

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

CR No.2055 of 2019(O&M)

Date of decision: 21.5.2019

Suresh Kumar

.....Petitioner

VERSUS

Satyadev

.....Respondent

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Sanjay Vashisth, Advocate for the petitioner.

REKHA MITTAL, J.

Challenge in the present petition has been directed against concurrent findings of fact recorded by the Courts whereby the petitioner has been ordered to be evicted from tenancy premises on the ground of bona fide personal need of the respondent/landlord.

The plea of the respondent/landlord is that he has three shops in total. The demised premises is in possession of the petitioner. Second shop is with Mahender and the third shop is in occupation of Geeta Devi wife of the respondent wherein she is running Beauty Parlour. The respondent requires the tenancy premises for running his business.

The Rent Controller answered issue No.1 pertaining to personal necessity in favour of the respondent and accordingly the eviction application was allowed vide order dated 24.12.2015 and the petitioner/tenant was directed to hand over vacant possession of demised premises within two months. The appeal preferred by unsuccessful

petitioner came to be dismissed by the Appellate Authority, Narnaul vide order dated 02.02.2019.

Counsel for the petitioner has not disputed that the respondent has three shops including the shop in dispute in the given area. He has also not disputed that one of the shops is in occupation of Mahender and the second one is under his tenancy. However, it has been contended that the respondent has failed to adduce cogent and convincing evidence to establish his plea that in the third shop, Geeta Devi, his wife, is running Beauty Parlour and as such the third shop is available to the petitioner for his use and occupation even if he wants to start his business. To bring home his contention, it is argued that the third shop was under tenancy of Tata Indicom and even till date the shutter of the said shop has the paint and name of Tata Indicom. It is further submitted that the respondent appeared in the witness box and he was confronted with the photographs, correctness whereof was admitted by him and in the photographs the shop stated to be in occupation of Geeta Devi is shown to be closed.

I have heard counsel for the petitioner, perused the paper-book and records.

Before advertng to the submissions made by counsel for the petitioner, it is pertinent to recapitulate the observations made by Hon'ble the Supreme Court in **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh, 2014 (4) RCR (Civil) 162** 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 Court approved the view taken in **Rukmini Amma Saradamma v. Kallyani Sulochana and others, 1993 (1) RCR (Rent) 346** and held that decision in **Ram Dass Vs. Ishwar Chander and others, 1988 (1) RCR (Rent) 625** must be read as explained above and accordingly answered the reference.

Satyadev – respondent appeared in the witness box and reiterated his version set out in the eviction application that tenancy premises/ disputed shop is required for his bona fide use and occupation to start his business, by way of affidavit Ex.PW4/A filed in examination in chief. In his cross examination, he has deposed about letting out third shop to Tata Indicom for a period of 36 months. However, he stated that the said tenant vacated the shop even before expiry of period of 36 months and was not let out thereafter. Voluntarily stated that the said shop was given by his father to respondent’s wife. The respondent was cross examined at length but nothing tangible and material has been brought-forth in his cross examination to disbelieve his version that the third shop is in occupation of his wife and used for Beauty Parlour business. The mere fact that the respondent has admitted correctness of the photographs Ex.R1 to R4 is not at all sufficient to record a finding that the said shop is lying closed or is actually in occupation of the respondent, thus, available to satisfy his need.

Counsel for the petitioner has failed to point out any materials on record to successfully controvert plea and testimony of the respondent that the third shop is in occupation of his wife and she is doing the business of beauty parlour. Counsel for the petitioner has also failed to advance any meaningful arguments to point out that either the Courts below have failed to consider evidence that has material bearing on adjudication of bona fide necessity of the respondent or has mis-interpreted the evidence available on record. In this view of the matter, I do not find an error or procedural irregularity much less illegality or propriety in the orders impugned.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed in limine.

MAY 21, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no