

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.1680 of 2016 (O&M)

Date of Decision: June 9th , 2020

Shiv Mangal

....Petitioner

Versus

Inderpal Mittu

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr.Vikas Bahl, Senior Advocate with
Mr. Nitish Garg, Advocate for the petitioner.

Mr. Baldev Raj Mahajan, Senior Advocate with
Ms. Bahaar Ghuman, Advocate for the respondent.

MAHABIR SINGH SINDHU, J.

Present revision is filed under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (for short 'Act of 1949') by the petitioner-tenant against the impugned judgment dated 11.01.2016 passed by learned Appellate Authority, Amritsar, whereby an appeal of respondent-landlord was accepted and the order dated 04.08.2014 of the learned Rent Controller, Amritsar dismissing his eviction petition had been set aside.

2. Brief facts of the case are that respondent filed Rent Petition No.187 dated 28.11.2005 under Section 13 of the Act of 1949 for eviction of the petitioner from backside (rear portion) of first floor Property No.960/IV (present No.265-266/IV), Bazar Churian Wala, Katra Mohar Singh, Amritsar (hereinafter referred as 'demised premises').

It is averred that, petitioner was inducted as a tenant by the earlier owner/landlord, namely Baldev Raj w.e.f. 01.12.1995 on the basis

of rent note dated 03.12.1995 at a monthly rent of Rs.200/- plus house tax, with a stipulation that after every three years, there shall be an increase of rent @ 10%. Respondent purchased the entire building including the demised premises from said Baldev Raj, on the basis of Sale Deed dated 05/08.05.2000 registered on 10.05.2000; thus, by operation of law, he became the landlord and their relationship as landlord- tenant has been continuing since then. Grounds of ejectment, in brief, are as under:-

a) (1) **Non-payment of rent:-**

- i) w.e.f. 09.06.2002 upto 30.11.2004 @ Rs.240/- per month= Rs.7128/-;
 - ii) from 01.12.2004 to 31.10.2005 @ Rs.260/- per month= Rs.2860/-;
- Total [(i) and (ii)] = Rs.9988/-.

(2) **House Tax:-**

- i) Since 05.05.2000 upto 31.10.2005 = Rs.1547/-.

b) **Building has become unfit and unsafe for human habitation:-** It is averred that the building, including the demised premises has become unfit and unsafe for human habitation. It is an old structure, built up of *Nanakshahi* bricks and portions of the same are standing with the support of props underneath the decayed roofs. The walls have developed massive cracks, resulting into disintegration which requires re-construction from foundation level.

Also averred that shop on ground floor is under tenancy of another tenant- Manohar Lal; whereas, one room on front side of first floor which was under tenancy of Agya Ram (father of respondent) is now in his own (respondent's) occupation for the purpose of business, but, taking into consideration its precarious condition, he discontinued the business from this room and shifted to shop No.5, 7 & 8,

property No.1104 to 1108, Bazar Kathian, Amritsar. Intimation regarding the shifting of business to new place was given by respondent to the concerned Departments including Income Tax, Insurance Company, BSNL, PSEB and MC for House Tax.

- c) ***Bonafide* requirement regarding demised premises:-** It is averred that respondent needs the demised premises for his own *bonafide* use & occupation as well as of his two grown up sons, namely, Harsh Mittu and Gautam Mittu, aged 27 & 24 years respectively, as they are not having their own place for business; rather used to move around and get the job work done from other goldsmiths. Respondent wants to rebuild the property for setting up a multi-storeyed showroom for manufacturing, trading in ornaments, jewellery and silver wares, which is their hereditary business (family trade). Also averred that respondent as well as his sons do not own or occupy any other suitable and adequate non-residential premises within the urban area of Amritsar; nor they have vacated any such premises without sufficient cause after the commencement of Act of 1949;
- d) **Nuisance for the neighbourhood:-** It is alleged that respondent is occupying one room in the same building , but petitioner is in the habit of making false complaints to the police, custom department as well as other Government functionaries without any basis and he has started putting a lock on the entrance of staircase at the ground floor, as a result thereof, respondent is not in a position to enter in the front room on first floor as well as second floor. Also alleged that petitioner in connivance with his brother, namely Santosh Kumar wants to grab the *barsati* on second floor of the building and they even filed a suit for permanent injunction before the Court of learned Civil Judge (Junior Division), Amritsar. Further alleged that petitioner tried to tarnish the

image of respondent in the Society by leveling false and immoral allegations to the police authorities.

