

218

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4187-2015

Date of Decision: September 10, 2019

Mishri Lal (Since deceased) through his LRs

.....Petitioner

Versus

Subhash Kumar Jain and another

.....Respondents

CORAM: HON'BLE MS.JUSTICE NIRMALJIT KAUR

Present: Mr.C.B.Goel, Advocate
for the petitioner.

Mr.Abhinav Jain, Advocate
for the respondents.

.....

NIRMALJIT KAUR, J.

The present revision petition is filed against the judgment of the Appellate Authority dated 30.05.2015 vide which the appeal preferred by the respondent-tenants against the order and judgment dated 27.08.2012, passed by the Rent Controller qua the *bonafide* need of petitioner-landlord was reversed and consequently, the rent petition filed by the petitioner-landlord was dismissed.

While praying for setting aside the said order passed by the learned Appellate Authority, learned counsel for the petitioner-landlord submitted that the petitioner had specifically pleaded in para 5 of the rent petition that he has not got evicted any other premises during his life time and he or his family is not holding any commercial building sufficient to commence the business. In view of this categorical averment, the finding of

the Appellate Authority that the landlord has not pleaded that he is not

occupying any other such building in the urban area is not correct which has resulted in the ultimate decision of the appeal. Secondly, at page 13 of the certified judgment of the Appellate Authority, the Appellate Authority has observed that the petitioner has admitted that he is in occupation of four shops constructed over the first and second floor of both the shops, and therefore he has sufficient area to carry on his business and also for settling his grandson is incorrect.

Learned counsel for the respondent-tenants while vehemently opposing the revision petition, stated that the petitioner-landlord had concealed material facts. He did not come to the Court with clean hands. He did not disclose that the shops bearing Nos.311 and 312 were triple storeys and their first and second floors were lying vacant. Hence, appeal against the order of the Rent Controller was allegedly allowed. It was further argued that petitioner-landlord is seeking eviction for the purpose of his grand-sons. Moreover, under the definition of the members of the family, grand-children did not come within the definition and nor are they dependent upon him. Therefore, his *bonafide* need was not genuine.

In order to ascertain as to whether the petitioner-landlord had concealed the fact that shop bearing Nos.311 and 312 are 3-storey building, it would be appropriate to reproduce para 6 of the petition, which reads as under:-

“6. That the shop No.311 and 312 were purchased by the petitioner in 1984. Earlier the shop No.311 was in possession of tenant Pawan Kumar, the same was got evicted by the petitioner through court and after reconstruction it was occupied under self business M/s Amar Nath Mishri Lal. The shop No.312 was under occupation of the firm M/s

Amar Nath Mishri Lal as tenant and after purchase it was reconstructed in an around 1990 and let out to the respondent.”

When the petitioner appeared as a witness, he submitted in his cross-examination as under:-

“I am having two shops bearing Nos.311 & 312. I had constructed these shops in the year 1986-87. I had got passed the site plan from the committee. It is correct that shop Nos.311 & 312 are three storeyed. It is correct that the respondent is a tenant in only the lower portion of shop No.312. Apart from the respondent, I do not have any tenant in Shop Nos.311 & 312. It is correct that my younger son is running a business alongwith me in the ground floor of shop No.311. This is a commercial building. This is situated in the commercial area. Saurabh is not studying anywhere. Voluntarily said, he was an employee earlier. Presently, he is unemployed.”

From the above, it cannot be said that the petitioner-landlord has concealed anything. In fact, he stated in his plaint that he has two shops, i.e. 311 and 312. In his cross-examination, he further admitted that they are three storeyed. The judgment in the case of **Onkar Nath vs Ved Vyas**, 1980 PLR 638, does not help as it is specifically pleaded by the petitioner-landlord in his plaint that they did not possess any other non-residential premises except shop Nos.311 and 312. The argument that he did not mention as 3-storey building in the plaint itself may not be sufficient to reject the plaint as the specific stand in the plaint was qua Shop Nos.311 and 312. They may be comprising of 3 storey, but, admittedly, these are the only two premises. Moreover, the petitioner/landlord duly stated in his cross-examination that two shops no.311 and 312 are three storey building

whereas the respondent/tenant is in possession of shop no.312 on the ground

floor. The two storeys over the two shops are meant for storage etc. and are not shops. Thirdly, no business can be carried out on the first and second floors.

