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

CR-1940-2020 (O&M)

DATE OF DECISION: 26.10.2020

Prem

.....Petitioner

versus

Maninder Kaur Kwatra

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. H.S. Dhindsa, Advocate for the petitioner.

Mr. R.S. Narang, Advocate for the respondent.

..

ALKA SARIN, J.

Heard through video conferencing.

The present civil revision petition has been preferred by the petitioner-tenant against the orders passed by the Authorities below ordering his ejectment from a portion of Industrial Plot No.C-50 Phase-III, Industrial Area, Mohali, measuring 50 sq. ft. (approximately) and 90 sq. ft. (approximately) shown as “ABCD” and “EFGH” respectively in the site plan attached with the ejectment application.

The brief facts leading to the filing of the present civil revision petition are that the husband of the respondent-landlady, Sh. Manjit Singh Kwatra, was the owner of Industrial Plot No.C-50, Phase-III, Industrial Area, Mohali. The petitioner was inducted as a tenant by him in a portion of the said plot, measuring 50 sq. ft. (approximately) and 90 sq. ft. (approximately) shown as “ABCD” and “EFGH” respectively

in the site plan attached with the ejectment application (the 'demised premises'). The rent of the demised premises was ₹4,410/- per month, excluding water and electricity charges, at the time of filing of the ejectment application. The tenancy was oral and on a month to month basis and the rent was payable in advance by the 7th of each month. The husband of the respondent-landlady expired on 09.05.2015 and, thereafter, the ownership of the industrial plot was transferred in the name of the respondent-landlady in the record of the Greater Mohali Area Development Authority (GMADA) vide its letter bearing Memo No.37564 dated 02.09.2015. The respondent-landlady, thus, became the owner and landlord of the industrial plot including the demised premises.

In November 2016, the present ejectment application was filed by the respondent-landlady seeking eviction of the petitioner-tenant from the demised premises on the grounds that he had failed to pay or tender the rent for the demised premises since January 2016 and further that the respondent-landlady *bonafidely* required the demised premises for her own personal use and occupation and that the respondent-landlady or her son were not occupying any other such building in the urban area of SAS Nagar and had also not vacated any such building without sufficient cause after the commencement of East Punjab Urban Rent Restriction Act, 1949 in the urban area of Mohali.

The ejectment application was contested by the petitioner-tenant contending that the same had been filed to cause harassment and financial loss to the petitioner-tenant by dragging him in unwanted litigation on the basis of false allegations merely to increase the rent of the demised premises. On merits, it was stated that the demised premises

were let out to the petitioner-tenant in the year 1998 by the husband of the respondent-landlady and since then he was carrying on the business of flower decoration at a monthly rent of ₹1,000/- per month. It was further the stand taken by the petitioner-tenant in his reply that in the year 2007, the husband of the respondent-landlady had allowed him to store his pipes etc. in a shed measuring 50 sq. ft. which was in fact a toilet initially and the total rent of both the sheds was fixed at ₹1,800/- per month, excluding water and electricity charges, and at present the rent was ₹2,500/-per month for both the sheds. It was further stated in the reply that the petitioner-tenant had been paying rent regularly to the respondent-landlady and in fact the son of the respondent-landlady used to collect the rent from the petitioner-tenant and he never issued any receipt. It was further the stand of the petitioner-tenant that in the month of December 2015, the son of the respondent-landlady told the petitioner-tenant that from January 2016 the rent of both the sheds would be ₹5,000/- per month. However, the petitioner-tenant had expressed his difficulty in paying rent @ ₹5,000/- per month. Thereafter, the son of the respondent-landlady did not accept the rent and asked him to vacate the sheds and threatened to get the same vacated. It was further the stand taken in the reply that the respondent-landlady had initiated ejectment proceedings only against the petitioner-tenant whereas there are other tenants in the plot and that the present ejectment application had been filed only to get the sheds vacated and let them out at a higher rent.

On the basis of the pleadings of the parties, the following issues were framed:

1. *Whether the petitioner is entitled to petition under Section 13 of the East Punjab Rent Restriction Act, 1949 as prayed for? OPP*
2. *Relief.*

Preet Inder Singh, son of the respondent-landlady, being her GPA holder, stepped into the witness box as PW1 and tendered into evidence his duly sworn affidavit as Ex.PW1/A reiterating the version of the ejectment petition. Gurpiar Singh, JE, Building Branch, GMADA appeared as PW2, and Madhu R. Garg, Senior Asstt. (Accounts) in the office of Estate Office, GMADA appeared as PW3.

