

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

**Civil Revision No.365 of 2016 (O&M)
Date of Decision: May 21, 2019.**

Vinod Kumar Sharma

.....PETITIONER(s).

VERSUS

Suresh Kumar and another

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Mukul Aggarwal, Advocate
for the petitioner (s).

Mr. S.K. Garg (Narwana), Senior Advocate with
Mr. Japjit Singh Johal, Advocate
for respondent No.1.

SURINDER GUPTA, J.

Respondent No.1-Suresh Kumar sought ejectment of petitioner and proforma respondent from the demised premises i.e. shop measuring 5 square meter situated near City Police Station, Bichla Bazar, Bhiwani on the ground of non-payment of rent and his personal bona fide necessity to start business of selling fruits and vegetables with his son Tarun, who was also unemployed. The petition was dismissed by the Rent Controller with the observations as follows:-

“Perusal of the testimonies of the petitioner and that of his son would clearly reveal some glaring discrepancies in their version. The petitioner alleges that he is doing the job of driver for the last 10-12 years whereas his son has submitted that his father never worked as a driver. The petitioner has alleged that his son is working at his uncle's shop and selling spare parts whereas son of the

petitioner has submitted that he has never worked anywhere and is unemployed. The petitioner submits that his another son Sumit is working with Idea Telecom, whereas son of the petitioner submits that his brother is running fruits stall at Dinod gate. From the aforesaid contradictory version of the petitioner and his son it rather emerges that there is no real or bona fide necessity on the part of the petitioner for the demised shop, but a false ground has been created just in order to seek eviction of the respondent. The fact is further corroborated from the conduct of the petitioner, who had purchased the demised premises on 31.01.2011 and had filed the petition for eviction of the respondent after a gap of ten months. Though, it is the version of the petitioner that he has purchased the demised shop for doing his own business and settling his son, but it cannot be expected from any prudent person to purchase a premise, which is under long tenancy for starting his own business. Further more, the petitioner neither in his petition nor in his testimony has submitted as to whether he or his son has got any prior knowledge or experience of running the fruits stall as alleged.”

Learned Rent Controller also observed that the landlord was having knowledge and notice of the tenancy of the petitioner at the time of purchase of the shop and there was no assurance by the tenant that he will vacate the shop. This reflects mala fide on the part of respondent-landlord that he purchased the tenanted premises and then filed the ejectment petition.

In appeal filed by the respondent-landlord, Appellate Authority did not agree with the observations of learned Rent Controller. The relevant

follows:-

“22. In the present case, petitioner specifically deposed that he wants the demised premises for doing business of selling vegetables and fruits with the assistance of his son. Son of petitioner namely Tarun also appeared before the court and also deposed that they required the demised premises for doing business of selling and purchasing the vegetables and fruits. Then, it is settled law that landlord is best judge to see as to which accommodation is suitable and required for him as well as his family members for the purpose of starting any work. Neither the court nor the tenant can suggest him any alternative solution for ignoring his claim of his personal use and occupation qua demised premises. The only duty of the court is to see as to whether the alleged personal necessity of the landlord qua the demised premises for his own use and occupation is the bona fide one or otherwise. In the case in hand, there is nothing on the file to say that the alleged requirement of landlord is mala fide. The tenant who is in occupation of the demised premises for the last many years cannot dictate his terms by saying that petitioner does not require the demised premises for his own use.

23. Learned trial court has dismissed the rent petition by observing that perusal of the testimonies of petitioner and that of his son would clearly reveals some glaring discrepancies in their version. Learned trial court has also observed that the petitioner alleged that he is doing the job of driver for the last 10/12 years whereas his son has stated that his father never worked as driver. Learned trial court has also found some defects in the statements of petitioner and his son but in the considered opinion of this court these discrepancies are not of such

type that shattered the whole case of petitioner and on these grounds petition cannot be dismissed. Learned trial court has also observed that neither the petitioner nor his son are having any experience, knowledge or expertise in the work of proposed to be done in the shop but for the purchasing or selling the vegetable and fruits, no specific experience is required and on this ground also petition cannot be dismissed.”

