

In the High Court of Punjab and Haryana at Chandigarh

CR-16411 of 2018(O&M)

Date of Decision:8.1.2019

Vikas Sharma

---Petitioner

vs.

Sushil Chopra

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.S.Bajaj, Advocate
for the petitioner

Rekha Mittal, J.

The present petition directs challenge against orders dated 6.12.2017 passed by the Rent Controller, Jalandhar and dated 19.11.2018 by the Appellate Authority, Jalandhar, whereby the application for eviction under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short “the Act”) filed by the respondent was allowed by the Rent Controller on the ground of personal necessity of the respondent and the Appellate Authority also affirmed findings of the Rent Controller qua eviction on the ground of personal necessity but further allowed eviction on the additional ground that the property in dispute is unfit and unsafe for human habitation.

The respondent-landlord filed the eviction application on the grounds of arrears of rent @ Rs. 500/- per month since March 1991; change of user; the demised premises is in dilapidated condition and not fit for human habitation and the property is required by the respondent for his

personal use and necessity for the office of his son Ashish Chopra who wants to start his own office being an Advocate.

The petitioner filed reply and raised preliminary objections inter alia that the petition is not maintainable; respondent has no locus standi to file the petition; site plan attached with the petition is wrong; respondent has not come to the court with clean hands and has suppressed true and material facts from the court. On merits, relationship of landlord-tenant between the parties is admitted and so also the rate of rent @ Rs. 500/- per month. It is averred that the respondent and his brothers used to take rent month by month but no receipt qua the same was issued in spite of demand. In the month of December 2012, the petitioner came to know about civil dispute between legal heirs of Janki Dass and the respondent or his brothers did not accept the rent thereafter. All other material averments on the basis of which the respondent sought eviction were specifically denied with a prayer for dismissal of the application.

The respondent filed rejoinder and reiterated his stand taken in the application and controverted the allegations raised in the reply.

The controversy between the parties led to framing of issues on 30.5.2014, reproduced in para 3 of the order passed by the Rent Controller.

The parties were permitted to adduce evidence in support of their respective claims. The respondent appeared in the witness box and examined Rakesh Chopra PW2 and Ashish Chopra PW3. The petitioner appeared in the witness box and examined Avtar Singh JE RW2 and Sukhdev Raj RW3.

The Rent Controller accepted claim of the respondent seeking

eviction on the ground of personal necessity for the office of Ashish Chopra PW3, son of the respondent. Vikas Sharma, the present petitioner preferred an appeal against order passed by the Rent Controller in which the respondent-landlord filed cross objections. The Appellate Authority dismissed the appeal filed by the petitioner whereas cross objections preferred by the landlord were partly allowed and the petitioner was ordered to be evicted on the additional ground that the tenancy premises has become unfit and unsafe for human habitation.

Counsel for the petitioner has assailed eviction on the ground of personal necessity on the sole premise that the respondent-landlord is in occupation of two other shops in the property in question, therefore, need projected by the respondent that the shop in question is required for the office of his son Ashish Chopra is not bona fide and genuine.

With regard to eviction on the ground of premises being unfit and unsafe for human habitation, it is argued that the petitioner examined Avtar Singh JE, B&R Branch Municipal Corporation, Jalandhar and his testimony is sufficient to rebut the report submitted by local commission, appointed by the Rent Controller.

I have heard counsel for the parties, perused the paper book particularly the orders impugned and statements of Sushil Chopra PW1, Rakesh Chopra PW2, Ashish Chopra PW3, Vikas Sharma RW1, Avtar Singh RW2 and Sukhdev Raj RW3, copies whereof were supplied by counsel for the petitioner during the course of hearing.

The respondent-landlord raised plea of personal necessity in sub para (iv) of para 3 of the eviction application. A relevant extract

therefrom reads as follows:-

“That the property in dispute is required by the petitioner for his son namely Ashish Chopra who is an advocate by profession who wants to start his own office in the property in dispute. The adjoining property is a passage and leads to the back portion. The petitioner is running his office in a small portion on the other side adjoining to the portion of Rakesh Chopra. Adjoining passage and back portion is under possession of the petitioner. The back portion has already fallen down. The accommodation under possession of the petitioner is insufficient to meet with his requirements.”

In the end of this para, it is stated that neither the petitioner nor his son owned or possessed any other suitable property to run the office as an advocate, nor they have vacated any such building within the limits of Municipal Corporation Jalandhar without any sufficient cause after commencement of the Act.

Counsel for the petitioner has carried me through cross examination of Sushil Chopra to bring home his contention that there are two other shops in possession of the landlord in the building in question. A part of cross examination highlighted by counsel for the petitioner, reads as follows:-

“There is no other tenant except Vikas Sharma in the property fallen to my share. Back side of the demise (sic) shop is vacant. Volunteered, same is in dilapidated condition. It is correct that on the both side of the

disputed shop are in my occupation. The property on the back side is use (sic) for my residence and my belongings are lying in the said building. It is correct that back portion as well front portion of building fallen to my share is double storey. It is wrong to suggest that false Ex. PW1/A has filed.”

A plain but careful reading of the aforesaid extract does not give an inkling that the respondent-landlord is in possession of two other shops in the disputed building. The only admission made by the respondent is that both the sides of the disputed shop are in his occupation. The respondent had already explained that passage adjoining to the shop is in his occupation that leads to the back portion of the building. He is in possession of a small portion used as his office adjoining to the portion that had fallen to the share of his brother Rakesh Chopra. Counsel for the petitioner has failed to point out from a site plan on record that there are two shops one each on both sides of the shop in question or the same are in occupation of the respondent-landlord. In this view of the matter, I find myself unable to accept contention of the petitioner that consistent findings recorded by the courts accepting plea of bona fide personal need suffer from material irregularity much less illegality, warranting intervention.

This brings the court to eviction on the ground of property being unfit and unsafe for human habitation. Counsel for the petitioner has not disputed that Rent Controller appointed the local commission to inspect the property and make a report with regard to its condition and status. The commission submitted the report with its observations and conclusions,

taken note of by the Appellate Authority in para 18 of the judgment. Sh. Satyajit Dhir, local commission submitted his report and photographs of the building to the effect that the building is over 60-70 years old and has already outlived its life, value and utility. Counsel for the petitioner has not disputed that the petitioner neither filed any objections challenging correctness of the report submitted by the local commission nor prayed for an opportunity to cross examine the local commission to challenge correctness and authenticity of findings of the commission. That being so, report submitted by the local commission merits acceptance except there being cogent and convincing evidence led by the petitioner to rebut the same.

The petitioner examined Avtar Singh JE from Municipal Corporation, Jalandhar to prove that the shop in question is not unfit and unsafe for human habitation. Admittedly, Sh. Avtar Singh neither prepared any report nor inspected the premises after notice to the landlord-respondent. In the given scenario, testimony of Avtar Singh RW2 cannot be taken as sufficient to rebut the unchallenged report submitted by the local commission who admittedly inspected the building after notice to both the parties. In this view of the matter, I do not find any illegality much less perversity in findings of the Appellate Court partly accepting the cross objections and ordering eviction of the petitioner on the additional ground that the building in question has become unsafe and unfit for human habitation.

No other point has been raised.

For the foregoing reasons, the petition fails and is dismissed in

limine. No order as to costs.

(Rekha Mittal)
Judge

8.1.2019
paramjit

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