Petitioner opposed the eviction petition by way of his written reply while raising the Preliminary Objections, *inter alia*, to the effect that he was not a party to the alleged rent note dated 03.12.1995 executed with the earlier landlord i.e. Baldev Raj. Also denied the claim of the respondent regarding enhancement of rent on the basis of above rent note and questioned the authenticity of the same on the ground that it was neither acted upon; nor he had gone through the contents thereof before signing. Also narrated about the filing of an application under Section 31 of The Punjab Relief of Indebtedness Act 1934, (for short 'Act of 1934') and claimed that enhancement of rent is not permissible in view of provisions of Act of 1949. Admissibility of the rent note was also denied on the ground that it is not a registered document.

On merits, the induction of the petitioner as a tenant by the earlier landlord-Baldev Raj, was admitted, including monthly rent of Rs.200/-, but submitted that he was paying Rs.20/- as extra on request of landlord due to rise in market rent. Sale-deed dated 05/08.05.2000 registered on 10.05.2000 in favour of the respondent by Baldev Raj is denied on account of lack of notice. Claim of respondent regarding arrears of rent was denied while submitting that rent is already deposited before the Court during proceedings under Section 31 of the Act of 1934 without prejudice to his rights. Also submitted that building is a *pacca* (solid) cemented structure in a habitable condition, thus, there is nothing wrong with the same, but respondent wants to eject the petitioner being an influential person. Also alleged that respondent in order to have his

smuggling business carried out, without any hindrance and unnoticed, wants to eject the petitioner from the demised premises. Again submitted that respondent has recently shifted to another shop owned by him to run the smuggling activities unnoticed.

Petitioner denied the *bona fide* need of respondent regarding demised premises for his own use or occupation as well as of his sons or for repair or demolition or renovation of the building as none of the sons are so far married. He further denied that sons of the respondent are in the age group of 27 and 24, respectively and claimed that respondent is a rich person having many other business premises including a very big room in the same building where demised premises is situated and it is lying vacant for the reasons explained above.

Regarding allegation of nuisance, it is submitted by the petitioner that so called neighbourers are the relatives of respondent and they have also indulged in the smuggling activities.

Respondent filed replication and reiterated the execution of rent note dated 03.12.1995 as well as sale-deed dated 05/08.05.2000 registered on 10.05.2000 in his favour. Filing of civil suit by the petitioner along with his brother Santosh Kumar and its dismissal is reiterated. Allegations of smuggling are specifically denied. Further reiterated that respondent has shifted his business to a premises which is not owned by him, rather these are rented shops on the basis of rent notes dated 26.09.2005 and 12.04.2005 respectively. *Bona fide* requirement of respondent as well as deteriorating condition of the building are reiterated. Again submitted that both sons are married and working with the respondent for jewellery business. Respondent has denied that

neighbourers are his relatives or they have indulged in any smuggling activities; rather petitioner is causing nuisance without any basis. It is specifically denied that respondent ever apologized before the police for any illegal act as alleged by the petitioner. Allegation against the petitioner regarding putting of the lock at the entrance of staircase is reiterated.

3. On the basis of pleading of the parties, learned Rent Controller, framed following issues 09.03.2006:-

- “1. *Whether tender made by respondent is invalid and short?*
OPA
2. *Whether demised premises is unfit and unsafe for human habitation?* OPA
3. *Whether petitioner requires the demised premises for his personal necessity and for necessity of family members? If so its effect?* OPA
4. *Whether respondent is source of nuisance in the demised premises? If so its effect?* OPA
5. *Whether petitioner is estopped from acting against rent note dated 03.12.1995?* OPR
6. *Relief.”*

Thereafter, again on 13.08.2008, following two additional issues, i.e. 5-A and 5-B were framed:-

- “5-A. *Whether Baldev Raj sold the property including the premises in possession of respondent to the applicant vide sale deed registered on 10.05.2000?* OPA
- 5-B. *Whether the rate of rent is liable to be enhanced by 10% after every three years as mentioned in the eviction application?* OPA.”

4. In order to prove his case, respondent himself appeared as AW-15 and examined other witnesses, which are as under:-

- AW-1**-Kamal Kumar, TOA, BSNL, Amritsar,
AW-2-Braham Parkash, Branch Incharge, UTI Technology Service, Amritsar,
AW-3-Charanjit Singh Chawla, Deed-Writer.
AW-4-Paramjit Singh, Husband of Pushpa Rani.
AW-5-Shiv Kumar son of Jagdish Rai.
AW-6-Anil Kumar, Deed Writer, District Courts, Amritsar,
AW-7-Vijay Kumar, Deed Writer.
AW-8-Swarn Singh, Record Keeper.
AW-9-Hari Singh, Attesting witness.
AW-10-Vijay Kumar, Photographer.
AW-11-M.R. Anand, Civil Engineer, District Courts, Amritsar.
AW-12-Smt. Baljit Kaur, Clerk, office of Sub-Registrar, Amritsar.
AW-13-Jagjit Singh, Clerk, House Tax Department, Amritsar.
AW-13-Manjit Kaur, LDC, PSPCL.
AW-14-Harsh Mittu,
AW-15-Inderpal Mittu-respondent.

5. On the other hand, petitioner examined following witnesses:-

- RW-1** Arvinder Singh, Draftsman, District Courts, Amritsar;
RW-2 Manjit Kaur, Clerk, PSPCL;
RW-3 Taranjit Singh, Inspector Food and Supplies.
RW-4 Darshan Singh, Delivery Man Sidhu Gas, Amritsar,
RW-5 Mohan Lal,
RW-6 Sanjay Kumar,
RW-7 Baldev Raj son of Jaginder Nath,
RW-8 Sikander, Meter Reader,
RW-9 Shiv Mangal.

6. Learned Rent Controller, after taking into consideration the material available on record and hearing the parties, dismissed the eviction petition vide order dated 04.08.2014.

Learned Rent Controller while considering issue No.2, came to the conclusion in paragraph No.20 of the order that building is repairable, but it has not become unfit and unsafe for human habitation.

While deciding issue No.3, it came to the conclusion that need of the respondent is neither *bona fide*; nor genuine, rather it reflects an element of greed. However, the plea of the petitioner that demised premises is a residential building and the same could not be vacated for non-residential purpose, was not accepted by Id. Rent Controller.

Issue No.4 relating to nuisance was decided against the respondent.

Issue No.5 regarding claiming of rent was decided partly in favour of the respondent upto the extent mentioned in the rent-note, but did not accept the enhancement clause thereof after every three years.

7. Aggrieved against the eviction order, respondent preferred an appeal, which was accepted by learned Appellate Authority vide impugned judgment dated 11.01.2016.

While considering issue No.2, learned Appellate Authority came to the conclusion that the building, including demised premises has become unfit and unsafe for human habitation, thus reversed the findings of learned Rent Controller, on this issue.

Ld. Appellate Authority while deciding issue No. 3 came to the conclusion that bonafide necessity pleaded by respondent is sufficiently proved on record and the same was found to be genuine. Further observed that respondent requires the building, including demised premises for his necessity as well as of both sons who are aged 37 and 35 years respectively.

However, findings of learned Rent Controller on issues No.1 and 5-B regarding rejection of the claim of respondent qua non-payment of rent as well as enhancement clause @ 10% after every three years, were affirmed, thus, so far as ground for eviction of the petitioner on account of non-payment of rent is concerned, the same has been decided against the respondent by both the Courts below and has attained finality. Ultimately, eviction of the petitioner has been ordered by learned Appellate Authority on the basis of findings recorded on issues no. 2 and 3.

8. Hence, the present revision petition.

9. It is contended by learned Senior counsel on behalf of the petitioner that Appellate Authority has committed grave error while reversing the well reasoned order passed by learned Rent Controller without taking into consideration the relevant material available on record, thus the impugned judgment is not legally sustainable. Further contended that point of *bona fide* requirement of respondent is not proved inasmuch as he has concealed the material facts regarding other properties owned and possessed by him, including, one big room in the same very building in addition to commercial property at Khadur Sahib and three shops in Bazar Kathian, Amritsar, thus, the eviction petition was liable to be rejected outrightly.

Also argued that only one son of the respondent appeared as a witness before learned Rent Controller, but the other son did not come forward to support the plea of *bona fide* need regarding the demised premises; thus, finding on issue No.3 is liable to be reversed only on this count.

