

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

Civil Revision No. 6546 of 2019 (O&M)

Date of decision : October 17, 2019

Paramjit Singh

.....Petitioner

Versus

Kuldip Singh Rathor

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Veneet Sharma, Advocate
for the petitioner.

LISA GILL, J.

The petitioner (tenant) is aggrieved of order dated 23.03.2018 passed by the learned Rent Controller, Amritsar as well as judgment dated 20.08.2019 passed by the learned Appellate Authority, Amritsar whereby ejection of the present petitioner has been ordered.

Brief facts necessary for the adjudication of the case are that the respondent – landlord filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short - 'the Act') seeking ejection of the petitioner on the ground of non-payment of rent and personal bonafide necessity. It is pleaded that the landlord, is the owner of the demised premises, which was originally given on rent to Kartar Kaur wife of Puran Singh who is the mother of the tenant, for a monthly rent of ₹175/- per month. Subsequently, a rent note was executed by Kartar Kaur on 04.04.1991 containing terms of tenancy. The present petitioner had earlier filed suit for permanent injunction against the landlord claiming himself to be in possession of the demised premises as tenant. It is, thus, pleaded that relationship of landlord and tenant existed between the parties.

It is further pleaded that arrears of rent w.e.f. 01.01.2012 have not been

paid. Personal bonafide necessity was pleaded by the landlord to the extent that he required the shop for the use and benefit of his son namely Harpreet Singh, aged about 33 years. It was pleaded that Harpreet Singh who had completed his Bachelor of Arts, PG Diploma in Computer Application, wanted to start his own computer and allied business from the shop, to earn his livelihood. It is further stated that the shop forming part of the residential property was suitable for the computer business. Moreover, the demised building, it is stated, consisted of two shops in front of the house. One of the shops is stated to be in possession of the respondent – landlord where he is stated to be taking tuitions to earn his livelihood. The second shop is in possession of the tenant, who is sought to be evicted. It is specifically pleaded that the landlord was not in possession of any other shop except the one from where he is taking tuitions within the urban area concerned and that neither his son Harpreet Singh was in occupation of any other commercial shop in the said area nor they had vacated any such premises without any sufficient cause, after the commencement of the Act.

Present petitioner resisted the petition taking preliminary objections to the extent that the respondent – landlord had other similar properties within the Municipal Corporation, Amritsar. It is denied that the tenant was in arrears of rent or that the landlord had any personal bonafide necessity. It is alleged that the landlord's son was already working with some company and earning handsomely. It is further denied that the landlord was taking any tuitions in the adjoining shop. Dismissal of the petition was prayed for.

Following issues were framed by the learned Rent Controller :-

- 1) Whether the respondent is in arrears of rent? OPP
- 2) Whether the demised shop under the occupation of

- respondent and is required by the applicant bonafide?OPR
- 3) Whether the present application is not legally maintainable ?
OPR
- 4) Whether the applicant has not come to the court with clean hands?OPR
- 5) Whether the applicant has no cause of action to file the present application?OPR
- 6) Relief.

Learned Rent Controller on considering the evidence on record concluded that the ground of non-payment of arrears of rent was not available with the landlord as the rent was tendered in Court. However, the landlord's petition was allowed on the ground of personal bonafide necessity of the landlord. Appeal preferred by the tenant was dismissed by the learned Appellate Authority vide impugned order dated 20.08.2019. Aggrieved therefrom, this petition has been filed.

