

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

**Civil Revision No.2903 of 2019 (O&M)
Date of Decision:May 16, 2019.**

M/s Aggarwal Traders and another

.....PETITIONER(s).

VERSUS

Narinder Mohindru and others

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate
for the petitioner (s).

Mr. Nippun Sharma, Advocate with
Mr. Namit Gautam, Advocate
for caveators-respondents No.1 and 2.

SURINDER GUPTA, J.

Respondents No.1 and 2-landlords filed petition under Section 13 of East Punjab Urban Rent Restriction Act, 1949 (later referred to as the Act) for ejectment of petitioners M/s Aggarwal Traders and its sole proprietor Vijay Kumar from shop forming part of property bearing No. EF-85 Mandi Fantonganj, Jalandhar on the grounds of non-payment of rent and personal bona fide necessity of respondents No.1 and 2-landlords.

As the arrears of rent were paid, the ground seeking ejectment of petitioners for non-payment of rent was held as redundant. Respondents No.1 and 2-landlords have projected their need for the ground floor of property bearing No.EF-85 for business purpose. Learned Rent Controller while upholding the contention of petitioners-tenants regarding bona fide

requirement of the demised shop, observed in para 13 as follows:-

“13. As such, as per law discussed above, there is presumption of need in favour of the petitioner and once there is presumption, onus shifts upon the respondent to rebut the same. To rebut the presumption, respondent is stating that the property is residential and residential property cannot be vacated for commercial purposes.”

The plea raised by the respondents-landlords was, however, discarded with the observations as follows:-

“15. The question which arises is here that whether building from which the ejectment is sought by the petitioner for business purpose, is residential building or commercial. The petitioner no.1 himself in the cross-examination dated 01.02.2017 has clarified the nature of building as he has stated that “ It is correct that demised premises is a triple story building. It is correct that first and second floor is being used for residential purpose.” Thus even the petitioner no.1 is explaining the nature of building in his cross-examination to be situated a residential building. Even in the rent note it is mentioned that one shop is rented out of the house bearing no. EF-85, Mandi Fentonganj, Jalandhar. The petitioner has himself clarified in the cross-examination and in his site plan Ex.A3 that ground floor of the building comprise of shops, and rest of the building comprises of residential building.”

Learned Rent Controller observed that the residential property cannot be got vacated for non-commercial purpose, even if it has been let out for non-residential purpose and dismissed the petition.

Respondents No.1 and 2-landlords filed appeal before the Appellate Authority, Jalandhar and learned Appellate Authority after

question for commercial purposes and cannot raise the objection that this is a residential building. The need of the landlord for demised premises was held as genuine and ejection of the revision petitioners from the demised premises was ordered.

Learned counsel for the revision petitioners has relied on the observations in case of *Shri Hari Mittal Vs. Shri B.M. Sikka (1986-1) PLR page 1*, to argue that since no written permission was obtained by the landlord from the Rent Controller under Section 11 of the Act to convert the residential building into non-residential, as such, letting out of demised premises for non-residential purpose gives him no right to get it vacated for his need of the shop in question to start business therein.

A similar question was raised before a Co-ordinate Bench in case of *Smt. Savinder Kaur Vs. M/s Pindi Paint Stores Agency 1997(1) PLR 212*, wherein learned counsel for tenant had relied on the observations in case of *Shri Hari Mittal Vs. Shri B.M. Sikka (supra)*, while arguing that “since no written permission was obtained by the landlord from the Rent Controller under Section 11 of the Act, it cannot be held that demised premises has non-residential character even if it was let out for that purpose.” The Co-ordinate Bench considered and distinguished the observations in case of *Shri Hari Mittal Vs. Shri B.M. Sikka (supra)* in para 23, 25 to 27 of above judgment as follows:-

“23. While deciding a case on identical facts a Single Bench of this Court in *Lal Chand's* case (supra) held that the premises in dispute are two shops on the ground floor of the larger building,- the major part of which is no doubt residential in character, but at the same time it cannot be disputed that the shops in dispute which have

been let out to the petitioner are non-residential in character. These two shops are a building falling within the scope of clause (a) of [section 2](#) of the Act. Merely because these two shops in the form of building are integral part of the larger building as known in the common parlance, predominant part of which is residential in character, it is difficult to hold that these shops are a residential building and not a non-residential one. The shops have admittedly been let out to the petitioners solely for running his business. Therefore, these shops are to be treated as non-residential building within the meaning of clause (d) of [section 2](#) of the Act. It is also observed that the ratio of *Hari Mittal's* case (supra) and *Gurbax Rai Sood v. Karnail Singh, (1986-2)89 P.L.R. 598* is not even remotely applicable to the facts of the case in hand. While letting out shops -- solely for the purposes of business it was not necessary to secure written permission of the Rent Controller under [section 11](#) of the Act.

25. The distinction between residential and non-residential building was also considered in [Raghubir Seth v. Ram Sarup, \(1993-2\)104 P.L.R. 487](#). It was held therein that the ground floor was let out as godown and was used as such for 30/40 years, while its first and second floors were used as residential building. On these facts, it was held that the ground floor cannot be treated as residential building. Specified landlord is not entitled to eject tenant on ground of bonafide requirement for residence. This contention was also repelled that no permission under [section 11](#) of the Act was taken by the landlord to convert residential building into non-residential.