Learned Senior counsel has further argued that findings of learned Appellate Court on issue No.2 that demised premises has become unfit and unsafe for human habitation, is not legally sustainable in view of the testimony of building expert AW-11 as well as photographer AW10, coupled with their reports and photographs, respectively. Also argued that learned Appellate Authority has not properly taken into consideration the report of building expert RW1 as well as report and photographs produced by him, which clearly prove that no portion of the building is in dilapidated condition. Lastly argued that demised premises is a residential building, thus petitioner cannot be evicted for *bona fide* requirement of the respondent while construing the same as non-residential building.

10. On the other hand, learned Senior counsel for the respondent submitted that petitioner did not raise any averment in the written statement that respondent is either owner or in possession of any other non-residential property within the urban area of Amritsar, except one room on first floor of the building and three shops in Bazar Kathian which are on rental basis. Further submitted that property situated at Khadur Sahib falls in the area of District Tarn Taran and not within urban area of District Amritsar. Also submitted that petitioner has not produced any sale-deed or document of title or rent-deed to prove that respondent is occupying any other non-residential property in the urban area of Amritsar. Further submitted that plea of the petitioner that demised premises is a residential building has already been rejected by learned Rent Controller, thus, he cannot re-agitate the same and moreover, as per the rent-note dated 03.12.1995, demised premises was let-out to the

petitioner by earlier landlord-Baldev Raj for doing the business of goldsmith alongwith residence, thus, the dominating purpose of the tenancy was/is for non-residential use and not for the residence. Also submitted that entire building is non-residential property thus, by no stretch of imagination, the demised premises could be construed as a residential building. Further argued that there is sufficient material on record to prove that respondent as well as his both sons are jointly doing jewellery business from Shop Nos. 5, 7 and 8, situated in Bazar Kathian on rental basis, which is their hereditary trade, thus, it is for the landlord to decide as to in what manner, he would carry on the business, but petitioner is no one to dictate the terms.

Also argued that another eviction petition, filed by the respondent against tenants-Manohar Lal & ors. was allowed by learned Rent Controller on similar grounds as in the present case while taking into consideration the testimonies of AW-11, AW10 and RW1 along with their reports as well as photographs and further affirmed by learned Appellate Authority on 11.01.2016, which is under challenge in Civil Revision No.1681 of 2016 before this Court. Also argued that Arvinder Singh (RW-1) produced by the petitioner himself admitted the construction of the building being of *nanakshahi* bricks as well as the roofs having wooden battens.

11. Heard both sides and perused the record.

12. Scope of interference with the findings of facts recorded by learned Appellate Authority while entertaining revision petition in such like matters, is well settled by the Hon'ble Supreme Court in various decisions and reference in this regard, can be made to the Constitution

Bench judgment, reported as '**Hindustan Petroleum Corporation Ltd. versus Dilbahar Singh**', 2014 (9) SCC 78. Para-45 thereof being relevant, reads as under:-

“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.”

Still further, Hon'ble Supreme Court in a recent case titled as **'M/s Kaithal Provision Store versus Sanjay Bansal & Anr.'**, decided on **26.07.2018**, reminded the revisional Courts in the following manner:-

“This Court has repeatedly held that in exercise of the revisional jurisdiction, unless a finding is perverse, there can be no interference in revision. See - for the revisional jurisdiction of the East Punjab Urban Rent Restriction Act, 1949, which is the Act applicable in the present case - Ajit Singh and Another vs. Jit Ram and Another, (2008) 9 SCC 699 (para 25).”

13. While passing the impugned judgment, learned Appellate Authority has ordered the eviction of the petitioner on two grounds, viz.
- (i) Bona-fide necessity of the respondent regarding demised premises for his own use and occupation as well as of his two sons;
 - (ii) The building which includes the demised premises has become unfit and unsafe for human habitation.

POINT NO.1-BONA-FIDE NECESSITY

14. Paper-book reveals that in view of the objection raised by the petitioner, issue No.5-A was specifically framed by Id. Rent Controller to the effect as to 'whether Baldev Raj sold the property, including the demised premises to the respondent vide registered sale deed dated 10.05.2000'?

Learned Rent Controller after taking into consideration the material available on record decided the same in favour of the respondent. Moreover, there is sufficient evidence on record to substantiate that the building-property No.960/IV comprises of two and

half storey (2 ½) constructed over the area measuring 56 sq. yards, including the demised premises and it was purchased by the respondent on 10.05.2000. Respondent has averred in para-5(b) of the eviction petition, that front room on the first floor of building, which was earlier occupied by his father as a tenant is now possessed by him for running the jewellery business, but in view of its precarious condition, the respondent discontinued the business from this room and shifted to shop No.5, 7 & 8- property No.1104 to 1108, Bazar Kathian, Amritsar. It is also averred that change of premises was duly intimated to all the Government Departments including Income Tax, Insurance Company, BSNL, Electricity Board, House Tax Department of the Municipality, and which is duly proved from the testimonies of AW-1, AW-2, AW-8 and AW-13. Again in para -5(c) of the eviction petition, it is specifically averred that respondent needs the demised premises for his own use and occupation as well as of his two grown-up sons, namely Harsh Mittu and Gatuam Mittu, who were in the age group of 27 and 24 respectively, at the time of filing the petition in the year 2005. One of the sons, namely, Harsh Mittu, was examined as AW14; whereas respondent himself appeared as AW15 and both of them have specifically deposed that sons of the respondent have no place of their own for business except the rented shops on first floor situated in Bazar Kathian along with their father (respondent). Both these witnesses have deposed that sons of the respondent used to move around for getting the job work done from other goldsmiths, thus keeping in view the *bona fide* need, respondent wanted to rebuild the property for setting up a multi-storey showroom for manufacturing, trading of ornaments, jewellery and silver-

ware which is their hereditary occupation/trade. It has been specifically disclosed in the eviction petition that respondent as well as both his sons do not own or occupy any other suitable and adequate non-residential building in the urban area of Amritsar; nor they have vacated any such premises without sufficient cause after the enforcement of Act of 1949. It is amply proved from record that both the sons are doing the jewellery business with the respondent from rented shops situated in Bazar Kathian and this fact is duly corroborated from the cross-examinations of AW4 and AW5 as well.

Learned Rent Controller in para 27 of its order observed that it is not the case of the respondent that his sons are doing a joint family business with him, and now they want to separate themselves to start a new business; and primarily only on this reasoning the issue No.3 was decided against the respondent. Although, learned Rent Controller, recorded that shop owned by respondent at Khadur Sahib is not falling within the urban area of Amritsar, therefore, it would not make any difference.

Still further, the plea of the petitioner that demised premises is a residential property was also not accepted by Id. Rent Controller, however it failed to take into consideration the overwhelming evidence on record relating to issue No.3. Id. Appellate Authority has thoroughly considered the material available on record pertaining to issue no. 3 in paras 11 to 23 of the impugned judgment and reversed the findings of Id. Rent Controller while giving detailed reasons that respondent needs the demised for his own use and occupation as well as for his two grown up sons.

As discussed above, both the sons are doing the jewellery business with their father in a rented place from shop Nos.5, 7 and 8, first floor, Bazar Kathian, Amritsar, and used to move around for getting the job work done from other goldsmiths. Respondent while appearing as AW15 specifically deposed that he requires the demised premises for his own use and occupation as well as of both the sons who have no place of business for their own. Since respondent is having two grown up married sons in the age group of 40 years, both are associated with him in the jewellery business being a hereditary occupation and he wants to re-construct the building as a multi-storeyed showroom for manufacturing, trading in ornaments, jewellery as well as silver-wares at one place suitable to all three of them. Although, learned senior counsel for the petitioner has contended that respondent is having commercial property at Khadur Sahib, but as discussed above, the learned Rent Controller, did not find favour with this plea while observing that Khadur Sahib is situated in District Tarn Taran; whereas the demised premises is within the urban area of District Amritsar, thus the argument is of no help for the petitioner. It is also established that respondent is running jewellery business along with his sons from rented shops on first floor situated in Bazar Kathian, Amritsar and rent notes dated 26.09.2005 and 12.04.2005 (Ex.A3 and A4) are duly proved in view of the testimonies of AW3, AW4, AW5, AW9 and AW15. Thus, the findings of learned Rent Controller while rejecting the claim of *bona fide* requirement projected by respondent on the basis that his sons are not going to start a new business, separately, has rightly been reversed by learned Appellate Authority, in para 14, which reads like this:-

“14. The findings given by learned Rent Controller that the sons of petitioner are doing business with him and rejected the ground of bonafide requirement on this ground that in the petition, he had not stated that his sons are doing joint family business with him and now he wants to separate them from their joint family business and wants to start a new one. It appears that learned Rent Controller has tried to develop a new case, which otherwise is not the case of the petitioner, because his case is that he requires the demised premises bonafidely for his own use and occupation and the for use and occupation of his grown up sons and the petitioner has duly proved his bonafide necessity, because though the respondent has tried to take the plea that the petitioner is owning some other property besides the building in question, of which the demised premises is part, but there is no evidence in this respect on the file and this fact has also come on record and even admitted that the petitioner has shifted his business to Bazar Kathian, Amritsar.”

Learned Appellate Authority has also come to the conclusion that even if the respondent is in occupation of front room on the first floor of the building owned by him, even then he has a right to plead *bona-fide* necessity for himself as well as his two grown-up sons. Concededly, the respondent never pleaded the bona fide need in eviction petition that he is going to separate his sons and they will run their new business exclusively; therefore, Ld. Rent Controller, not only mis-directed itself, rather created altogether a new case beyond the pleadings. Resultantly, this Court is in complete agreement with the conclusion of learned Appellate Authority to the effect that respondent wants to re-construct the multi-storeyed showroom for running the jewellery business and there is nothing wrong with such a proposal.

Moreover, rented shops in Bazar Kathian are on first floor and respondent wants to open a show-room to make progress in the life, thus, that can make a big difference for the jewellery business of all three i.e. respondent as well as both his sons. Even otherwise, the person who is running a business can always expand the same within the four corners of law, to flourish in the life and the tenant cannot ask for an interdict, until and unless the circumstances so warrant, which are totally missing in the present case. The respondent invested his hard-earned money while purchasing the building on 10.05.2000 for expansion of his jewellery business which he has been running from rented shops situated on first floor of Bazar Kathian, Amritsar and fighting for eviction of the petitioner for the last 15 years, thus, Learned Appellate Authority has rightly recorded the findings that ground of *bona fide* necessity of the respondent as well of his both sons, is duly proved.

There is sufficient material on record to indicate that both the sons of respondent have crossed the age of 40 years as on today; jewellery business is their hereditary occupation, thus, there is nothing bad for joining hands with their father while making efforts to grow in the trade. In view of the facts of the case, the *bona fide* requirement of respondent has been duly proved and consequently learned Appellate Authority has rightly reversed the finding on issue No.3. Also noteworthy that this Court, while deciding CR No.7737 of 2019 along with bunch of cases on 28.02.2020, in somewhat similar issue of *bonafide* requirement, observed as under:-

“Moreover, as per the case of the respondents/landlords, Anil Kumar was sought to be

associated for running the jewellery business on the basis of his expertise and thus, by no stretch of imagination, it could be construed that eviction petition was filed for the benefit of said Anil Kumar only or his non cross-examination would be fatal for the bona fide requirement of the respondents/ landlords in any manner.

It has also been duly established that all the respondents belong to different families, but they are from a common ancestor, namely, Shri Harbans Lal s/o Shri Nathu Mal and moreover, relationship of the respondents/landlords is duly admitted by the petitioner(s)/tenant(s) in para 2 of their reply also.

Since all the respondents/landlords are related to each other being from common ancestor and running four jewellery shops since long and which are as under:-

(i) M/s Golden Jewellers at Garha Road by Anil Kumar, (husband of respondent No.4-Monika), on rent, which is 20 meters away from the demised premises. Ejectment orders have been passed and attained finality up to Hon'ble Supreme Court. Anil Kumar is having long experience in the field of jewellery business and would join the respondents/landlords in their business;

(ii) M/s Paras Bhardwaj Jewellers, situated at a distance of 100 feet from the demised premises, measuring 65 sq. ft., owned by respondent No.4, thus, very small in size;

(iii) M/s Prince Jewellers, run by Mangat Ram (husband of respondent No.1), on rent, situated at Rama Mandi, Jalandhar;

(iv) Babbar Jewellers at Bansa Wala Bazar, Jalandhar, on rent by Sita Ram (husband of respondent No.3).

All the families of respondents/landlords are having vast experience in jewellery business and thus, requirement of the demised premises for running their business at a common platform is absolutely justified being bona fide requirement and there is nothing wrong to start a retail outlet showroom at one common platform by joining hands with each other.”

