

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

**Civil Revision No.2298 of 2019 (O&M)
Date of Decision: April 29, 2019.**

M/s Puran Singh and sons through its Proprietor and another

.....PETITIONER(s).

VERSUS

Komal Sharma

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Anil Chawla, Advocate
for the petitioner (s).

Mr. S.K. Sandhir, Advocate
for caveator-respondent.

SURINDER GUPTA, J.

This is revision against the order of ejectment of petitioners-tenants from shop situated in building bearing Khana Shumari No.1287, Blue Plate and Black Plate No.841 at Chowk Manna Singh, Amritsar (later referred to as the demised premises).

Respondent Komal Sharma sought ejectment of petitioners-tenants from the demised premises on the ground of non-payment of rent w.e.f. 31.08.2012 and personal bona fide requirement of the same by the respondent-landlady and her son Rahul Sharma, whom she wanted to settle in business. She has alleged that her husband is also doing business of selling cloth and he needs space to store the cloth in the shop in question, It was also alleged that petitioners-tenants have changed the nature of the business and in violation of the terms of the rent note, they have started

business of fast food, snacks, fried food etc. in demised premises.

The petitioners-tenants contested the ejectment petition inter-alia pleading that the rent for the period from September 2013 to April 2014 was sent to the respondents through money orders, which was not accepted by the respondent-landlady and the same has been deposited with the Court. Respondent-landlady has concealed about other properties owned by her in the urban area of Amritsar. Her husband also owned one commercial property of 50 square yard at Bhai Manjh Singh Road, Kot Mit Singh, Amritsar. The respondent-landlady also owns other shop in the same building of which the demised shop is a part. That shop was earlier in possession of a tenant, who was running the business in the name and style of "Dupatta House". She got vacated that shop and then let out the same to one Gurpreet Singh. Son of respondent is also studying in DAV School, as such, requirement of the demised premises for his need was not genuine.

Pleadings of the parties led to the framing of issues as follows:-

- “(1) Whether the petitioner is entitled to claim the relief of eviction of the respondents on the ground of non payment of rent, as prayed for?OPP
- (2) Whether the petitioner is entitled to claim the relief of eviction of the respondents on the ground of personal and bonafide requirement, as prayed for? OPP
- (3) Whether the petitioner is entitled to claim the relief of eviction of the respondent on the ground that the respondent(s) has(have) changed the nature of the business in violation of the terms of rent (sic note), as prayed for? OPP
- (4) Whether the petition is not maintainable? OPR
- (5) Relief.

As the rent was tendered, issue No.1 was decided against the

respondent-landlady. However, her requirement of the demised premises for her personal bona fide need was upheld. Issue No.3 was not pressed and finding on issue No.4 were recorded in favour of respondent-landlady as the relationship of landlady and tenant between the parties was admitted. The petitioners were ordered to be evicted and directed to hand over the vacant possession of the demised premises within a period of three months of passing of the order.

Not satisfied, petitioners-tenants filed appeal before the Appellate Authority, which was dismissed vide judgment dated 06.02.2019 by Appellate Authority, Amritsar.

Learned counsel for the petitioners has argued that after the commencement of Punjab Rent Act, 1995 (later referred to as Act of 1995), the petition filed by the respondent-landlady was not maintainable as per provisions of East Punjab Urban Rent Restriction Act, 1949 (later referred to as Act of 1949). Referring to the provisions of Section 20(2)(q) of Act of 1995, he has argued that the respondent-landlady had not become owner of the demised premises for a period of three years before filing of the ejectment petition, as such, this petition was not maintainable. The property was purchased by the respondent on 07.03.2013 and this petition was filed on 03.04.2013 i.e. before the expiry of period of three years. The shop, which was earlier with '*Daleke Gatka Bhandar*' was vacated and lying vacant. Respondent-landlady has not disclosed this fact while filing this petition. The need of the respondent-landlady otherwise stood satisfied and no more remains bona fide for the demised premises.

Learned counsel for respondent-landlady has argued that as per

provisions of Section 75 of Act of 1995, all cases and proceedings with regard to the tenancy created before the commencement of Act of 1995 shall be governed and disposed of as per provisions of Act of 1949, as such, provisions of Section 20(2)(q) of the Act of 1995 are not attracted to this case. The shop, which was earlier with '*Daleke Gatka Bhandar*' was vacated after the filing of the present petition, as such, there is no non-compliance of provisions of Section 13 of the Act of 1949 or concealment of any fact on the part of the respondent-landlady. The respondent-landlady has already given the clarification that she had stored her articles in that shop, which is not fit for business of her son. The authorities under the Rent Act, 1949 have already taken note of this fact and have committed no error while concluding that petitioners have failed to prove that the shop vacated by '*Daleke Gatka Bhandar*' is most suitable accommodation to start the business by the son of respondent-landlady.

The first point to be looked into is as to whether for the ejectment petition filed by the respondent-landlady after the commencement of Act of 1995, the provisions of that Act will be applicable or these shall be governed by the Act of 1949. To see the applicability of both the Acts, the date of creation of tenancy is most relevant and an important fact. In this case, it is not disputed that the tenancy of the demised premises was created much prior to the commencement of the Act of 1995. Section 3 (i) of the Act of 1995 clearly lays down that nothing in this Act shall apply to any premises let out before the commencement of this Act. Section 75 of Act of 1995 which deals with repeal and savings clause, also states that all the cases and other proceedings in respect of the premises let out prior to the

commencement of this Act shall be governed and disposed of in accordance with the provisions of Act of 1949. This fact repels the argument of learned counsel for the petitioners that the petition, which was filed on 03.07.2014, was to be governed by the provisions of Act of 1995.

The respondent-landlady put forth her bona fide need for the shop in question for her use; to start business of her son Rahul Sharma; and thirdly, for her husband, who is doing cloth selling business and required premises to store the clothes so as to run his business properly. The need was found bona fide by learned Rent Controller and Appellate Authority. The observations of learned Appellate Authority to this effect are reproduced as follows:-

“..... In this case when the evidence was led, son of the petitioner namely Rahul Sharma has appeared as AW1, stating that he is doing the profession of his family i.e. performing the last rites of dead person, which is their ancestral profession. He has already passed 10+2 to start his profession and his father Manjit Kumar used to collect the material for performance of last rites, thus shop is required for keeping the material. He has also stated that house and shop in dispute is near to the cremation ground and they have no other commercial property except for the demised premises.....”

Much emphasis has been put forth by learned counsel for the petitioners on fact that one shop which was earlier in possession of '*Daleke Gatka Bhandar*', was vacated by the tenant and is in possession of respondent-landlady. It appears that shop in question as well as shop in possession of '*Daleke Gatka Bhandar*' are part of the same building. While appearing as AW1, Rahul Sharma has stated that the shop vacated by

Gurpreet Singh, who was carrying on business in another shop in the same building under the name and style of '*Daleke Gatka Bhandar*' was given to a Hotelier for two months, who was in their brotherhood relations and it was not let out. Now, their goods are lying in that shop. Arwinder Singh, Civil Engineer, who prepared the site plan of the demised premises, has stated that when he visited the spot that shop was lying closed.

Komal Sharma, respondent-landlady while appearing as AW4 stated that the shop under the tenancy of '*Daleke Gatka Bhandar*' had not been vacated when this petition was filed. Now, that shop had been vacated and she has stored her luggage in that shop. From the evidence, this fact is amply proved that shop which was under the tenancy of '*Daleke Gatka Bhandar*' was not vacated when this petition was filed, as such, there was no occasion for the respondent-landlady to plead that shop is in her possession. She has disclosed its user after vacation, as such, there was no concealment of fact on the part of respondent-landlady.

Learned counsel for the petitioners has referred to the observations of a Co-ordinate Bench in case of ***Randhir Singh Rohilla Vs. Rajbir 2015(4) P.L.R. 325***, in support of his argument that non-disclosure of vacation of shop under the tenancy of '*Daleke Gatka Bhandar*' amounts to concealment of fact. The observations in above case are not applicable to the facts and circumstances of this case. In that case, landlady was in possession of one vacant shop and had let out two other shops. The facts of the case in hand are quite distinguishable as in this case, the landlady was neither in possession of any vacant shop at the time of filing of eviction petition nor had let out any shop thereafter. Reference was also made to the

observations of a Co-ordinate Bench of this Court in case of ***Thakar Dass Vs. Madan Mohan 2018(2) Rent LR 593***. In that case, the landlady had concealed the existence of third shop, when confronted with this fact in written statement she denied availability of that shop with her. However, in her statement, she admitted that third shop was being used by her for storing garbage and this fact was taken as concealment of material fact.

Learned counsel for the petitioners has also relied on the observation of Co-ordinate Bench in case of ***Banwari Lal Vs. Ram Parkash and Anr. 2009(2) R.C.R. (Rent) 160*** and ***Shankar Lal Vs. Madan Lal and others 2011(1) R.C.R. (Rent) 139***, wherein it has been held that the ingredients of Section 13 (3) (a) of the Rent Act are mandatory in nature.

As already discussed, respondent-landlady was not in possession of any other shop at the time of filing of the ejectment petition, as such, there was no occasion to plead that another shop was in her possession. It is not disputed during the course of arguments that shop vacated by '*Daleke Gatka Bhandar*' is a part of her house. A Co-ordinate Bench in case of ***Sunil Kumar Vs. Jagjiwan Kumar 2014(2) RCR (Civil) 635*** has observed that if a landlord has got vacated any shop from other tenant during the pendency of the ejectment petition and the same was made part of the residential premises, it will not affect the bona fide need of the landlord projected for the demised premises which was subject matter of the petition. In this case, respondent-landlady has been alleging that her husband required the shop for storing his goods; she wanted to start her own business and to settle her son in the business in demised shop. The petitioners have failed to refute the bona fide need so projected by the

respondent-landlady and learned Rent Controller and Appellate Authority have committed no error while holding the need of the demised premises projected by the respondent-landlady as her bona fide need.

As a sequel of my above discussion, this revision petition has no merits.

Dismissed.

April 29, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***