

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-448-2017 (O&M)

Date of decision: 23.07.2019

Varinder Singh

... Petitioner

Versus

Ravinder Kumar Jain

... Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. R.S. Sihota, Sr. Advocate, with
Mr. B.R. Rana, Advocate,
for the petitioner.

Mr. Arun Jain, Sr. Advocate, with
Mr. Vaibhav Sehgal, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. The petitioner-tenant herein is aggrieved against the order of ejectment passed by the Rent Controller, Ludhiana on 29.09.2012, which order was affirmed by the Addl. District Judge, Ludhiana vide his judgment dated 13.12.2016.

2. In brief, a few facts that require to be noticed are that the respondent-landlord filed an eviction petition pertaining to the disputed property on the grounds of non-payment of rent w.e.f. 01.01.1994 @ Rs. 1850/- per month along with house tax @ 15% per annum and that the property in dispute is required by the landlord for the use and occupation of his son Lovish Jain, who

was pursuing 3rd year of Bachelor of Engineering at Faridkot, while in the ejectment application, it was stated that his son on completion of studies wants to start his Computer Centre and the shop in dispute was required for the said purpose. Additional grounds were taken that the tenant had materially impaired the utility and value of the shop in dispute. Upon notice, the petitioner-tenant appeared and filed his reply taking the plea that the rent had been paid and also denying that the property in dispute was required by the landlord for the use and occupation of his son, who was still a student. A replication was filed to the written statement and thereafter issues were framed by the Rent Controller on 24.01.2004. After having gone through the evidence led by both the parties, the Rent Controller ordered the eviction on the grounds of personal necessity for the use of his son while directing the landlord respondent to refund the excess amount received from the tenant with interest @ 6% per annum. Aggrieved against the order of ejectment, the petitioner herein preferred an appeal before the Appellate Authority, Ludhiana, whereas the landlord respondent too challenged the order directing refund of an amount of Rs. 1,40,200/-. Both the appeals were decided and by a common order the Appellate Authority, Ludhiana, upheld the order of ejectment as passed by the Rent Controller on the ground of personal necessity and partly allowed the appeal filed by the landlord to the extent that the excess amount of Rs. 18,370/- paid should be refunded along with interest @ 6% per annum or in the alternative, be adjusted against the rent of the subsequent months. Aggrieved against the order of ejectment as passed by the Rent Controller and upheld by the Appellate Authority, the instant revision petition has been preferred.

3. Mr. R.S. Sihota, learned Sr. Advocate, assisted by Mr. B.R. Rana,

Advocate, appearing on behalf of the petitioner vehemently contends that the premises in dispute is not required for the use and occupation of the son as stated in the ejectment application. It is argued that Lovish Jain, the son of the respondent, is highly educated and is well settled in England. It is argued that after obtaining his degree, he worked with Multi National Information Technology Companies at Bangalore and subsequently shifted to England. It is submitted that Lovish Jain has no intentions of coming back to run a computer shop at the premises which are currently in occupation of the petitioner. It is argued that the bonafides of the landlord are suspect, since no effort was made by him to set up a computer shop for his son at the premises which are adjacent to the disputed shop and were lying vacant.

4. Per contra, Mr. Arun Jain learned Senior Advocate assisted by Mr. Vaibhav Sehgal Advocate for the respondent-landlord submits that the eviction petition was filed as far back as 2002 when the son of the respondent was still studying and subsequently has completed his Bachelor of Engineering. In anticipation of the fact that he would acquire a Degree, the shop was sought to be vacated so that a computer shop would be set up. It is argued that the eviction petition though filed in 2002 came to be decided in the year 2012 and, therefore, it could not be expected that the son would be sitting idle during the interregnum. It is argued that the needs of the landlord have to be seen as on the date, the ejectment application is preferred. In this regard, reliance has been placed on the judgments rendered by the Hon'ble Supreme Court in *Sarla Ahuja vs. United India Insurance Company Ltd. 1998(2) RCR 533*, *Raghunath G. Panhale vs. M/s Chaganlal Sundarji and Co. 1999(2) RCR 485*, *M/s Sait Nagjee Purushotham & Co.Ltd. vs. Vimalabai Prabhulal &*

Ors. 2005(2) RCR 436 and Joginder Pal vs. Naval Kishore Behal, 2002(1) RCR 582 and the judgments rendered by this Court in *Rajinder Kumar vs. Diwan Chand and others, 2014(1) RCR (Rent) 402 and Jasbir Singh vs. Jalandhar Ex-Servicemen M/T Cooperative Ltd. 2009(2) RCR 152.*

5. I have heard learned counsel for the parties and with their able assistance have gone through the judgments relied upon with the case laws referred.

6. Admittedly, there was a tenancy created between the petitioner and the respondent-landlord and an ejectment application came to be preferred in the year 2002 seeking ejectment on the ground of bonafide personal necessity to set up his son in business. Both the respondent and his son stepped into the witness box as PW-1 and PW-4 and gave their evidence in support of the eviction petition. The contention as raised by counsel for the petitioner that Lovish Jain never worked in Ludhiana and was gainfully employed with a Multi National Company and working in London, cannot be taken into consideration to upset the orders of the ejectment as passed. The affidavit dated 19.04.2017 as furnished by Lovish Jain clearly reflects that his job in London is on a contract basis which is renewed every year. The averments in the affidavit also reveals that the deponent is the only son of his parents and there is no one else to look after them and he would come back to India immediately to start his business in the shop in dispute. The landlord has specifically pleaded that premises in dispute are required for the use and occupation of his only son and to set him up in business. Based upon the statement of the landlord PW-1 and the affidavit as furnished, there would be enough material available to establish the genuine requirement of the landlord. The Hon'ble Supreme Court in *Mehmooda Gulshan v. Javaid Hussain Mungloo 2017(1)*

RCR (Rent) 273, specifically observed that requirement of the usage of the premises by the son of the landlord would necessarily cover the requirement of the words 'for his own use' by the landlord.

7. Another contention has been raised by the learned counsel for the petitioner that the son never started work at Ludhiana and worked either in Bangalore or in England and, therefore, bonafides are not be established. The submission made can not be countenanced, as a person is not expected to sit idle waiting for the premises to be vacated. It is but natural for a person to start earning on obtaining a degree to try and become independent. If the son of the landlord had to wait for the premises to be vacated he would have been idle as of now i.e 15 years after being qualified. The law as settled in **M/s Sait Nagjee Purushotham & Co.Ltd. supra** is fully applicable in the instant case.

8. The second plea as raised by the learned counsel for the petitioner that there was a vacant accommodation available with the landlord for his son to have commenced the business, is again not sustainable. The site plan which is available on the record, clearly shows that the area which is lying adjacent to the disputed premises is nothing but a passage, which would not be suitable for the purpose of setting up his business. Again, it is not for the tenant to dictate to the landlord as to the suitability of the premises.

9. It has been held by the Hon'ble Supreme Court in **Hindustan Petroleum Corporation Limited v. Dilbahar Singh, (2014) 9 SCC 78** that this Court while exercising revisional jurisdiction would normally not interfere in concurrent finding of fact until and unless it is shown that there is gross misreading of evidence or ignoring of material evidence on record which renders the finding of the courts below to be perverse. Both the Rent Controller

and the Appellate Authority on due consideration of the evidence have ordered eviction of the petitioner and the eviction is upheld by this Court as well.

10. Finding no merit, the instant revision deserves to be dismissed. The tenant is directed to hand over vacant possession within two months from today.

23.07.2019

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.