

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

CR No.4989 of 2018 (O&M)

Reserved on : 15.12.2020

Pronounced on : 23.12.2020

Akash Arora & others

... Petitioners

Versus

Krishan Kumar Arora

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.Viren Sibal, Advocate, for the petitioners.

Ms.Bhavna Kapur, Advocate, for the respondent.

(Proceedings have been being conducted through video conferencing, as per instructions.)

G.S. Sandhawalia, J.

Challenge in the present revision petition, filed by the petitioners-tenant, is to the concurrent findings of the Courts below, Kapurthala, whereby ejectment had been passed on the ground of bona fide requirement. The Rent Controller had ordered eviction on 27.03.2017, which has been upheld by the Appellate Authority on 08.05.2018.

Counsel for the petitioners has vehemently contended that the landlord had stated that he had not occupied any non-residential unit and had not vacated any such type of premises or had sold any such building within the Municipal Council, Kapurthala. It is, accordingly, contended that as per the affidavit filed by him and in the cross-examination he had admitted that he had vacated another premises in April, 2007 and therefore, once he had not come to the Court with clean hands, ejectment application was liable to be dismissed. Reliance is placed upon the judgment passed in

Inderjit Sharma Vs. Moti Lal 2009 (4) PLR 85 to contend that once the

bona fides were not there, ejectment petition was liable to be dismissed on this ground. It is further contended that there was no bona fide necessity since he had retired in the year 2000 and the petition was filed on 15.02.2012 and thus, he did not require the premises in question and in the alternative, space on the first-floor of the shop was also available.

Counsel for the respondent, on the other hand, submitted that there was clear disclosure about the earlier occupation of the shop in the rent petition itself in the earlier portion. Therefore, there was no concealment and merely because at the subsequent portion, it was submitted that he had not vacated any portion, it did not mean that there was any concealment, as such. It is, accordingly, contended that neither the said issue was pressed before the authorities below on this account. It was further submitted that the landlord is the best judge of his needs and therefore, the tenant could not dictate to the landlord as to where he has to conduct his business while placing reliance upon **Uday Shankar Upadhyay & others Vs. Naveen Maheshwari 2010 (1) SCC 503**.

A perusal of the paperbook would go on to show that the petition for ejectment was filed from the establishment in question as detailed in the head-note of the rent petition on the ground that it was originally owned by Tirath Ram, father of the landlord who had expired in the year 2007. He had executed a registered Will dated 14.07.2006 in favour of the petitioner and thus, the respondent was the exclusive owner. The establishment had been rented out vide rent deed dated 19.09.1995 @ Rs.1520/- per month to Ram Prakash, father of the present petitioners

and that the rent was to be increased @ 10% after every 3 years. The tenant had paid the due rent upto 30.11.2011, which was to the tune of Rs.2415.77 per month, after deducting the meter rent and the enhancement terms. It was further alleged that the present petitioner was working in the shop in dispute during the lifetime of his father and was continuing possession and therefore, no other legal heir had any concern with the shop. The performa respondents had also been impleaded as party, as such and are now arrayed as petitioner No.2 and 3 and they were running separate shop in Sadar Bazar, Kapurthala in the name and style of Fancy Cloth House. The landlord was an employee of the Punjab National Bank and had taken voluntary retirement in December, 2007 and had been working along with his father in a tenanted shop and was doing the business of tobacco near Jallow Khana, Kapurthala. His landlord, Piara Lal had filed the ejectment petition against Tirath Ram and the shop was got vacated on ground of bona fide requirement, addition and alterations and therefore, they had vacated the shop on 20.04.2007. Since then, the present petitioner-tenant had been asked to vacate the shop as it was required by the landlord to start his own business where he intended to open a gift and flower shop for the purpose of earning his livelihood. However, the averment that he had not vacated any other type of premises and was not occupying any such non-residential building, had also been made. Arrears of rent along with house tax and fire cess since December, 2011 had also been claimed.

