

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

CR No.2698 of 2019 (O&M)

Date of Decision: September 05, 2019

Hawa Singh

.... Petitioner

Versus

Deepak Seth & Anr.

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. P.K.S.Phoolka, Advocate for the Petitioner.

Mr.Ajeet Pal Singh Pakka, Advocate for the
Respondents/Caveators.

SUDIP AHLUWALIA, J.

This Revisional Application is directed against the Judgment dated 20.02.2019 passed by the Ld. Appellate Authority, Bathinda in Rent Appeal No.17 of 2017 affirming the Judgment of the Rent Controller, vide which the Eviction Petition filed by the Respondents/Landlords under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 had been allowed.

2. The Respondents are the sons of deceased Smt. Savitri Seth, who was owner of the Building bearing MC No.400 (New No.2150), situated in Mohalla Madhokpura, Bathinda. The Building comprises of two Shops on the Groundfloor facing Kamal Cinema Road on the Western side. Out of those two Shops, the disputed Shop was let out to the Petitioner at a monthly rent of Rs.287.50 P, of which, the House Tax liability was to the tune of Rs.37.50 P, while Rs.250/- per month was the rent. Smt. Savitri Seth during her life time executed a Will on 14.12.1999 bequeathing the property in favour of the two

Respondents alone in equal shares, and to the exclusion of her husband and two daughters. As such, the Respondents became Landlords of the demised Shop. They filed Rent Petition No.57 of 2014 in the Court of Ld. Rent Controller, Bathinda seeking eviction of the Petitioner on the ground that the Shop in question was bonafidely and urgently needed by them for their use and occupation i.e. for the business need of Smt. Kiran Seth w/o Respondent No.2 Vinod Seth. It was made out in the Eviction Petition that the Respondents/Landlords were themselves carrying on business of General Order Suppliers in Red Cross Shopping Complex, The Mall, Bathinda, while the aforesaid Smt. Kiran Seth, who was issueless, had previously been carrying on business of Creche, apart from taking private Tuition at her residence. But the said business failed and therefore, she intended to start a fresh business of Ladies Boutique and Readymade Garments in the demised Shop as she herself holds a Diploma in Fashion Designing, which was granted to her by the National Institute of Fashion Designing.

3. The Eviction Petition was allowed in favour of Respondents/Landlords by the Ld. Rent Controller and the Appeal preferred against such decision was dismissed by the Ld. Appellate Authority, vide its impugned Judgment dated 20.2.2019. Both the Ld. Courts below after perusing the evidence and material on record came to the conclusion that the Landlords had succeeded in making out a case of bonafide requirement of the demised Shop for the purpose of starting business of Boutique and Readymade Garments by Smt. Kiran Seth as claimed by them.

4. It was contended on behalf of Petitioner before this Court that Claim of the Landlords/Respondents was misleading and fanciful, as they also had another Shop adjoining the demised Shop on its Northern side. This Court is in agreement with the findings of both the Courts below that such contention raised on behalf of the Tenant in this regard is not tenable. This is so because it was nowhere the case of Landlords that the adjacent Shop situated on the Northern side of the demised Shop did not belong to them. On the contrary, their case was that the said Shop was given at the relevant time on rent to one Partap Singh, and in any case, they required both the Shops together for the purpose of starting business of Boutique and Readymade Garments, since dimensions of two Shops were also modest, the breadth in each case, being only 11'x 6", while length of the demised Shop is 7' x 5". It is the settled law that Landlord is the best Judge of his requirement and it is not for the Tenant to suggest as to how he should utilize his property for his own business, and claim of the Landlords regarding personal requirement is not presumed to be not genuine, unless the facts and circumstances indicate any manifest absurdity in such claim, which is undoubtedly not the position in the present case.

5. Another contention raised on behalf of Petitioner is that the Eviction Petition was barred by the principle of resjudicata inasmuch as an earlier Eviction Petition filed by the Erstwhile Landlady/deceased Savitri Seth seeking eviction previously in 1996, was dismissed on merits. But this contention is also not tenable considering that the previous Eviction Petition was dismissed

inasmuch as the deceased/landlady had sought possession of the demised premises, which is a commercial property, by claiming that it was required by her for 'residential purposes', which the concerned Courts naturally found untenable and preposterous. But the Claim in the subsequent Eviction Petition is of bonafide requirement of the premises for commercial purposes itself. As such, the ostensible bar of resjudicata clearly does not apply to the subsequent Petition.

6. In view of the above observations, this Court finds no merit in this Revisional Application, which is accordingly dismissed. Considering however, that the Petitioner has been in occupation of the demised premises, which is commercial in nature for a very long time, he is granted time till the end of this year i.e. 31.12.2019 to peacefully vacate the same, during which period, any execution proceedings pending against him shall remain stayed, but subject to his continuing making payment of the admissible rent regularly and promptly within the 15th day of each calender month, after clearing all outstanding dues, if any, within the 15th day of this month i.e. September, 2019. Failing this, the Respondents/Landlords would be at liberty to seek execution of the Eviction Decree against him forthwith.

(SUDIP AHLUWALIA)
JUDGE

September 05, 2019
AS

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |