

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

Civil Revision No. 561 of 2019 (O&M)

Date of decision : **April 09, 2019**

Kamla Rani

.....Petitioner

Versus

Banwari Lal

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Anil Bansal, Advocate
for the petitioners.

Mr. Vivek Gupta, Advocate
for the respondent/caveator.

LISA GILL, J.

Petitioner – tenant is aggrieved of judgment dated 15.12.2018 passed by the learned Appellate Authority, Patiala whereby judgment dated 21.04.018 passed by the learned Rent Controller, Nabha has been set aside and eviction of the petitioner has been ordered from the premises in question.

Brief facts necessary for adjudication of the case are that the premises in question i.e. a shop forming a part of the plot as described in the petition was rented out by Ram Singh – father of the respondent/Banwari Lal to Jatinder Kumar husband of the present petitioner (since deceased) on 01.01.2007 at a monthly rent of ₹5,000/- per month. Tenancy was oral. It was settled that Jatinder Kumar would pay the electricity, water charges besides house tax apart from the rent. It is further pleaded that Ram Singh, father of the landlord borrowed ₹20,000/- from Jatinder Kumar and writing was executed between the parties to secure the loan, which was cleared after adjusting the same towards the rent of the shop. Original writing was

destroyed by Jatinder Kumar in the presence of Ram Singh. The shop in question was transferred by Ram Singh in favour of Banwari Lal/respondent by virtue of transfer deed dated 11.12.2009. Hence, he became the owner and landlord of the shop in question. Rent was paid by Jatinder Kumar to Banwari Lal. Receipts thereof were issued to Jatinder Kumar. Rent for the premises was paid upto 31.01.2011 and it was claimed that no rent was paid thereafter. To the contrary, a suit for permanent injunction on false premise was filed by Jatinder Kumar which was pending before the court of Civil Judge, Nabha. Jatinder Kumar unfortunately died on 15.05.2014. Present petitioner, it is claimed, stepped in the shoes of the tenant. In order to pressurise and harass the landlord, FIR No. 65 dated 15.05.2014 under Section 306 IPC was registered against the landlord at the behest of the present petitioner i.e. wife of Jatinder Kumar. Landlord's wife as well as college going daughter were also arrayed as accused in the FIR. It was claimed that the present petitioner having stepped in the shoes of Jatinder Kumar was in arrears of rent since 01.02.2011. Eviction was sought on the ground of arrears of rent as well as for personal bona fide necessity of the landlord. It is stated that the landlord was married to Prem Lata who was carrying the business of flower pots etc. in the adjoining shop. The demised premises were required for settling the elder son of the landlord who had cleared his matriculation examination but was idle. It was revealed that the landlord owned another shop measuring 18 square yards but the same was not sufficient for running the business of grocery (Kiryana) for his son. Another residential plot measuring 153 sq. yards and plot measuring 233 sq. yards besides residential house measuring 150 square yards (in which they were residing) was revealed to be owned by the petitioner. It is specifically

averred that the shop in question was most suitable for running grocery (kiriyana) business by the landlord's son. Furthermore, as residence of the landlord was adjacent to the shop in question, it would be extremely convenient for the petitioner's son to run his business from the shop in question. Despite being requested, tenant refused to vacate the premises. Hence, the petition was filed.

Present petitioner (respondent in the proceedings before the learned Rent Controller) resisted the petition. It was denied that rent of the shop was ₹5,000/- per month. It was claimed to be ₹1,500/- per month. Liability of the tenant to pay the house tax was denied. It is claimed that rent up to 28.02.2014 was paid. Landlord in fact wanted to evict the tenant and wanted enhancement of rent. Present petitioner alongwith her husband were stated to be harassed and threatened for vacation of premises. Suit for permanent injunction was filed. Being fed up and annoyed of the threats meted out by the landlord, husband of the present petitioner committed suicide and FIR in this respect stood registered. It is denied that the shop was required for settlement of the landlord's son who was alleged to be owner of other property as well. Dismissal of the petition was prayed for.

Replication was filed.

