

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

CR No.373 of 2017(O&M)

Date of decision: 9.5.2019

Maninder Singh Tinna

.....Petitioner

VERSUS

Bharat Petroleum Cor. Ltd and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Harkesh Manuja, Advocate for the petitioner.

REKHA MITTAL, J.

Challenge in the present petition has been directed against orders dated 29.08.2013 and 01.10.2016 passed by the Courts whereby application for eviction filed under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short 'the Act') was dismissed.

Briefly stated, the petitioner through his Special Attorney Sh. Gulzar Singh Bedi filed the eviction application with the averments that respondents took land measuring 100 ft. x 16.6 ft. from father of the petitioner on lease and lease deed dated 24.11.1967 was executed and the same was extended upto 24.11.2007. Father of the petitioner died on 23.05.2006. The land was leased out to the respondents for sale of petroleum products as well as service station etc. He sought eviction on the ground of subletting, cease to occupy, material alteration in the demised premises, non-payment of rent and personal necessity of the petitioner.

The Rent Controller framed issues reproduced in para 5 of the order passed by the said Court. Parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the Rent Controller negated plea of the petitioner qua liability of respondents to be evicted on any of the grounds raised in the petition including that of bona fide necessity of the petitioner. As has been noticed hereinbefore, appeal preferred by the petitioner did not find favour with the Appellate Authority, Karnal.

Counsel for the petitioner, at the outset, would fairly inform that the present petition has been preferred to challenge findings of the Courts only on the issue of eviction on the ground of bona fide use and occupation mentioned in para 6 (1) of the eviction application in respect whereof the Rent Controller framed additional issue vide order dated 20.04.2009. Counsel would argue that the Courts have rejected plea of bona fide use and occupation primarily on the ground that the petitioner himself did not appear in the witness box to prove his case. It is argued that mere fact that the petitioner did not examine himself personally, *ipso facto*, cannot be fatal to his case though the same, at best, may be a circumstance to be considered at the time of appreciation of evidence. In support of his contention, he has relied upon judgments of this Court **Smt. Sumitra Devi Vs. Smt. Pritam Kaur, 1982 (2) RCR (Rent) 667; Roshan Lal Vs Hans Raj son of Bahadur Chand, 1984 (2) RCR (Rent) 16; Satnam Channan Vs. Darshan Singh, 2006 (2) RCR (Civil) 614** and **M/s Hind Sons Agency and others Vs. Sh. Jai Parkash Jain, 2012 (1) RCR (Civil) 828.**

Another submission made by counsel is that during pendency of appeal, the petitioner filed an application for adducing additional evidence and the same has been dismissed by the Appellate Authority, in view of its findings recorded in para 18 of the order. It is argued that additional documents sought to be produced before the Appellate Authority are relevant and material for deciding the matter in controversy, therefore, order of the Appellate Authority dismissing the application for additional evidence may be set aside and the matter be remitted to the Appellate Authority for deciding the appeal afresh after allowing the petitioner to adduce additional evidence.

I have heard counsel for the petitioner, perused the paper-book particularly the orders impugned, copy of application for additional evidence and the judgments cited at bar.

There cannot be quarrel with the proposition in law laid down in the referred authority that non-examination of the landlord himself/herself in a case seeking eviction on the ground of personal requirement is a circumstance to be considered at the time of appreciation of evidence and final disposal of the case. Perusal of the impugned orders would reveal that the Courts have not straightaway rejected contention of the petitioner merely on the ground that he personally did not appear in the witness box and rather examined his special attorney to prove his case. On the contrary, the Courts have appreciated the facts elicited in cross examination of the attorney in order to conclude that his testimony is not sufficient to establish plea of the petitioner that demised premises is required by him for his bona fide use and occupation.

The petitioner, in para 4 of the eviction application, has raised averments with regard to bona fide need. A relevant extract therefrom reads as follows:-

"That as the respondents have ceased to occupy the land in question and the petitioner is now working at abroad i.e. Oakville, Ontario L6H 6G8 and wants to start his own business in India at Karnal i.e. his native place on the said piece of land and requires for bona fide personal necessity and requirement."

Indisputably, the petitioner left India and is settled in Canada for the past about 25/30 years prior to filing of the eviction application on 03.03.2008. Nothing has been mentioned in the application as to why the petitioner wants to start his business in India at Karnal. It has also not been mentioned that he wants to shift from Canada to India and spend his remaining life in India. The petitioner did not appear in the witness box to prove his necessity much less bona fide need for use and occupation of the premises in question. Counsel for the petitioner has not disputed the correctness of facts elicited in cross examination of Attorney of the petitioner. The Rent Controller, in para 17 of the order, has noticed to the following effect:-

"He further stated that he does not know whether the petitioner is a Green Card holder or not, whether the petitioner is owning a house in abroad or not. He further stated that he does not know about the work profile of the wife as well as

sons of the petitioner and he does not know about the names of family members of the petitioner."

The Appellate Authority has also taken note of these facts in para 16 of the judgment. There is nothing on record suggestive of the fact as to what persuaded the petitioner to start his own business in the demised premises despite his being settled in Canada for the past about 30 years coupled with the fact that his family is also settled there. It has also been brought on record that neither the petitioner nor his brother or father had any other property in India except the demised premises. The petitioner is more than 70 years of age. The petitioner is, admittedly, a pensioner. Taking into consideration that averments raised in the petition are quite vague coupled with that the petitioner even did not like to visit India for recording his statement qua his necessity along with the facts elicited in cross examination of Attorney sufficient to indicate that he does not have personal knowledge with regard to bona fide requirement of the petitioner, it can safely be held that the orders passed by the Courts do not suffer from material irregularity much less illegality, warranting intervention in exercise of limited revisional jurisdiction.

To be fair to the petitioner, counsel has made submissions in respect of application for additional evidence filed before the Appellate Court. Perusal of copy of the application would reveal that the petitioner sought to produce the documents i.e. affidavit dated 23.09.2016, certificate dated 02.03.2009, copy of driving licence and bank statement of account of the petitioner regarding his pension. In para 2 of the application, there is reference that the petitioner was working in RND Traders inc. at Brampton

and in the year 2009 he left the job. He is now 71 years old and is drawing pension. The document dated 02.03.2009 was very much available to the petitioner when his attorney was examined before the Rent Controller in October 2009 and cross examined on 09.03.2010. This apart, the documents sought to be produced by way of additional evidence are not per se admissible and as such, it would not advance cause of the petitioner even if the same are allowed to be brought on record. In this view of the matter, I do not find any reason to interfere in the order rejecting application for additional evidence.

In the application for additional evidence, the petitioner has averred that he is more than 70 years of age and is a pensioner. It is difficult to digest that a person who is well settled in Canada and has a family settled there, has a bona fide need to set up his business in India after attaining the age of more than 70 years. It appears that since the petitioner knew it well that there is no substance in his plea of bona fide requirement, he preferred to stay away from the witness box in order to save himself from the wrath of cross examination at the hands of an experienced counsel.

The property in question was given on lease in the year 1967 and as such the same is in occupation of respondents for the past about 50 years. The demised property is the only property of the petitioner or his family situated in India. It further appears that since the property occupied by a tenant may not fetch prevalent market price, the petitioner sought to create a ground seeking eviction of the respondents. Analyzed from any

angle, I do not find any reason to interfere in the consistent findings recorded by the Courts.

In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly dismissed in limine.

MAY 9, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no