In view of the discussion made hereinabove, this Court fully agree with the conclusion recorded by the learned Appellate Authority on issue No. 3 regarding the bonafide requirement of respondent and there is no illegality or perversity to interfere with the findings recorded on this issue.

POINT NO.2-UNFIT AND UNSAFE FOR HUMAN HABITATION

15. It is the case of the respondent that building including the demises premises is an extremely old structure built up of *nanakshahi* bricks and some portions of the same are standing with support of props underneath the decayed roofs. It is also claimed that walls have developed massive cracks resulting into disintegration and requires reconstruction from foundation level.

In order to prove the condition of the building, respondent examined AW 11-M.R.Anand, Civil Engineer as well as AW10-Vijay Kumar, photographer and both these witnesses have produced detailed reports along with various photographs, respectively.

On the other hand, petitioner also examined his own building expert i.e. RW1 Arvinder Singh, Draftsman, District Courts, Amritsar, who submitted his report, site plan and photographs.

Reports of both the building experts AW11 and RW1 along with photographs were duly considered by learned Appellate Authority and after taking into consideration the same, it was observed that there were cracks in the building and joints have been dislocated which are naked and clearly established that building of which the demised premises is the part and parcel, has become unfit and unsafe for human habitation.

Learned Appellate Authority has thoroughly examined the material available on record regarding issue No.2 and after taking into consideration the testimony of AW11-M.R.Anand, along with his report as well as photographs observed that according to this witness the entire building appears to be in a depilated condition and which is about 70-80 years old. Its walls including the demised premises is made up of standard size bricks/Nanakshahi bricks laid in lime surkhi mortar and cracks to the extent of 1/8" to 1/4" width and 5'-6' in height were noticed in the verandah also. Further observed that according to this witness for concealing the cracks, the petitioner has got repaired the same by filling with lime slurry which were checked with the help of small knife. The material used in the construction of the walls has lost its adhesive strength and it was checked by rubbing with the fingers. Leakage of water from roofs was substantiated from water marks and dampness found at the ceiling level. Also noticed that walls have bulged out and which were checked with the help of plumb bob. AW11 further stated that roofs of entire portion at first floor are made up of wooden beams, wooden planks, tiles/bricks and the wood used in the construction of the roofs is broken, damaged and eaten up by white ants and after checking

with the help of wooden stick, it gave hollow sound. Regarding the frontal room also which is in occupation of respondent, three wooden batons have fallen down and wooden support in vertical shape has been given to wooden beams to save it from falling. The wooden material used in the construction of the roofs, doors and windows is damaged, broken and eaten by white ants. The wooden beams used to support the roof above verandah are in a damaged condition and tilted downwards towards the staircase side, thus, damaging the walls and the roofs of the verandah. Learned Appellate Authority while making a reference to various photographs observed that cement plaster has come out from the walls which reveal the condition of bricks and three wooden battens used in the roof are totally damaged and there is space in the tiles. Still further, while making reference to the photographs it is noticed that the condition of the beam used is totally damaged and on many places it has become hollow. Learned Appellate Authority also observed that petitioner has replaced the damaged wooden beams with two iron girders in the middle portion of shop and a gap of two feet has been left in between the girders to fill the entire hole of wooden beams and the wall appears to have been repaired recently. Learned Appellate Authority further observed that whatever has been stated in the report of AW11 is duly reflected in photographs which were referred individually in extenso. Testimony of RW1 as well as his report and photographs were also duly considered by learned Appellate Authority minutely and conclusion recorded in paras 42 and 44, reads as under:-

“42. Here the question arises, why he has not mentioned the same in his report and it shows that his report

is one sided and does not depict the complete and true position of the building. Further he admitted this fact in his cross-examination that he has not shown the other part of the wooden batons in photos Ex.RW1/25 to Ex.RW1/27 as joints at which these wooden batons are lying and left the space and he admitted this that he had not clicked any photograph of left hand side of the wall in possession of Shiv Mangal and he also refused to identify the photographs Mark AX/1 to Mark AX/14, which infact pertain to the property in dispute. The photographs which the respondent has proved on record as Ex.RW1/3 to Ex.RW1/44, are proved in the statement of RW1 Arvinder Singh. The perusal of these photographs reveal that an effort was made by the tenant and the building expert examined by him to get the photographs of only that portion, which is painted freshly in order to conceal the true position of the building. The photographs of that portion of roof are taken, on which there is false ceiling. The photographs of entire roof are not taken and it shows that a deliberate attempt has been made to conceal the true position of the building. The photographs of that portion of wall have been taken, on which the wooden racks have been affixed and which are freshly painted and whitewashed. Further the photographs which are produced on behalf of the tenant reveal that in order to conceal the position of the building, even ground floor tenant Manohar Lal had got freshly painted the portion in his possession as the photographs so depicted and the portion which is in possession of Shiv Mangal, that is also freshly painted and whitewashed in order to get concealed the position of the building. Even the photographs which are taken of the room in possession of Inderpal appellant, only photographs of that portion are taken, the condition of which appears to be somewhat good and the photographs of the entire room showing the damaged condition of wooden beams, batons,

