

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

CR-1781-2019 (O & M)

Date of decision: 09.04.2019

RATTAN LAL

.... Petitioner

VERSUS

VIJAY LUXMI

.... Respondent

CORAM : HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Lalit Pathak, Advocate for the petitioner

ARUN KUMAR TYAGI, J.

1. The petitioner-tenant has filed the present revision against judgment dated 28.11.2018 passed by the learned Appellate Authority, Narnaul in **Rent Appeal No.01 of 2018 titled Rattan Lal Vs. Smt. Vijay Luxmi** whereby appeal filed by the petitioner-tenant against ejectment Judgment dated 15.01.2018 passed by learned Rent Controller, Narnaul in **Rent Petition No.21 of 2016/2017 titled Smt.Vijay Laxmi Vs. Rattan Lal**, ordering ejectment of the petitioner-tenant from the demised premises, was dismissed.

2. For the sake of convenience the parties are hereinafter referred to in this order by their description in this revision petition as **petitioner-tenant** and **respondent-landlady**.

3. The respondent-landlady filed petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the 1973 Act) for ejectment of the petitioner-tenant on the

grounds of non-payment of rent, the petitioner tenant having ceased to occupy the demised premises, material impairment of the value and utility thereof by the petitioner-tenant, the demised premises having become unfit and unsafe for human habitation and her bona fide personal necessity for occupation of the demised premises by her Advocate son who is practicing in District Courts, Narnaul and for keeping the files, books etc. of her deceased husband.

4. On notice, the petitioner-tenant appeared and filed written statement taking preliminary objections as to maintainability, locus standi and want of cause of action. The petitioner-tenant admitted landlord-tenant relationship and tendered arrears of rent with costs and interest assessed by the learned Rent Controller. The petitioner-tenant controverted the other grounds of ejectment and pleaded that the respondent-landlady has no personal necessity and petition has been filed to harass the petitioner-tenant on frivolous grounds.

5. On the basis of the pleadings of the parties following issues were framed by the learned Rent Controller:-

1. Whether the respondent is liable to be evicted from the demised premises on the ground that the respondent has ceased to occupy the demised premises? OPP
2. Whether the respondent is liable to be evicted from the demised premises on the ground that he has materially impaired the value and utility with the demised premises?
OPP

3. Whether the respondent is liable to be evicted from the demised premises on the ground that the demised premises is in dilapidated condition? OPP
4. Whether the respondent is liable to be evicted from the demised premises on the ground that the demised premises is required by the petitioner for his personal necessity? OPP
5. Whether petition filed by petitioner is not maintainable in its present form? OPR
6. Whether petitioner has no cause of action and locus standi to file the present petition? OPR
7. Relief.

6. The evidence produced by the parties was recorded. On perusal of the material on record and consideration of the submissions made by the learned Counsel for the parties, the learned Rent Controller vide judgment dated 15.01.2018 held that the petitioner-tenant has ceased to occupy the demised premises for continuous period of 4-5 years, materially impaired the value and utility of the demised premises which have become unsafe and unfit for human habitation due to long non usage by the petitioner-tenant and that the respondent-landlady requires the tenanted room for use as an office by her Advocate son and for keeping the files, books etc. of her deceased husband. The learned Rent Controller accordingly decided issues no.1 to 4 in favour of the respondent-landlady and issues no.5 and 6 against the petitioner-tenant and vide impugned judgment dated 15.01.2018 allowed the ejectment petition.

7. The petitioner-tenant challenged the ejectment order by filing appeal no. 01 of 2018 titled as Rattan Lal Vs. Smt. Vijay Luxmi before the

learned Appellate Authority, Narnaul, which vide impugned judgment dated 28.11.2018 affirmed the findings of the learned Rent Controller on all issues and dismissed the appeal.

