

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

CR No.1941 of 2019(O&M)

Date of decision: 24.5.2019

Inderjit Singh

.....Petitioner

VERSUS

T.R. Sachdeva and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Navjot Singh, Advocate for the petitioner.

REKHA MITTAL, J.

Challenge in the present petition has been directed against concurrent findings of fact whereby application filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') for ejectment of the petitioner from shops bearing No.2 and 3 forming part of property No.8, Adarsh Nagar, Jalandhar detailed in head-note of the eviction application was allowed by the Rent Controller, Jalandhar vide order dated 29.08.2017 on the premise that the respondents require the shops for their bona fide use and occupation. The appeal preferred by the petitioner did not find favour with the Appellate Authority, Jalandhar vide order dated 25.01.2019.

The respondents/petitioners sought the eviction on the ground of arrears of rent, change of user, bona fide personal necessity, building being in dilapidated condition and alterations without consent/permission

of the landlord. However, the eviction was ordered only on the ground of bona fide personal necessity.

A relevant extract from sub-para (c) of para 2 of the eviction application, relevant in the present context, reads as follows:-

“(c) The petitioner has got the personal necessity for bonafide reasons and need the same for his personal needs and occupation for himself and for his sons. His one son is an Advocate and the other is in Sports business and they have insufficient space for their daily work respectively causing them great inconvenience. The second son has to open sports goods show room in the premises in question as there is sports market, near the premises required.”

There is no dispute that property in question is owned by Shakuntala Sachdeva – applicant No.2 therein and Sh. T.R. Sachdeva – applicant No.1 has claimed himself to be landlord on the allegations that tenancy was created by him. There is no dispute between the parties with regard to relationship of landlord and tenant and so also entitlement of Sh. T.R. Sachdeva to maintain the eviction proceedings.

Sh. T.R. Sachdeva appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.PW1/A wherein he detailed need of the premises in question for the purpose of making a showroom and residential portion to be constructed on the back of showroom.

Counsel for the petitioner would argue that sons of the petitioners namely Varinder and Raman are not dependent upon the respondents and they are residing with their families in their own property as has been admitted by respondent No.1. He has further submitted that the total property is measuring 30 marlas and area measuring 20 marlas is

lying vacant. It is argued that despite the respondents being in occupation of vacant area measuring 20 marlas, they have not raised construction of residential portion. The front of the property is about 100 feet out of which only 18 feet is in possession of the petitioner, therefore, the remaining frontage is with the respondents or their son Raman Sachdeva who is doing business in the third shop which has 9 feet front. Further, respondent No.1 has admitted that area of shop in possession of his son can be extended towards backside. It is argued with vehemence that in view of the facts elicited in cross examination of respondent No.1, findings recorded by the Courts qua bona fide necessity suffer from illegality rather perversity.

I have heard counsel for the petitioner, perused the impugned orders, copy of the site plan and testimonies of respondent- T.R. Sachdeva and his son Varinder Sachdeva, copies whereof were supplied during the course of hearing.

Before adverting to the submissions made by counsel for the petitioner, it is pertinent to recapitulate that landlord is the master of his need and the tenant cannot dictate as to how he can satisfy his need by using other portions of the property. Equally settled is that neither the Court nor the tenant can curtail the genuine and bona fide need of the landlord. When a petition for eviction on the ground of personal necessity is filed, the Court would not proceed with a presumption that the same is not genuine. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Sarla Ahuja Vs. United India Insurance Company Ltd., 1998 (2) RCR (Rent) 533** and a relevant extract therefrom reads as follows:-

“The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for

occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself...”

There are concurrent findings recorded by the Courts accepting plea of the respondents that tenancy premises is bona fide required for personal use and occupation of the petitioners as they want to use the entire property for the purpose of residence on the backside and a showroom on the front side, to be constructed on the front side including the shops in question that covers front to the extent of 18 feet.

Hon’ble the Supreme Court in **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh, 2014 (4) RCR (Civil) 162** has held in the penultimate para, reads thus:-

“We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate

Authority because on re- appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law.

A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper.

The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first

appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

The Courts approved view taken in **Rukmini Amma Saradamma v. Kallyani Sulochana and others, 1993 (1) RCR (Rent) 346** and held that decision of the Court in **Ram Dass Vs. Ishwar Chander and others, 1988 (1) RCR (Rent) 625** must be read as explained above and accordingly answered the reference.

Before proceeding further, it is pertinent to note that in the referred authority provisions of Section 15 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 were taken into consideration in addition to Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The provisions of Section 15 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 are *mutatis mutandis* the same as that of the Punjab Rent Control Act (East Punjab Urban Rent Restriction Act, 1949), relevant in the present context.

After recapitulating the settled legal position, this Court would analyze the present case in the light of submissions made by counsel for the petitioner. The plea of respondents is that the entire property bearing No.8, Adarsh Nagar, Jalandhar is to be used for the purpose of constructing residence on the back and a showroom in the front. The respondents are at present residing with their son in his house at village Malko. One of the portions of the property in question is being used by Raman, the second son of the respondents for doing business of sports goods. T.R. Sachdeva in his testimony on oath has stated that petitioner

wants to construct a showroom of sports goods by demolishing the suit property as well as other adjoining shops and he wants to start sale of sports goods business in the said showroom. He shall manage the sports goods showroom and supervise the entire business. There is no challenge to testimony of T.R. Sachdeva that he was doing business of sports goods for the past 20-25 years. The fact that shop in occupation of Raman wherein he is doing sports business, can be extended towards backside cannot be construed in favour of the petitioner as the tenant cannot dictate terms to the landlord how the other portion of the building can be used for satisfying the need or how else landlord can accommodate himself in the other portion of the building in question. Similarly, the fact that the property has front measuring 100 feet out of which the tenant is in occupation of two shops with front measuring 18 feet cannot be ground to reject claim of the respondents that the remaining front can be used for constructing a showroom. I have gone through testimony of Sh. T.R. Sachdeva but find myself unable to accept contention of the petitioner that consistent findings recorded by the Courts suffer from procedural irregularity much less illegality, warranting intervention in exercise of limited revisional jurisdiction.

In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly dismissed in limine.

MAY 24, 2019
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no