walls etc. are not taken. So every possible effort is made on the part of the tenant to get concealed the true position of the building and in these circumstances, the report made by building expert examined on behalf of the tenant does not inspire confidence, because his report can be said to be incomplete one as he has not shown the condition of entire building deliberately. He has made report of that portion appearing to be somewhat good according to the convenience of tenant, on whose behalf he is appearing. Moreover when RW1 Arvinder Singh was confronted with photographs of the room in possession of Shiv Mangal, he refused to identify the same. It shows that he is deliberately avoiding the question during cross-examination. When he was asked specific question that even the photographs which he had produced Ex.RW1/42 to Ex.RW1/44 that these photographs show the signs of dampness at Point A to F, he tried to avoid the question and gave a vague reply that these are signs of fading of whitewash and not of dampness.....

44. In my opinion, the learned trial Court has not made correct appreciation of evidence in this respect. When both the parties have led the evidence in this respect in detail, then the learned Rent Controller was required to see from the available evidence that the evidence of which of the party inspires confidence and brings the complete and true position of the building. The photographs which the petitioner/appellant has placed on record of entire building infact reveal the true position of the building, whereas the report of building expert of respondent is one sided as discussed above and further the learned Rent Controller has also failed to consider this aspect that when the entire building has become unfit and unsafe for human habitation, then even if the portion in possession of tenant is fit, the building would be considered to be unfit and unsafe including the portion of

tenant. So in these circumstances, the findings given by learned Rent Controller on this issue stand reversed.

The above findings of facts recorded by learned Appellate Authority are fully supported with the cogent material available on record and the same cannot be said to be perverse or unfounded in any manner.

Although learned Senior Counsel for the petitioner tried to argue on the basis of some photographs which are on record to the effect that above conclusion drawn by learned Appellate Authority is not correct, but this Court does not think it appropriate to re-appreciate or re-examine the evidence in the form of few photographs as findings on issue No. 2 were recorded after taking into consideration the entire material on record including the testimonies of AW10, AW11, RW1, their reports and various photographs in addition to the deposition of AW15.

There is no doubt, that view taken by learned Appellate Authority is the possible view, therefore, this Court will not substitute its own opinion in view of the facts and circumstances of the present case, particularly when no miscarriage of justice has been pointed out on behalf of the petitioner.

16. It is pertinent to mention here that this Court while passing order of even date in CR No. 1681 of 2016, titled Manohar Lal (since deceased) through his L.R. and another Vs. Inderpal Mittu (respondent), relating to the demised premises situated in the same building (Property No.960/IV present No.265-266/IV), has affirmed the eviction order against the tenants Manohar Lal through his LRs and anr. from the shop

on ground floor, while taking into consideration the testimonies of AW10, AW11 and RW1.

17. In view of the discussion made hereinabove, this Court is fully convinced that findings recorded by learned Appellate Authority on Issue Nos.2 and 3 are based on sufficient material and there is no perversity, illegality or impropriety with the impugned order, thus, no interference is required while exercising the revisional jurisdiction under Section 15 (5) of the Act of 1949.

No other point was raised or argued by either side.

18. Consequently, this Court is left with no option except to dismiss the revision petition by upholding the judgment of learned Appellate Authority.

Ordered accordingly.

Petitioner / tenant shall handover the vacant possession of the demised premises to the respondent on or before 31.10.2020.

Learned senior counsel for the respondent does not press the application for mesne profits (CM No.15165-CII of 2017), thus, the same is disposed off as not pressed.

(MAHABIR SINGH SINDHU)
JUDGE

June 9th, 2020
sanjay

Whether speaking/reasoned?:
Whether reportable?:

Yes/No
Yes/No