

**125+218 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.4588 of 2016 (O&M)

Date of Decision: 8.7.2019

Kanwal Nain

.....Petitioner

Versus

Randeep Singh

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Parunjeet Singh, Advocate and
Mr. Mohit Chaudhary, Advocate, for the petitioner.

Mr. Sushil Jain, Advocate, for the respondent.

NIRMALJIT KAUR, J.

The present revision petition is filed against the orders dated 15.1.2015 and 10.5.2016 passed by the Rent Controller, Panipat and the Appellate Authority, Karnal, respectively, vide which, the petitioner-tenant was ordered to be evicted from the shop in dispute.

While praying for setting aside the two judgments rendered by the learned Courts below, learned counsel for the petitioner-tenant submitted that the grounds for which the respondent-landlord has filed the suit are frivolous. The ground of bonafide necessity is false, as the respondent-landlord has an independent chamber in District Courts Complex from his father. The respondent-landlord has also nine shops at Ram Lal Chowk and apart that he has several other properties. Further the father of the respondent-landlord had already got vacated another shop from another tenant in the year 2012 on the ground that he required that shop for separate office of his son. Secondly, the second eviction petition on the same ground was barred in case, the landlord has already obtained

possession of another non-residential building for the same reason as per proviso under Section 13 (3) (a) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short, the Act'). It was further argued that the father of the respondent-landlord has since died and, therefore, the office used by his father, who was also a lawyer has become available. Therefore, he does not need the present shop any more.

Heard.

While allowing the eviction petition, concurrent findings have been recorded that respondent-landlord has been able to prove on record that he has bonafide and personal necessity of demised shop for setting up of his office for practicing as a lawyer. The argument raised by learned counsel for the petitioner-tenant that the respondent has inherited various other properties on account of death of his father as well as office run by his father, cannot be sustained. Admittedly, there are other legal heirs. Property is yet to be partitioned. Moreover, the same is a subsequent event, whereas, the crucial date for deciding the bonafide requirement of the landlord is date of the application as held by the Hon'ble the Apex Court in Gaya Prasad vs. Pradeep Srivastava, 2001 (1) RCR (Rent) 221. Even otherwise, the death of the father of the respondent-landlord does not project that the bonafide need of the landlord has ceased to exist, especially when, there are other legal heirs who shall lay their claim to the property left by the father of the landlord-respondent.

The argument of learned counsel for the petitioner-tenant that the landlord cannot apply again for possession of non-residential building, in case, he has already taken possession of another non-residential building also does not help in the facts of the present case. It is not disputed that the

earlier petition was filed by the father of the respondent-landlord and not by the respondent-landlord himself. Secondly, the present premises in dispute was purchased by the respondent-landlord himself and it was his own shop and earlier eviction petition filed by his father had nothing to do with it. Besides the above, this Court cannot loose sight of the findings recorded by the two Courts below that the demised shop has become unsafe and unfit for human habitation. The premises is without electricity connection since the year 2011. Moreover, the petitioner-tenant was held to be 88 years of age in January, 2015 by the Rent Controller, making him 92 as on date, who cannot be possibly in a position to work on the shop. The said finding with respect to the shop is recorded as under:-

“As far as the question of dilapidated condition of the demised premises is concerned, RW4, Kanwal Nain stated during the course of his evidence that plants have been grown on the terrace of demised premises and level of demised premises is 1½ feet down from the level of road. He admitted that photographs Ex P2 to Ex P8 are of the demised premises. The Photographs Ex P2 to Ex P8 makes it evident that the demised premises is in a dilapidated condition. The demised premises is unfit and unsafe for human habitation. Therefore, admittedly, the demised premises is lying in a dilapidated condition, as such, value or utility of demised premises was impaired by the respondent. Further, evidence produced on record by the respondent have failed to substantiate that he is running business of Hardware and Paints from the demised premises; Admittedly, electricity connection has been disconnected from the demised premises. RW4, Kamal Nain had admitted during the course of his testimony that electricity connection has been disconnected from the demised premises in the year 2011 and since then, there is no electricity connected in the demised premises. In these modern days, it

would be very difficult to run any business from a shop without any facilities of fan, light etc. Moreover, admittedly, respondent is old man of 88 years of age. As such, it cannot be said that respondent is running any business in the demised premises.”

It is the choice of the landlord to decide what is the best place suited to him to build his office. The landlord is best judge of his requirement for residential or business purpose. The landlord has complete freedom in the matter. The apprehension of the petitioner-tenant that the landlord will not occupy the building, once vacated possession has been handed over is safe guarded by directing that in case the demised shop is not occupied for the purpose of independent office within the period of 12 months from the date of obtaining the possession or lets it out other tenant, then the petitioner-tenant has right to apply to the Rent Controller for an order and direction that he should be restored to possession under Section 13 (6) of the Act.

In view of the same, no ground for interference in the well reasoned concurrent findings of the two Courts below are made out.

Dismissed accordingly.

(NIRMALJIT KAUR)
JUDGE

8.7.2019
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Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No