The petitioner-tenant himself stepped into the witness box as RW1 and tendered into evidence his duly sworn affidavit Ex.RW1/A reiterating the version of his reply.

On the basis of the pleadings of the parties, evidence on the record and submissions made, vide order dated 12.10.2018 the Rent Controller allowed the ejectment application of the respondent-landlady and directed the petitioner-tenant to vacate the demised premises within a period of two months. The Rent Controller, while allowing the ejectment application, rejected the argument raised by the petitioner-tenant that since the respondent-landlady had failed to step into the witness box to prove the contents of the ejectment application and, therefore, the evidence led on her behalf by way of affidavit of her son, being her General Attorney, could not be looked into. The Rent Controller held that, admittedly, not only was the rent being paid to the son of the respondent-landlady but further that the son of the respondent-landlady, who appeared as GPA holder of the respondent-landlady, was well

conversant with the facts of the present case and, therefore, was competent to depose.

Against the order dated 12.10.2018 passed by the Rent Controller, the tenant-petitioner preferred an appeal before the Appellate Authority. However, vide order dated 13.02.2020 the said appeal was dismissed and the eviction order passed by the Rent Controller was affirmed. The Appellate Authority also rejected the contention of the petitioner-tenant that the son of the respondent-landlady could not depose in support of the ejectment application without the respondent-landlady herself appearing in the witness box. Hence, the present civil revision.

Vide order dated 04.09.2020, it was brought to the notice of the Court by the counsel for the respondent-landlady that the petitioner-tenant was using the demised premises only as a godown for storage purposes and that he had actually shifted his business to some other place. It was further pointed out by the counsel that the petitioner-tenant was in arrears of rent since March 2019 and not paid a single penny to the respondent-landlady. The counsel for the tenant-petitioner accepted that the petitioner-tenant was in arrears of rent since March 2019. Thereafter, the matter was adjourned for giving an opportunity to the petitioner-tenant to clear all the arrears of rent.

On 29.09.2020, it was submitted by learned counsel for the petitioner-tenant that a Demand Draft amounting to ₹25,000/-, out of ₹45,000/- which was due towards the rent to the respondent-landlady, had been handed over to the respondent-landlady. The said fact was admitted by learned counsel for the respondent-landlady. The contention of counsel for that respondent-landlady that the petitioner-tenant was

using the demised premises only for storage purposes and that he had in fact shifted his business elsewhere was also not denied by learned counsel for the petitioner-tenant.

In the present civil revision petition the grounds of challenge to the impugned orders passed by the Authorities below are that the son of the respondent-landlady could not depose in support of the ejectment application without the respondent-landlady herself appearing in the witness box since he was only her General Attorney; that the Authorities below have also erred in not appreciating that the ejectment application was filed only to put pressure on the petitioner-tenant to increase the rent; that there was nothing on record to show that the industrial plot was under threat of resumption for any illegal construction; and that the impugned orders passed by the Authorities below are illegal, arbitrary, unjust, improper and un-warranted having been passed without application of mind and without consideration of the facts and circumstances of the case and the same are liable to be set aside.

However, at the time of arguments the counsel for the petitioner-tenant has addressed the Court only on the first ground while contending that the respondent-landlady did not step into the witness-box to testify as to her personal bona fide necessity and thus the testimony of her son PW1, Preet Inder Singh, who appeared in the witness box as her General Attorney, was not admissible in evidence regarding matters of her personal knowledge. It was argued that the Authorities below committed material illegality in accepting the same. The learned counsel for the petitioner-tenant also contended that the respondent-landlady did not examine any other witness to substantiate her claim of *bona fide*

personal necessity and there is no valid and sufficient evidence to prove this ground of eviction.

Per contra, learned counsel for the respondent-landlady submitted that both the Authorities below had concurrently decided the ejectment application in favour of the respondent-landlady and that there was no error of jurisdiction which would warrant any interference by this Court. The respondent-landlady did not herself enter into the witness box but her son being a close family member had personal knowledge about all the material facts. Therefore, her non-examination as a witness did not warrant drawing of any adverse inference against the respondent-landlady and the evidence of her son as her General Attorney, being a close family member and having personal knowledge as to all material facts, was admissible in evidence and could be accepted by the Authorities as sufficient.