The Appellate Authority while reversing the judgment has totally ignored the *bonafide* need. The petitioner has two sons. His elder son has also two sons. His younger son Rajat Goel has completed his B.T.M. from Kurukshetra University and is unemployed. He wants to start his own business in the shop in question of sale of computers and its allied parts, C.Ds, UPS, printers, batteries, paper stationery, ink, cartridges etc., programs of Tour and Travels agency by arranging air ticket, Railway, bus and cars travelling, Hotel bookings and lodging. The elder grand-son namely Saurabh Goel is also facing difficulty in attending his private job at Pune far away from home and he is also earnestly waiting to join hands with his brother at his own city in their own business. He is B.Tech. Mechanical and as soon as the premises is got evicted from the respondent, the said grand-son shall leave his job and would join new business being proposed in it. Further he also intended to settle his son Rakesh Mohan in his own business of *Pansari* shop M/s Amar Nath Mishri Lal as he himself was an old man of 83 years of age. He wanted to see his grand-sons settled down in their life in the business of their choice. The respondent-tenant has not been able to dispel this need of the petitioner-landlord.

The argument that they are grand-children and grand-sons are not family members cannot be acceptable in a country like India where people live in joint families and children and grand-children carry on their family business. The judgment relied upon in the case of Kizhakkayil

490, in fact, goes to support the case of the petitioner-landlord wherein it is specifically held that where the landlord *bona fide* needs the building not for his occupation but, for occupation of the members of his family, it must be shown that such a member of the family is dependent on him. The petitioner-landlord is the *karta* of family. He is the head of the family. His grand son, being unemployed, has a right to look up his grand father for giving him the accommodation available with him for the purpose of starting his own business and settling down in life, in case the grand-father has the means to do so. Thus, the desire of the grand-father to allow his grand-son, who is unemployed, to run the business from the premises in dispute by all means falls in the category of genuine *bona fide* need. In fact, it is the stand of the petitioner-landlord that he also wants the part of the premises for his son so that he can run his business, i.e. *pansari* shop. In the case of **Rishi Kumar Govil vs Maqsoodan and** others 2001(1) RCR (Rent) 405, the Hon'ble Apex Court held as under:-

“19. In **Ragavendra Kumar vs Firm Prem Machinery and Co.,** 2000(1) RCR (Rent) 135 (SC) it was held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter. In **Gaya Prasad vs Pardeep Shrivastava,** 2001(1) RCR (Rent) 221 (SC) it was held that the need of the landlord is to be seen on the date of application for release. In **Prativa Devi (Smt.) vs T.V.Krishnan,** 1987(2) RCR (Rent) 580 : 1996(5) SCC 353, it was held that the landlord is the best judge of his requirement and Courts have no concern to dictate the landlord as to how and in what manner he should live. The bonafide personal need is a question of act and should not be normally interfered with. The High Court noted that when the Prescribed Authority passed the order son of

the respondent-landlady was 20 years old and the shop was sought to be released for the purpose of settling him in business. More than 20 years have elapsed and the son has become more than 40 years of age and she has not been able to establish him as she has still to get the possession of the shop and the litigation of the dispute is still subsisting. The licence for repairing fire arms can only be obtained when there is a vacant shop available and in the absence of any vacant shop, licence cannot be obtained by him. Therefore, the High Court came to the conclusion concurring with that of the Prescribed Authority and Appellate Authority that the need of the landlady is *bonafide* and genuine. Considering the factual findings recorded by the Prescribed Authority, Appellate Authority and analysed by the High Court, there is no scope for any interference in this appeal which is accordingly dismissed.”

It is the stand of the petitioner-landlord that Shop No.311 where he is doing business and the remaining portion of Shop Nos.311 lying vacant and remaining portion of Shop No.312 except where the tenant is doing his business are not sufficient because he himself offered the area lying vacant to the respondent-tenant in exchange of shop in dispute, which was in possession of the respondent-tenant with the shop in possession of the petitioner-landlord. This in itself shows that the remaining portion was not fit for carrying out the business being in a thickly populated locality with narrow lanes. In such an area, it is only the ground floor which gets good business. Hence, a tenant cannot dictate to the landlord as to how and where he should run his business.

Thus, it is a well settled proposition of law that the landlord is the best judge of his requirement and Courts have no concern to dictate the

has no right to seek eviction for the purpose of his sons and family members.

The landlord's claim for additional requirement to run his business and to settle his sons and grandchildren is required to be liberally construed.

In view of the above, the petition is allowed and the order dated 30.05.2015 passed by the Appellate Authority is set aside.

September 10, 2019
meenuss

(NIRMALJIT KAUR)
JUDGE

- | | |
|---------------------------------------|---------------|
| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |