

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

**Civil Revision No.5113 of 2018 (O&M)
Date of Decision: April 09, 2019.**

M/s B.B. Saraf & Company and another

.....PETITIONER(s).

VERSUS

M/s Harisons Engg. Works and others.

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rakesh Gupta, Advocate
for the petitioners(s).

Mr. Rahul Sharma, Advocate
for respondent(s).

SURINDER GUPTA, J.

Respondent No.1 M/s Harisons Engineering Works through its Proprietor Inderjit Aggarwal, respondent No.2 filed petition under Section 13 of East Punjab Urban Rent Restriction Act, 1949 seeking ejectment of revision petitioners from the demised premises comprising a shop situated at G.T. Road, Batala as fully described in the head note of the petition on the ground of non-payment of rent, subletting and personal bona fide requirement of the demised premises.

Learned Rent Controller approved the order of ejectment of the revision petition from the demised premises with the observation that respondents-landlord has been successful in proving the plea of subletting and personal bona fide necessity. In appeal, the ground of subletting was

not pressed before the Appellate Authority, however, the finding of learned Rent Controller that the premises is required for bona fide use and occupation by the respondents-landlord, was affirmed.

Learned counsel for the revision petitioners has assailed the finding of learned Rent Controller on the ground as follows:-

- (i) Firstly, Sunil Kumar, for whose bona fide requirement of shop in question, ejectment order has been passed, is occupying a shop in the grain market;
- (ii) Secondly, the shop in dispute is a part of a big plot of 1200 square yard and the remaining portion which has a big front by the side of the road, is available with the landlord for use but has not been disclosed. The respondents-landlord have concealed the material facts and have not disclosed possession of the adjoining plot and that Sunil Kumar owns a shop in the grain market.

Learned counsel for respondents No.1 and 2 has drawn my attention to the pleadings in the petition, wherein the respondents-landlord have specifically stated that Sunil Kumar is carrying on separate business of Commission Agent in New Grain Market, Batala, which has almost failed and he has joined the business of respondents-landlord. Now, Sanjeev Kumar and Sunil Kumar sons of respondent No.2 intend to start business in the shop in dispute. He has also stated in this paragraph that he or his son are not in possession of any other shop in the municipal limits of Batala or have vacated such premises. Learned counsel for the respondents-landlord has further argued that the revision petitioners have not concealed any fact from the Court. The petitioners have admittedly purchased commercial land

measuring 12 marlas on G.T. Road, Batala, near the shop in dispute, vide sale deed dated 04.10.2017. This fact was admitted by the revision petitioners before the Appellate Authority. The personal bona fide necessity of the respondent No.2-landlord for the shop in question to settle his sons was duly proved and finding of the fact recorded by the Rent Controller and Appellate Authority suffers from no infirmity calling for any interference in this revision petition.

So far as the plea of learned counsel for the revision petitioners that Sunil Kumar son of respondent No.2-landlord is possessing a shop in Grain Market, Batala is concerned, this fact find mentioned in the petition itself that he is running the business of Commission Agent, which has almost failed. The landlord has three sons namely Vinod Kumar, Sanjeev Kumar and Sunil Kumar. He wants to settle his sons Sanjeev Kumar and Sunil Kumar in business in shop in question. There is no concealment regarding the occupation of shop by Sunil Kumar in Grain Market. The landlord was required to disclose while filing the petition that he does not possess any other shop or commercial building and he has specifically stated this fact in his petition. The fact that shop in question is surrounded by some plot of landlord, cannot be termed as concealment of fact, particularly when same has been fairly admitted in the cross-examination by the landlord.

Learned counsel for the revision petitioners has argued that Sunil Kumar for whose requirement, the shop is required, has not been examined.

On this issue, learned counsel for the respondents-landlord has

relied on the observations in case of ***Mehmooda Gulshan Vs. Javaid Hussain Mungloo 2017(5) SCC 683***, wherein Hon'ble Apex Court has observed that non-examination of son of landlord for whose benefit the premises is sought to be vacated, is no ground to non-suit the landlord. Taking note of observation of Supreme Court in above referred case of ***Mehmooda Gulshan Vs. Javaid Hussain Mungloo (supra), C.Karunkaran (dead) V. T. Meenakshi, (2005) 13 SCC 99*** and of Single Bench of this Court in ***S.P. Sethi V. R.R. Gulati 2006(3) PLR 93***, a Co-ordinate bench of this Court in case of ***Hukam Chand Vs. Saroj Rani 2018(1) PLR 381***, has observed in para 7 as follows:-

“7. In all these three cases, the sons for whose personal requirement the ejectment was sought were not produced as witnesses and yet the plea succeeded. Therefore, the contention of the petitioner/tenant that nonappearance of the son of the landlady in the witness-box is fatal to the action is misjudged and the argument is only noticed to be rejected in view of the settled legal position.”

Learned counsel for the revision petitioners has also relied on the observations in case of ***Brij Bhushan and another Vs. Sanjay Harjai and another 2015(2) R.C.R. (Civil) 68***, wherein a Co-ordinate Bench of this Court observed that examination of son of landlord for whose personal necessity was pleaded is required to face the test of cross-examination. However, in view of the observations of Hon'ble Apex Court in case of ***Mehmooda Gulshan Vs. Javaid Hussain Mungloo(supra)*** and ***Hukam Chand Vs. Saroj Rani (supra)*** observations of Co-ordinate Bench are of no help to the revision petitioners.

On perusal of judgments of the Rent Controller and the

Appellate Authority, I find the same suffering from no factual or legal infirmity, calling for any interference. Hon'ble Supreme Court has defined the scope of interference in revision against the order passed by the authorities under the Rent Act in case of ***Hindustan Petroleum Corporation Ltd Vs. Dilbahar Singh*** 2014(9) SCC 78 as follows:-

“We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. 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 re-appreciate 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. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

Finding of facts recorded by Courts below are well reasoned and call for no interference in this revision, which has no merits and the same is dismissed.

April 09, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>