I have heard learned counsel for the parties.

The only point on which counsel have addressed this Court is regarding the legality of the ejectment application being allowed on the basis of the deposition of the General Attorney of the respondent-landlady without the respondent-landlady stepping into the witness box. The counsel for the petitioner-tenant has not argued about the *bona fide* necessity pleaded by the respondent-landlady but has rather argued about the mode of its proof. According to him, the respondent-landlady did not step into the witness box to be cross-examined and, as such, an adverse inference ought to be drawn against her and further, the deposition by her son as her General Attorney was not sufficient.

It is by now well settled that a landlord can seek eviction of a tenant from the tenanted premises not only for his or her need but even for the need of a closely related person. In the present case the eviction petition was filed by the respondent-landlady pleading the *bona fide* need of the demised premises for her son to start his business. Such an eviction petition was clearly maintainable by the respondent-landlady under the provisions of the Act. Further, as per law settled by the Apex Court in '**Man Kaur (Dead) through LRs vs. Hartar Singh Sangha**', 2011(1) RCR (Civil) 189, where a landlord seeks eviction of his tenant on the ground of his *bona fide* need, normally the landlord himself has to give evidence and not an attorney. However, there is an exception to the aforesaid requirement i.e. where the affairs of a party are managed, transacted and looked after by an attorney and such attorney happens to be a close family member, it would certainly be possible to accept the evidence of such attorney. Adverting to the facts of the present case, the ejectment application had been filed under Section 13 of the Act seeking eviction of the tenant-petitioner specifically raising a plea that the same is required by the respondent-landlady for her son to start his business, after raising some construction. The General Attorney of the respondent-landlady who deposed in support of the averments made in the ejectment application is none other but this very son of her's. Thus, the son of the respondent-landlady could definitely depose in support of the averments made in the ejectment application without the respondent-landlady stepping into the witness box. Similar view has been taken in '**Shere Punjab Trading Co. & Anr. vs. Smt. Uma Rani Mohindru**', 2019(2) RCR (Rent) 102; '**M/s. Hind Sons Agency & Ors. vs. Sh. Jai Parkash**

Jain', 2012(1) RCR (Rent) 92; and '**Chuni Lal Chaudhary vs. Rakesh Bakshi'**, 2017(1) RCR (Rent) 516. Thus, merely because the respondent-landlady has not appeared as a witness in the case and her General Attorney appeared, which General Attorney was none other than her own son, is no ground to non-suit the respondent-landlady. There is, thus, no merit in the sole contention argued by the counsel for the petitioner-tenant.

Before parting, this Court also deems it appropriate to deal with the other grounds of challenge to the impugned orders that have been raised in the civil revision petition though no arguments were addressed on these points by the counsel for the petitioner-tenant. It has been pleaded that the ejectment application was not *bona fide* and filed only to put pressure on the petitioner-tenant to increase the rent. However, there is no material available on the record to substantiate this objection by the petitioner-tenant. It has further been pleaded that there was nothing on record to show that the industrial plot was under threat of resumption for any illegal construction. On this point the Authorities below found that the demised premises were not in conformity with the Bye-laws of GMADA and that the testimony of the son of the respondent-landlady, while appearing as PW1, was duly corroborated by the testimony of PW2, Gurpiar Singh, JE, Building Branch, GMADA, who had deposed that portion marked as "ABCD" and "EFGH" in the industrial plot were illegally constructed and as per the Bye-laws the area was required to be kept open to the sky. PW2 had further deposed that there was a likelihood of resumption of the premises in case the illegal construction was not removed by the respondent-landlady. A

show cause notice Mark PX issued by GMADA is on the record. The Appellate Authority rejected the argument of the petitioner-tenant on this point while relying upon the decisions in '**Anil Talwar vs. P.C. Verma**', 2010(1) RCR (Rent) 348. The counsel for the petitioner-tenant has not been able to counter the findings on these two points by raising any arguments and this Court, thus, affirms the same.

In view of the discussion above, there is no merit in the present civil revision petition. The civil revision petition is hence dismissed.

(ALKA SARIN)
JUDGE

26.10.2020

Yogesh Sharma

NOTE:

Whether speaking/non-speaking: Speaking

Whether reportable: YES/NO