petitioner and his brothers are settled at Nawanshahr and at Delhi respectively, it is to be assumed that the petitioners do not wish to start their practice at Hoshiarpur. It is thus prayed that this petition be allowed and judgment dated 29.08.2005 passed by the learned Appellate Authority, Hoshiarpur be set aside and that of the learned Rent Controller be upheld.

To the contrary, learned counsel for the respondents submits that a well reasoned and logical judgment has been passed by the learned Appellate Authority after considering the evidence on record. Desire of the landlords is not to be whimsical and a mere fancy. It is submitted that evidence on record proves that the petition has been filed only with a view to evict the respondents from the demised premises. It is beyond all imagination that an established doctor would shift his practice to another place at this stage. Moreover, all other family members of the petitioners are settled either at Nawanshahr or at Delhi. This Court in exercise of revisional jurisdiction would not interfere until and unless it is for correction of jurisdictional error or material irregularity. He relies upon the judgments of the Hon'ble Supreme Court in **Hindustan Petroleum Corporation Limited**

Vs. Dilbahar Singh 2014(4) R.C.R (Civil) 163. He further relies upon the judgment of the Hon'ble Supreme Court in **Sri Kempaiah Vs. Lingaiah and others 2001(2) RLR 612** to submit that pleading of the landlord that he was being asked to vacate the tenanted the premises which he was occupying at Nawanshahr, cannot be a reason for eviction of the present respondents. It is thus prayed that the present petition be dismissed and the judgment dated 29.08.2005, passed by the learned Appellate Authority be upheld.

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

Petitioners have sought eviction of the respondents on the ground of non-payment of arrears of rent and personal *bona fide* necessity. Petitioners no.1 and 2 are siblings. Petitioner no.1 is a qualified LSMF and petitioner no.2 is a registered medical practitioner. Insofar as the question of relationship of landlord and tenants is concerned, the same stand established. Respondent-tenants have accepted the petitioners to be the landlords. Ground of nonpayment of arrears of rent, it is rightly held did not survive to the landlords. In respect to the question of personal *bona fide* necessity of the landlords, the petitioners have specifically pleaded that premises were taken on rent by petitioner no.2 at Nawanshahr (i.e. a shop) for running his practice. Rajinder Kumar Chopra-AW-2 (landlord of petition no.2) served a notice upon petitioner no.2 seeking vacation of the premises with petitioner no.2 on account of his own personal *bona fide* necessity. AW-2-Rajinder Kumar Chopra has testified before the learned Rent Controller. AW-2 specifically stated that he served notice Ex.A-3 upon petitioner no.2. He specifically stated that at the time of letting out the shop to petitioner no.2, they had cordial relations, but not after he asked petitioner no.2 to vacate the

shop. He denied that notice Ex.A-3, was issued with a view to help petitioner no.2.

AW-1-Dr. Mohinder Kumar Saini, has clearly deposed regarding his personal *bona fide* necessity. He specifically deposed that his ancestral village is Mirzapur Dhaliwal, which is 2 km from Bullowal and about 8-9 kms from Hoshiarpur. He further pleaded that he has an ancestral house in village Mirzapur Dhaliwal. He wished to run his clinic from the shop in dispute. His son, it is stated would continue to reside at Nawanshahr.

RW-2-Tarlochan Singh in his cross-examination admitted that the ancestral home of the petitioners is Mirzapur Dhaliwal, though it is stated that the house in the village is not in good condition. In the next breath, it is stated that Sukhwinder Singh son of Thakur Singh cultivates the land of the petitioners. Petitioners use to come to the village to take their share in the crop etc., and it was further admitted that the petitioners are in possession of their house situated at village Mirzapur Dhaliwal. RW-6-Bhupinder Singh, Ex-Sarpanch of village Mirzapur Dhaliwal, though in his examination-in-chief stated that the house of the petitioners has fallen down, admitted in his cross-examination, that the petitioners have their ancestral property in village Mirzapur Dhaliwal. Father's brother of the petitioners, it is stated resided in the village along with their family. It is stated that they are having ancestral houses in village Mirzapur Dhaliwal.

Needless to say, the personal necessity set-forth by the landlord has to be genuine, *bona fide* and not a mere whim or desire which is capricious. In the present case, merely because petitioner no.2 was carrying on with his medical practice at Nawanshahr for a number of years and his son was separately practicing at Nawanshahr, cannot in any manner lead to an assumption that the desire of the petitioners to settle at their ancestral

village where other family members are still residing, is not genuine. It has been held by the Hon'ble Supreme Court in **Sarla Ahuja Vs. United India Insurance Company Limited, Vol. CXXI-(1999-1) 804**, that the Court is not to proceed on the assumption that requirements of the landlord is not *bona fide*. It is indeed not for the tenant to dictate terms to the landlord as to how the property belonging to the landlord is to be utilized by him for the purpose of his business. Moreover, it takes only one hour to cover the distance between Nawanshahr to Hoshiarpur. Therefore, it cannot be presumed that the landlord does not intend to start his practice at Hoshiarpur. Moreover, it is a matter of record that petitioner no.2 is carrying on his medical practice at rented premises at Nawanshahr. His landlord Rajinder Kumar Chopra-AW-2 has asked him to vacate the premises. In such a situation, in case a decision has been taken by the landlord to shift his practice to Hoshiarpur, it is not to be doubted and treated with skepticism. The judgment of the Hon'ble Supreme Court in **Sri Kempaiah's** case (supra), relied upon by learned counsel for the respondents, is not applicable to the facts and circumstances of the case.

From the evidence on record, it is clear that the landlords have successfully proved their personal *bona fide* necessity and requirement. It is relevant to note at this stage that pursuant to order dated 20.04.2011, affidavits of the petitioners, each dated 22.05.2011 were filed to the effect that they require the premises for conducting their own practice. They would not let out the premises to anyone else and neither would the premises be kept closed. Needless to say, the tenant always has the remedy to seek restoration of the possession of the premises in terms of Section 13(4) of the Act. There is no doubt that this Court in exercise of revisional jurisdiction would interfere only then it is found that a finding of fact recorded by the

learned Court/Authority below is perverse or has been arrived at without consideration of the material evidence or misreading of the evidence and if such findings are allowed to stand it would result in gross miscarriage of justice. In the present facts and circumstances of the case, it is apparent that there is clear misreading of the evidence on record and the findings returned by the learned Appellate Authority deserve to be set aside.

Accordingly, this revision petition is allowed and order dated 29.08.2005 passed by the learned Appellate Authority, Hoshiarpur, is set aside and order dated 20.09.2004, passed by the learned Rent Controller, Hoshiarpur, is upheld.

05.02.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.