26. In [Ram Gopal v. Sher Singh, \(1995-2\)110 P.L.R. 445](#) also the facts were similar. In that case also ejectment of

tenant was sought from a shop which was a part of the residential building. Building was constructed in commercial area. The Court held that shop being part of the residential building is irrelevant. The building is situated in commercial area and demised premises was let out for running a shop, which was a part of residential building. On these facts, ejectment petition was dismissed.

27. Thus, in my considered view, the Rent Controller has rightly held that the demised premises is non-residential building, though it is a part of residential building.”

Another Co-ordinate Bench of this Court in case of ***Vijay Kumar Vs. Charanjit Singh and others 2019(1) RCR (Rent) 17***, again examined this question and observed as follows:-

“28. It has been repeatedly held by this Court that in the absence of any zoning plan, scheme or notification proving the residential or non residential character of a building, the purpose for which the demised premises was let out would determine its character as residential or non residential.

29. In ***Anima Biswas v. Gurbachan Singh 2010 (4) R.C.R. (Civil) 688***, it was observed thus:

“14. Undisputedly, the area where building is situated could not be proved to be residential zone by placing any scheme, notification, house tax assessment register. Rent receipts issued by the father of the landlord and thereafter by the landlord, contain that rent is being received for two shops. The demised premises was let out initially for non-residential purpose i.e. to run clinic and part of which was never used for residential purpose, hence, in my view, demised

premises shall fall within the definition of non residential building.”

30 In **Arun Kumar v. Ashok Kumar Chhabra 2011(1) R.C.R. (Rent) 138** it was observed as under:

“9. The nature and character of the tenanted premises for the purpose of determination of the controversy in hand will not make much of difference for two reasons - one is that after the decision of the Supreme Court in Harbilas Rai Bansal v. State of Punjab, 1995(2) R.C.R. (Rent) 672 (S.C.), the ground of personal necessity is equally applicable to both residential and non-residential buildings and can be availed of by a landlord to seek eviction of the tenant and the second is that the petitioner had pleaded that the tenanted room was being used by the respondent as a shop which fact has not been denied by the latter in his cross examination. In addition to this, the tenanted room is required by the petitioner for setting up a shop for his son which is again a commercial purpose for which the same is already being used by the respondent since 1977.

10. Having regard to the aforesaid when the respondent himself has admitted that since 1977, he has been using the tenanted room as a shop, he cannot question the status of the building to be a residential so as to deny the petitioner the benefit of the same very purpose for which it is being used.”

31. In **Satpal Chadha v. Satish Kumar 2011(3) R.C.R. (Civil) 283** it was held as under :

“8. After taking into consideration the precedents referred to by both learned counsel for the

parties, I am also of the view that the demised premises in both the cases, which is though a part of a residential building and is being used for non-residential purpose by the tenants, is a separate non-residential building and fall within the definition of non-residential building for which landlords can seek eviction of the tenants for the non residential purposes and not for residential purposes. Insofar as the bona fide necessity is concerned, a concurrent finding has been recorded by the Courts below and no case is made out by learned counsel for the tenants to persuade this Court to take a view different from the view taken by the Courts below in order to disturb the said finding.”

32. Admittedly, in this case as per the rent note Ex P-6 the premises taken on rent had been described as a shop. It was being used by the respondent as such. Eviction therefrom is also being sought to use the same as a shop. Thus eviction could be sought for its use for non-residential purposes.”

Learned Appellate Authority looked into nature of demised premises, its location in a commercial area of Jalandhar known as Mandi Fantonganj, user of demised premises, its letting out for commercial purposes etc., while observing that portion of the residential building let out for commercial purpose can be got vacated for commercial purpose.

Law has undergone a sea change after the decision of Full Bench in ***Shri Hari Mittal Vs. Shri B.M. Sikka (supra)***. At that juncture, a non-residential premises could not be got vacated on the ground of personal bonafide need of landlord. In case of ***Harbilas Rai Bansal and Anr Vs.***

notification of Punjab Government dated 24.09.1956, whereby right of landlord to evict his tenant from non-residential building on ground of his bona fide need was taken away and held that even a non-residential building can be got vacated for personal bonafide requirement of landlord. Full Bench in case of *Shri Hari Mittal Vs. Shri B.M. Sikka (supra)*, has confined its observations to applicability of provisions of Section 11 of the Act and when it observed in para 30 as follows:-

“30. The reference made by the learned single judge is answered in the affirmative and it is held that a residential building let out for non-residential purpose by the landlord without obtaining the written permission of the Rent Controller in terms of section 11 of the Act would continue to be a residential building and the landlord would be entitled to seek ejectment of the tenant on the ground of his bona fide personal requirement.”

It was nowhere observed that if a portion of a residential premises in a commercial area has been let out for non-residential purposes, it operates as a bar for the landlord to get it vacated for his non-residential bonafide need.

In view of the above settled proposition of law, I find no reason to differ with the view taken by the Appellate Authority on the above legal proposition. Consequently, this revision petition has no merits.

Dismissed.

May 16, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No