8. Feeling aggrieved, the petitioner-tenant has filed the present revision petition.

9. I have heard learned Counsel for the petitioner-tenant and gone through the record.

10. Learned Counsel for the petitioner-tenant has argued that the respondent-landlady did not step into the witness-box to testify as to her personal bona fide necessity. The testimony of her advocate son-Rakesh Sharma, who appeared in the witness box as her General Power of Attorney, was not admissible in evidence regarding matters of her personal knowledge. The Courts below committed material illegality in accepting the same. The respondent-landlady did not examine any other witness to substantiate her claim of bona fide personal necessity and there is no valid/sufficient evidence to prove her bona fide personal necessity. The Courts below have also erred in holding that due to the petitioner-tenant and his wife having taken flats from the Housing Board, the petitioner-tenant ceased to occupy the demised premises. The petitioner-tenant had no legal right in house owned by his wife. The other grounds of ejectment are also not proved. The Courts below have also committed material irregularity in relying upon photographs which were merely marked documents and were not legally proved in accordance with the provisions of the Indian Evidence Act. The impugned judgments passed by the Courts below are illegal, arbitrary, unjust, improper and un-warranted having been passed without application

of mind and consideration of the facts and circumstances of the case and the same are liable to be set aside.

11. On perusal of the material on record and consideration of the submissions made I am of the considered view that the revision petition is devoid of any merit and liable to be dismissed.

12. The petitioner-tenant tendered arrears of rent with costs and interest on which the ground of non-payment of rent was given up.

13. To prove the other grounds of ejectment, the respondent-landlady examined her advocate son-Rajesh Sharma, being her duly constituted attorney, as PW-1 and the respondent landlady did not herself enter into the witness box.

14. In **Janki Vashdeo Bhojwani Vs. Indusland Bank Ltd. 2005 (2) SCC 217**, it was held by Hon'ble Supreme Court that Power of Attorney could appear as witness in his own capacity to depose with regard to act done by him on behalf of principal and not on behalf of the principal in matters of his personal knowledge. However, in **M/s Sant Footwear Pvt. Ltd. and another (Supra)**, it was observed by an Hon'ble Coordinate Bench of this Court that where landlord seeks eviction of his tenant on the ground of his bona fide need, normally the landlord himself has to give evidence and not an attorney-holder. However, there is an exception to the aforesaid requirement, i.e. where the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it is possible to accept the evidence of such attorney even with reference to bona fide need of the landlord/landlady, and if such attorney-holder is a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of his/her

spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.

15. The petitioner did not herself enter into the witness box but her advocate son being a close family member had personal knowledge as to all material facts. Therefore, her non-examination as witness did not warrant drawing of any adverse inference against the respondent-landlady and the evidence of her Advocate son as her general power of attorney, who being a close family member had personal knowledge as to all material facts, was admissible in evidence and could be accepted by the Court as sufficient.

16. PW1 Rajesh Sharma testified as to the petitioner-tenant being liable to ejection on the grounds of having ceased to occupy the demised premises; the demised premises having become unfit and unsafe for human habitation; material impairment of value and utility thereof and personal bona-fide necessity of the respondent-landlady for occupation of the demised premises by him being her Advocate son for his office and for keeping the files, books and other documents of her deceased Advocate husband. The testimony of PW-1 Rajesh Sharma is supported by documents placed as Exhibit P1 to Exhibit P5 and photographs Mark PA to Mark PF.

17. Admittedly, the demised premises were let out to the petitioner-tenant for the purpose of residence. By documents Ex.P1 to Ex.P5 produced by the respondent-landlady it was proved that petitioner tenant was residing at Housing Board in LIG 308 taken by him in his name and LIG 309 taken in the name of his wife for the last 4-5 years. The petitioner-tenant admitted in his cross-examination that for the last 4-5 years he has been residing at Housing Board in LIG 308 taken by him in his name and LIG 309 taken in

the name of his wife. In view of this admission of the petitioner-tenant himself, the petitioner-tenant could not be said to be residing in the demised premises. Keeping the demised premises under his lock and occasionally visiting and cleaning the same by the petitioner-tenant as proved by his own admission of last cleaning the demised premises 7 days back, could not be treated as occupation for residence. Therefore, by the evidence on record including admission of the petitioner-tenant, it is proved that the petitioner-tenant is not residing in the demised premises and the petitioner-tenant has ceased to occupy the same for his residence for the last 4-5 years.