The plea of respondent-landlord that he requires the premises for his personal bona fide need, was upheld and petitioner-tenant and proforma respondent were ordered to be ejected from the demised premises and hand over the vacant possession to the respondent-landlord within a period of two months.

Not satisfied, the petitioner-tenant filed this petition challenging the order of the Appellate Authority.

Learned counsel for the petitioner has argued that there are two adjoining properties in Bichla Bazar, Bhiwani bearing MC Unit No.W-653 and W-654. The property bearing No.W-653 is a 35 square yard double storey building, which was purchased by Hari Chand @ Hari Charan son of Roshan Lal, who is running his business in that premises under the name and style of “*Satyanarayan Sarees*”. The adjoining property bearing No.W-654 is a 5 square meter double storey building, which was purchased by the respondent-landlord on 31.01.2011. Immediately after the purchase of property bearing no.654 of which the demised premises is a part i.e. Ground floor, the respondent-landlord agreed to sell the first floor of that property to Hari Charan and executed sale deed of that portion in favour of his wife on 21.10.2011. This shows the conduct and intention of the respondent-

landlord, who under the garb of his personal bona fide necessity, wants to get the demised premises vacated in order to sell the same to Hari Charan as he is in employment of Hari Charan as driver. This shows that the need as projected by him is not bona fide and learned Appellate Authority has failed to take note of the act and conduct of the respondent-landlord.

The facts of purchase of property by the respondent and the adjoining property by Hari Charan, are not disputed. Respondent-landlord examined Hari Charan, owner of adjoining property No.W-653 as PW4, who has stated that he had purchased the first floor of the property bearing No.W-654. Respondent Vijay Kumar sold that property because he had no staircase to go to the first Floor. He has categorically stated that he has no concern with the ground floor of property No.W-654. From the above, it is evident that respondent-landlord has fairly disclosed all the facts regarding purchase of property, sale of first floor to the owner of the adjoining shop. It is also evident from the evidence on record that the respondent had not only disclosed the fact of the sale of first floor of his property to wife of Hari Charan but has also placed on file copy of the sale deed Ex.P6 executed by him, as such, there was no concealment of any fact in this regard.

It is also proved on record that the first floor of the property No.W-654 purchased by the respondent had no staircase. This building is adjacent to property bearing No.W-653 of which ground and first floor was purchased by Hari Charan, as such, selling the first floor of the property purchased by him, in no manner, reflect on his conduct or shows his mala fide. It is proved on file that respondent-landlord is not an affluent person.

He has purchased the small property of 5 square meter and wants to start

business of selling fruits and vegetables with his son. This plea of the petitioner that respondent has purchased this property at the instance of Hari Charan as he intends to sell the same to him and is working with him as driver, has no basis. As per the plea taken by the petitioner in his written statement, respondent was employed with Padam Sharma, previous owner of the property bearing No.W-653 and W-654. The reasons recorded by learned Rent Controller while dismissing the petition are not legally sustainable and were rightly discarded by the Appellate Authority.

The argument of learned counsel for the petitioner that conduct of the respondent-landlord in purchasing this property with intention to sell the same to the owner of the adjoining property, has no merit or reflect mala fide on the part of respondent-landlord. It is evident that the first floor of property bearing No.W-654 was sold as the respondent-landlord had no approach to that portion of the property. Even otherwise, he was not in a position to use the first floor of his property for any business purpose. Learned Appellate Authority has committed no error while observing that the landlord is the best judge of his need and tenant has no authority to dictate any term to the landlord in this regard.

On perusal of judgment of the Appellate Authority, I find no legal or factual infirmity therein, calling for any interference . This revision petition has no merits.

Dismissed.

May 21, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No