Following issues were framed by the learned Rent Controller:-

1. Whether the petitioner requires the demised premises for his personal necessity for settlement of his son as alleged?OPP
2. Whether the respondent is in arrears of rent since 01.02.2011 @ Rs. 5000/- per month?OPP
3. Whether the tender of rent made by respondent is short or invalid?OPP
4. Whether the respondent is not liable to be evicted from the demised premises as alleged?OPR

5. Whether the petition is not maintainable? OPR

6. Relief.

Evidence was led by both the parties.

Learned Rent Controller on considering the evidence on record, facts and circumstances dismissed the petition filed by the landlord – respondent while observing that the landlord had alternate property where his son could very well be settled. Moreover, the landlord, it is observed, was in possession of 630 square yards of the property and not 144 square yards as claimed. It is further observed that ejectment petition was filed by the landlord a few months after filing of the written statement in the suit for permanent injunction, thereby raising an inference adverse to him. It was held that bona fide personal necessity of the landlord was not genuine and was not proved from the evidence on record. The shop which was got vacated from another tenant seven years back should have been used for running the business of the landlord's son. Learned Rent Controller further held that landlord was unable to prove rate of rent to be ₹5,000/- per month. As rate of rent of shop is ₹1,500/- per month, the ground of arrears of rent no longer survived to the landlord. Learned Rent Controller, thus, dismissed the landlord's petition for eviction vide impugned judgment dated 21.04.2018.

Appeal filed by the landlord was, however, allowed on the ground of personal bonafide necessity of the landlord, by the learned appellate Authority, Patiala vide judgment dated 15.12.2018.

Aggrieved therefrom, present petition has been filed.

I have heard learned counsel for the parties at length and have gone through the photocopy of the record, which was furnished by learned counsel during the course of hearing.

Learned counsel for the petitioner vehemently argues that the learned Rent Controller has rendered a well reasoned and logical judgment, which has been wrongly set aside by the learned appellate authority. Both the grounds raised by the petitioner for ejectment of the tenant are not proved by the evidence on record. It is contended that the petitioner's husband had admittedly filed a suit for permanent injunction for restraining the landlord from interfering in his possession. Landlord had appeared and filed his written statement in the said suit. In the interregnum, the petitioner's husband committed suicide in which the landlord and his family members were arrayed as accused. It is only by way of a counter blast that the present ejectment petition was filed by the landlord. Moreover necessary ingredients of Section 13(3)(a)(i) of the East Punjab Urban Rent Restriction Act, 1949 (for short - 'the Act') are not complied with. The landlord has concealed the fact the he is the owner of 650 sq. yards of land. Moreover, an adjacent shop was got vacated seven years prior to the filing of the petition. Landlord's son was idle since a number of years and his business could easily have been run in the said shop. Furthermore, the landlord's son failed to plead that he had no suitable property for running the grocery business. Necessary ingredients in terms of Section 13 (3) (a)(i) of the Act, it is urged, are conspicuous by their absence. It is submitted that there is gross misreading of evidence by the learned appellate authority. Therefore, judgment dated 15.12.2018 passed by the learned appellate Authority, Patiala be set aside and judgment dated 21.04.2018 passed by the learned Rent Controller, Nabha be upheld. It is, thus, prayed that this petition be allowed.

Learned counsel for the respondent-caveator per contra submits

that personal bona fide necessity is duly proved on record. There is proper compliance with the statutory provision of section 13(3)(a)(i) of the Act. Respondent's son is now married, having no other source of income and is dependent on his father. The adjacent shop which was got vacated seven years prior to the filing of the petition was being utilised by the respondent's wife as she is in the business of plantation, flower pots etc. The open area is being used as a nursery and the adjacent shop is being used as a flower pot store. Therefore, to say that the landlord's wife should stop running her business only with a view to accommodate the son is unjustified and it cannot be said that personal bona fide necessity of the landlord is non-existent. Counsel further submits that the respondent and his family members have been acquitted in the criminal case registered at the instance of the petitioner. It is contended that it is in fact the respondent and his family members who have been subjected to extreme harassment and pressurisation at the hands of the petitioner. The respondent's unmarried daughter was also arrayed as an accused. They had to face false criminal prosecution. It is, thus, prayed that this revision petition be dismissed and judgment dated 15.12.2018 passed by the learned Appellate Authority, Patiala be upheld.