Learned counsel for the petitioner vehemently argues that both the learned courts below have grossly erred in ordering ejectment of the petitioner. It is contended that the shop adjoining the demised premises, which are in occupation and possession of the petitioner, is lying vacant. Apart from the bald statement of the landlord, there is no evidence on record to show that any tuition centre is being run from the said shop. Therefore, in case the landlord's son wanted to run a computer Centre, he could have very well done the same, from the adjoining shop itself. It is further submitted that Harpreet Singh was admittedly working as a Guide and also filing his income tax returns. Therefore the need projected by the landlord is not bonafide but whimsical. Moreover, the landlord is admittedly a retired Assistant Registrar and he is not proved to be taking tutitons on the said premises. The landlord not having approached the Court with clean hands,

is not entitled to any relief. It is urged that both the learned courts below have, thus, grossly erred in ordering ejectment of the petitioner. In this view of the matter, it is submitted that the present petition be allowed and order dated 23.03.2018 passed by the learned Rent Controller, Amritsar as well as judgment dated 20.08.2019 passed by the learned Appellate Authority, Amritsar be set aside. Consequently, the petition filed by the landlord be dismissed.

I have heard learned counsel for the petitioner and have gone through the file with his able assistance.

It is a matter of record that the respondent is the landlord of the demised premises which had been given on rent earlier to Kartar Kaur. Relationship of landlord and tenant between the parties is not in dispute. Respondent – landlord sought ejectment of the petitioner – tenant on the grounds of non payment of arrears of rent and personal bonafide necessity. Ejectment has been ordered on the ground of personal bonafide necessity. A perusal of the file reveals that the respondent – landlord has successfully proved the existence of a bonafide personal necessity inasmuch as he requires the premises in question, for his son namely Harpreet Singh for running the business of computers therein. Learned counsel for the petitioner has vehemently argued that Harpreet Singh is already working and earning handsomely, therefore, the personal bonafide necessity set forth by the landlord is non-existent. However, this argument is bereft of any merit. Learned counsel for the petitioner is unable to deny that it has come on record that Harpreet Singh is working as a Guide. The said vocation is clearly not a permanent or regular vocation. As per the Income Tax Return of Harpreet Singh which has been duly filed on record by the landlord

reveals that Harpreet Singh is in receipt of ₹3,266/- per month. Learned Appellate Court has rightly observed that it cannot be opined that Harpreet Singh is in receipt of a handsome amount. Educational qualifications of Harpreet Singh have been proved on record which clearly show that he is a Graduate and well versed in computer education. Therefore, to say that there is no requirement of the shop in question for the purpose of Harpreet Singh starting the business of computer therein, is devoid of merits.

Similarly, the argument that the landlord himself having retired as Assistant Registrar is not expected to give tuitions and in any case is not having any requirement or need of any supplement to his income, is patently misconceived and unacceptable. Merely because a person has retired cannot lead to a presumption that he cannot carry on with any other work or as is in the present case, he is not capable of doing tuition work. Both the learned courts below have returned a concurrent finding in a totally justified manner that there is no evidence on record to nullify the stand of the landlord in this respect. Clearly the plea raised on behalf of the petitioner to the extent that the computer business, if any, can be set up in the existing shop already in possession of the landlord is not tenable, hence rejected.

It is a settled position of law that it is not for the tenant to dictate the landlord in respect to the manner of use of the premises and neither can the courts proceed on an assumption that the need or requirement of the landlord is not bonafide. The suitability or otherwise of the premises has to be determined by the landlord. In the present case, both the learned courts below have rightly concluded that personal bonafide necessity of the landlord is duly established by the evidence on record. It is pertinent to note at this stage that the Hon'ble Supreme Court in **Hindustan**

Petroleum Corporation Limited versus Dilbahar Singh (2014) 9 SCC

378 that the scope of revisional jurisdiction is indeed a limited one. Pure findings of fact, until and unless perverse and opposed to the evidence on record should not be interfered with. It is specifically observed that:

“ 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 reappreciate 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.”

Both the learned courts below have rendered concurrent findings of fact, which do not call for any interference by this Court in exercise of revisional jurisdiction.

No other arguments has been addressed.

Keeping in view the facts and circumstances of the case, this

revision petition is dismissed being devoid of any merit without any order as to costs. However, the petitioner is afforded four weeks from today to hand over the vacant peaceful possession of the premises to the landlord.

October 17, 2019
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No