18. To prove material impairment of the value and utility and dilapidated condition of the demised premises the respondent-landlady apart from examining PW1 Rajesh Sharma also produced photographs Mark PA to Mark PF. In his cross examination as RW-1 the petitioner-tenant admitted that the photographs Mark PA to Mark PF were of the demised premises which he had taken on rent and correctness thereof was not disputed. In this factual backdrop objection as to mode of proof would stand waived and be of no legal significance. In view of the admission of the correctness of the photographs Mark PA to Mark PF the same could be relied upon by the Courts below. In his cross-examination the petitioner-tenant admitted that there are cracks in the walls of the room in dispute as shown in the photograph Mark PA. The Courts below observed that the photographs Mark PA to Mark PF showed that the disputed premises is in dilapidated condition because of its non usage of the same by the respondent and has become unfit and unsafe for use. By the evidence on record grounds of ejectment as to the petitioner-tenant having materially impaired the value and utility of the demised premises by long non-user and the same having become unfit and

unsafe for human habitation are proved and petitioner-tenant has been rightly ordered to be ejected on the basis thereof.

19. To prove ground of bona fide personal necessity PW1 Rajesh Sharma testified that the respondent landlady required the demised premises for use of the same after repair by him being her Advocate son as an office and also for keeping the files, books etc. of her husband (since deceased). Bona fide personal necessity of respondent-landlady included requirements of her Advocate son being a member of her family on whom respondent-landlady was also dependent. This view is supported by Judgment in **Krishan Lal Sood Vs. Sharda Sharma 2008(1) PLR 627**. The petitioner-tenant has disputed bona fide necessity of the respondent landlady on the ground that the respondent landlady had many other properties and office was already functional at different place as shown by photographs Mark RA to Mark RC but these grounds of contest are without any merit. Respondent-landlady being the best judge of her requirements is entitled to use/utilize her property in the manner considered appropriate which could not be dictated by the petitioner-tenant. For judicial precedents to support this view reliance may be placed on the decisions reported as **Iqbal Singh and others Vs. Sunil Arora and another 2013(4) RCR (Civil) 44** and **Krishan Lal Sood Vs. Sharda Sharma 2008(1) PLR 627**. Since it will be convenient for respondent-landlady and her Advocate son to have his office and also to keep the files, books and other documents of her Advocate husband in the demised premises, need of the respondent-landlady is proved to be genuine and could not be said to be actuated by any greed. In these facts and circumstances, the ejectment petition could not be said to have been filed mala-fide to harass the petitioner-tenant. It may also be observed here that in

the eventuality of non occupation of the demised premises by respondent-landlady and her advocate son for the claimed purpose the petitioner-tenant will be entitled to statutory protection of Section 12 (6) of the 1973 Act for restoration of possession of the demised premises to him.

20. Consequently, the petitioner-tenant has failed to demonstrate any illegality in the judgments of the courts below warranting even issuance of notice to the respondent-landlady what to talk of the interference with the same and the revision petition being devoid of any merit is liable to be dismissed.

21. However, it may be observed that while ordering ejectment of the petitioner-tenant the learned Rent Controller had given two months time to the petitioner-tenant for vacating the demised premises which expired during pendency of the appeal. Therefore, in the eventuality of the petitioner-tenant submitting an undertaking before the learned Rent Controller within one week from the receipt of certified copy of this order undertaking to vacate the demised premises on expiry of three months, the petitioner-tenant may be granted three months time to vacate the same.

22. With the above observations revision petition is dismissed.

(ARUN KUMAR TYAGI)
JUDGE

09.04.2019
Kavneet Singh

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