It is borne out from the record that the respondent is the landlord of the demised premises. Learned Rent Controller dismissed the petition filed by the landlord finding no merit in any of the two grounds raised by the landlord i.e. arrears of rent and personal bonafide necessity of the landlord. Learned appellate authority vide impugned judgment dated 15.12.2018, allowed the appeal on the ground that personal bonafide necessity of the landlord was proved from the evidence on record. Finding

of the learned Rent Controller regarding arrears of rent was, however, upheld. A perusal of the record reveals that the learned appellate Authority has rightly discarded the argument raised by the tenant that the landlord failed to plead the ingredients of Section 13 (3) of the Rent Act. Petition under Section 13 of the Act specifically mentions the other property which is owned by the landlord. It is further mentioned that landlord's wife was running the business of flower pots and she was storing the flower pots and connected items in the shop. The other shop measuring 18 square yards, it was stated, was not sufficient for running business of grocery. Details of the two plots owned by the landlord are also mentioned. It is clearly stated therein that the demised premises are most suitable for running grocery business of the landlord's son. Reasoning given by the learned Rent Controller that there is a concealment by the landlord inasmuch as the exact area of the plot in question is not mentioned, has been rightly set aside. It is a settled position of law that the landlord is the best judge of his requirement. It is not for the tenant to dictate the terms thereof. Learned Rent Controller has indeed grossly erred in making an observation, that in case there was any bonafide requirement of the landlord, then the respondent – landlord and witness Sanjeev Kumar should have been quizzed on the point of personal necessity of the landlord in the criminal proceedings. Apart from the fact that the same were separate proceedings, it is admitted by Sanjeev Kumar in his cross examination that a petition for ejectment stood filed by the landlord on the ground of bona fide personal necessity (Ex.R8). Learned appellate Authority has appreciated the evidence on record in correct perspective. Argument raised on behalf of the petitioner that the landlord's son has failed to state that he did not own any other

property is devoid of any merit. Perusal of Ex. PW2/A i.e. affidavit of PW2 Amit Kumar (son of the landlord) reveals that he has specifically stated that he did not own any other suitable shop for running grocery business. Therefore, to say that the landlord did not specify that his son did not own any suitable property in the concerned area should be taken as a ground to non-suit the landlord is clearly incorrect.

Similarly, there is no merit in the argument that the petition under section 13 of the Act is a counter blast to the suit for permanent injunction filed by the petitioner's husband or registration of FIR under Section 306 IPC. It is relevant to note that filing of the suit for permanent injunction by a tenant for restraining the landlord from interfering in his possession in due course of law cannot be a bar to filing of the eviction petition by a landlord. Similarly, registration of FIR under Section 306 IPC prior to filing of the present petition cannot in any manner lead to a presumption that it is a counter blast or that personal bonafide necessity of the landlord does not exist. Use of the adjacent shop by the landlord's wife is squarely proved on record. Therefore, to say that instead of landlord's wife running her flower pot business in the adjacent shop (which was got vacated seven years prior to the filing of the petition) or using the same for storage, the same should be given to the son for running his grocery shop, is clearly unjustified. It is relevant to note that the respondent while testifying as RW3 has admitted that the said shop is being used for storage of flower pots from the nursery run by them in the adjoining plot, though it is sought to be explained that the landlord started using the said premises only with a view to seek the petitioner's eviction. It is stated that the landlord filed the petition only with a view to enhance the rate of rent. In the given facts and

circumstances of the case as discussed above, I do not find any infirmity in the impugned judgment dated 15.12.2018 passed by the learned Appellate Authority, Patiala.

No other argument has been raised.

Learned counsel for the petitioner is unable to point out any illegality, infirmity, perversity or error of law in the impugned judgment dated 15.12.2018 passed by the learned Appellate Authority, Patiala, which calls for interference in exercise of revisional jurisdiction by this Court. The same is upheld.

No order need be passed in the pending miscellaneous applications, if any, as the main petition stands decided.

Present petition is, accordingly, dismissed.

(Lisa Gill)
Judge

April 09, 2019

rts

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No