The petition was contested by petitioner No.1 whereas

petitioners No.2 and 3 had failed to appear and were proceeded against ex-parte. The objection taken was that shop was owned by Shri Tirath Ram who had expired and the validity of the Will was also challenged on the ground that the original landlord was not physically and mentally in a position to execute any Will. Even the increase in the rent deed was also objected to. It was further denied that the petitioner had paid the rent to the landlord and also that he had never worked with his father in the running of the tobacco shop. The shop had been surrendered on account of his death. The requirement to open the gift and flower shop was also denied.

The issues were framed to the extent that whether the premises are required for personal necessity, whether the landlord had the personal necessity and whether he was entitled for ejectment. The third issue was regarding the non-joinder of necessary parties.

The landlord examined as many as 4 witnesses and had also stepped into the witness-box himself and also examined the Manager of the Punjab National Bank as PW-4. The petitioner-tenant only examined himself and no other witness.

The Rent Controller rightly came to the conclusion that the shop had been rented out to Ram Prakash and he was the original tenant. It was held that the landlord was initially Tirath Ram who had expired in January, 2000 and the respondent had stepped into the shoes after his death. Regarding the execution and validity of the Will, objection to which was raised, was rightly rejected as the title of the shop in question

was not the subject matter of the ejectment application. It was noticed that the original tenant was Ram Prakash and thereafter, the shop was in possession of his son, the present petitioner No.1 who was paying the rent to the landlord. Resultantly, the ownership of Tirath Ram and thereafter, inheritance to his son being not disputed and he being the legal heir, was, thus, entitled to file the ejectment application. It was further noticed that PW-3, Raj Kumar was the marginal witness of the rent deed and Chaman Lal was the Deed Writer and therefore, the rent deed had been duly proved. The tenant had also identified the signatures of his father on the rent note dated 19.09.1995 (Ex.P-2) and in cross-examination, admitted that he used to give the rent to Krishan Kumar Arora the respondent and he used to take receipts after giving the rent. There was a admission that he had given the rent @ Rs.2415.77 and Rs.16.50/- as meter rent as per the enhanced rate and therefore, admission being the best evidence, arrears of rent from 01.12.2011 @ Rs.2432.77 were also awarded. The balance was to be payable since initially only Rs.1500/- per month had been assessed by the Court.

On the issue of bona fide requirement, the statement of PW-4, Dilbagh Singh, Senior Manager, Punjab National Bank, Kapurthala was taken into note and the fact that the landlord had retired as Assistant Manager by taking voluntary retirement in December, 2000. Resultantly, it was noticed that it had been pleaded in the petition that the father was running a tobacco shop and his landlord was Piara Lal and when he had retired, he had been working with his father in the tenanted shop which

was also stated by PW2, Gurbaksh Singh and the shop was got vacated by Pyara Lal who filed the ejectment petition. Resultantly, it was held that the landlord was the best judge of his requirement and there was no lack of bona fide and ejectment was, accordingly, ordered.

The Appellate Authority also applied its mind to the argument which was raised and has rightly upheld the order by noting that as per the reply and the cross-examination, there is an admission of the ownership by Tirath Ram and the rent deed dated 19.05.1915. There was also admission that the father had taken the shop on rent and thereafter, had been ejected. Similarly, in his cross-examination, it was also admitted that the shop in dispute had been given to Ram Parkash, the father of petitioner No.1 by Tirath Ram and after his death, the rent was being paid to Krishan Kumar Arora, respondent No.1. Once the relationship of tenant-landlord was admitted and the rent note had also been proved, the maintainability of the ejectment petition was, thus, settled beyond an anvil of doubt.

The rent receipts had also been brought on record as Ex.AX whereby the rent was paid uptill November, 2011 and therefore, the locus standi regarding the right of respondent to have filed the ejectment petition cannot be questioned as it is settled principle that the tenant is no one to raise the question of title, in view of the presumption under Section 116 of the Indian Evidence Act, 1872. Even otherwise, any legal heir of the original landlord is entitled to file the eviction petition. It was also further noticed by the Appellate Authority that the petitioner himself

had admitted that the respondent's father was running a tenanted shop which had been vacated vide order dated 20.04.2007 on account of the litigation initiated by Piara Lal. Resultantly, it was held that since the landowner was to open a gift and flower shop, bona fide requirement was present, in the facts and circumstances and resultantly, the appeal had rightly been dismissed.

It is settled principle that it is not for the tenant to dictate terms to the landlord as to how he can adjust himself as as to which portion of the tenanted premises he is to set up his business. Only a prima facie case is to be taken into consideration by the Rent Controller to draw the presumption that the requirement is bona fide, which has been held by the Apex Court in **Sarla Ahuja Vs. United India Insurance Company Ltd. 1999(1) PLR 805**. Reliance is also rightly placed upon the judgment in Uday Shankar Upadhyay (supra) wherein also, it has been held that shops and businesses on the ground-floor being better located therefore, it is not for the Court to tell as to which floor the landlord should do his business. The argument, thus, raised that the nephew was keeping the first-floor of the shop in dispute and therefore, the landlord should shift there, is without any basis. Merely because the tenant is carrying business since 1995 would not entitle him to continue in the premises for all times to come.

Rather the bona fides of the landlord is clear which has specifically been pleaded and the fact has been admitted by the tenant that there was a shop in possession of father of the respondent who eventually

expired in the year 2007 and he had to vacate the said shop. The landlord has further waited for almost a period of 5 years before filing the eviction petition in February, 2012 and it has specifically been pleaded that requests had been made to the tenant to vacate the premises but he has not done so which led to the filing of the eviction petition and thus, eviction has rightly been ordered by the Courts below. Lack of bona fide on the part of the landlord cannot be inferred, as has been held by the Apex Court in **Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkune 1999(4) SCC 1** wherein the Apex Court had allowed the appeal of the landlord as the High Court had come to the conclusion that landlord did not have the necessary experience to start the business of electrical goods. It was held that there was a jurisdictional error in upsetting the factual findings merely by an individual view by the Judge of the High Court about the business venture which was unsupportable in law. The Rent Act further provides that reoccupation of a building can always be asked for by the tenant and he can recover the possession of the building after the shop is vacated if the landlord does not occupy the building. Thus, it is a safeguard which is provided. In such circumstances, the bona fides of the landlord who had retired as Assistant Manager cannot be questioned by the tenant.

Reliance upon Inderjit Sharma (supra) is without any basis as that was the case pertaining to an NRI landlord and this Court came to the conclusion that the landlord had not disclosed that there was another tenant in possession of the adjacent building. The fact that he had secured

possession of the second shop during the course of such proceedings and in that circumstances, it was held that his bona fides were missing and the eviction order was set aside, by holding that the landlord had concealed facts and therefore, he could not get the benefit of the special provisions as contained under Section 13-B of the Rent Act. Thus, the said judgment would not be applicable in the facts and circumstances of the present case.

The Apex Court in a judgment rendered by the Constitution Bench in **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh 2014 (8) SCC 78** has held that revisional powers are not like appellate powers and only the legality and propriety of the orders are to be seen. The same view was also taken in **Boorugu Mahadev & sons vs. Srigiri (2016) 3 SCC 343** and **D. Sasi Kumar Vs. Soundararajan 2019 (9) SCC 282**.

Accordingly, keeping in view the lack of irregularity and illegality in the impugned orders, finding no merit in the present revision petition, the same is dismissed. However, since the tenant has been in possession since 1995, he is given 3 months time to vacate the premises, subject to clearing all the arrears of rent and depositing the same in Court, within a month in order to continue in the premises for the said period.

23.12.2020
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes