

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

CR No.328 of 2019(O&M)

Date of decision: 9.5.2019

Pawan Kumar Gaddi and another

.....Petitioners

VERSUS

Satish Kumar and others

.....Respondents

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

Present: Mr. Harkesh Manuja, Advocate for the petitioners.

REKHA MITTAL, J.

Challenge in the present petition has been directed against concurrent findings of fact whereby the petitioners have been ordered to be evicted from the tenancy premises i.e. property measuring 15' x 33.9" square yards marked by letters ABCD in the site plan attached with the eviction application, on the ground of personal necessity of Dr. Satish Kumar – respondent No.1.

The respondents (successors in interest of Sh. Jai Bhagwan) filed the eviction application and one of the grounds of eviction is that the tenanted premises is required for personal use and occupation of respondent- Satish Kumar and his son. It is averred that respondent No.1 is practising as Senior Doctor and compelled to carry out his practice in the backside of main road. He has been requesting the petitioners to vacate the suit property from the time he completed his M.D. in 1985 so that he

can get sufficient and proper space to carry out his practice. Respondent No.1 also needs the premises to settle his son in business.

Counsel for the petitioners would argue that on the ground floor of property No.13, Lajpat Colony, G.T. Road, Panipat, there are two rooms facing G.T. Road which were let out to late Sh. Hari Chand Gaddi and another tenant. The respondents filed eviction application against both the tenants and the second tenant has already vacated portion in its occupation. It is further argued that respondent NO.1 is doing practice in the two rooms which are on the back of two shops that abut main G.T. Road. It is argued with vehemence that respondent No.1 has not adduced any evidence with regard to number of patients examined by him in a day or month in the OPD, number of staff members working at his clinic, the magnitude of his present practice, therefore, need projected by the respondents is bereft of bona fide and it is mere desire and wish of the respondents with an intent to evict the petitioners from the premise in respect whereof the tenancy was created in the year 1972. It is further argued that though requirement and desire both have element of need but the respondents cannot seek eviction without proving bona fide requirement. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **Kempaiah Vs. Lingaiah and others, (2001) 8 SCC 718, Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, AIR 1999 SC 2507.**

Counsel would inform that son of respondent No.1 unfortunately passed away during pendency of eviction application and as such requirement of Deepak son of respondent No.1 no longer subsists.

I have heard counsel for the petitioners, perused the paper-book and copies of documents supplied during the course of hearing.

Indisputably, Satish Kumar son of Sh. Jai Bhagwan (erstwhile owner of the suit property) is a doctor by profession and he is running his clinic (OPD) in two rooms situated on the back of two shops including the shop in question and the shops are situated on the main G.T. Road, Panipat. Dr. Satish Kumar – respondent No.1 appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.PW1/A. A relevant extract from his affidavit pertaining to his need of the premises in question, reads as follows:-

“5. That now the deponent is a practicing Senior Doctor of aged about 66 years and compelled to carry out his practice in backside of the main road, hence he is suffering a great financial, mental and social loss. He has been requesting to the respondents to vacate the suit property from the time he completed his M.D. degree in 1985, so that he can get sufficient and proper space to carry out his practice. This long time from 1986 to 2014, turned the deponent from a young doctor to Senior Citizen, but the respondents never cared to listen to his request, but it seems that the respondents having malafide intention and keeping in view their ulterior motive, the deponent and sisters have preferred to file the present petition.....”

In sub para (iii) of para 11 of the affidavit, his deposition reads as follows:-

“That the deponent require the demises premises for his own occupation. The deponent is not having any other property in the urban area, in which he can extent his clinic. The deponent is in dire need of demise premises to extend his clinic, as the demise premises abutting towards main G.T. Road, at red Light Chowk Panipat, which is a prime location in the City. The deponent has to start the business of his young son namely Deepak, but the son of deponent has been expired unfortunately, during the pendency of the present petition and now the deponent is in need of demise premises for his bona fide necessity. The deponent’s requirement is quite bona fide and petitioners No.2 & 3 have also given permission to their brother i.e. deponent to extent his clinic, because after the death of his son, the deponent has to fulfill more responsibilities towards his family, for which he has to extend his clinic into a hospital. The demised premise is situated at such a place, where there are very huge chances of growth and establishing the hospital. The deponent is a qualified and well known doctor of the city.”

The witness was cross examined at length in 5 to 6 sittings on different dates. On due consideration of cross examination of respondent No.1, it becomes undisputed position of the case that there is no challenge to his testimony with regard to demised premises being required by him for the purpose of extending his clinic in order to have better practice as a doctor. No such facts have been elicited in his cross examination which create even a slightest doubt with regard to bona fide of respondent No.1 to

use the premises in question for the purpose of extending his clinic as a practising doctor.

Counsel for the petitioner has not disputed the settled position in law that if the landlord shows a prima facie case of bona fide requirement, the Court has to proceed with a presumption that requirement is bona fide. Equally settled is that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of tenanted premises. Neither the tenant nor the Court can curtail genuine and legal demand of the landlord for use and occupation of the tenanted premises either for extension of his business or starting a new business even if he is carrying out business from different premises.

The tenancy in the present case was created way back in the year 1972. There is nothing on record suggestive of the fact that prior to the present eviction application, the respondents ever sought eviction of the petitioners or their predecessor in interest. Keeping in view the above, it is difficult to accept contention of the petitioners that concurrent findings recorded by the Courts suffer from material irregularity much less illegality that would call for intervention in exercise of limited revisional jurisdiction. As such, the petitioners cannot derive any advantage to their contention from the cited authorities.

In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly dismissed in limine.

MAY 9, 2019
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no