

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

Sr. No.201

**CR-3762-2017 (O&M)
Date of decision : 26.08.2021**

Sardool Singh

..... Petitioner

VERSUS

Rattan Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. V.K. Sandhir, Advocate, for the petitioner.

Mr. Prateek Sodhi, Advocate, for the respondent.

SUDHIR MITTAL, J.

CM-4144-CII-2020

This application has been filed for impleading the LR's of deceased, namely, Rattan Singh.

For the reasons stated in the application, the same is allowed subject to all just exceptions. Persons mentioned in para No.2 of the application are brought on record as LR's of deceased, namely, Rattan Singh.

Amended memo of parties is taken on record.

CR-3762-2017

The petitioner is the tenant. The respondent-landlord filed eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 on the ground of bona-fide personal necessity that he requires the demised premises for his own use and occupation as a residential premises. The eviction petition was dismissed by the Rent

Controller on the ground that the personal necessity pleaded was not bona-fide. The landlord's appeal has, however, succeeded and the tenant has been directed to be evicted from the demised premises.

Demised premise is shop No.16 forming part of property No.1277, situated at Raj Deep Market, opposite Gurudwara Baba Deep Singh Sahib, Ram Sar Road, Amritsar.

An earlier eviction petition was instituted on 24.05.2011 in respect of the same shop, wherein, bona-fide personal necessity of the grandson was alleged. It was stated that the shop in dispute is required for settling him in the business of computer hardware, software and computer job works. The said petition was dismissed in default vide order dated 04.01.2013. Meanwhile, the present petition was instituted on 11.08.2011, wherein, the landlord has pleaded his own personal necessity. It has been stated that he is residing alongwith his son and his family members on the first and second floor of the property in question. Shop No.16 is on the ground floor, being more than 84 years in age, he is unable to climb stairs and thus, the shop is required for use as his personal residence. During the pendency of this revision petition, the landlord has died on 15.04.2019 and his LRs have been impleaded vide order of even date passed in CM-4144-CII-2020.

Learned counsel for the petitioner has argued that the earlier eviction petition instituted on 24.05.2011 has not been disclosed in the present petition. The said eviction petition was put to the landlord appearing as AW-4 and he admitted his signatures thereupon. The instant petition was filed barely three months after the filing of the earlier petition

in which old age and own personal necessity was not pleaded. No evidence has come on record on behalf of the landlord that some serious medial ailments have developed in three months between filing of the earlier petition and the present petition. Thus, the personal necessity pleaded was not bona-fide. The appellate authority has erred in reversing the finding of the Rent Controller. It has further been argued that the landlord while appeared as AW-4 has admitted in his cross-examination that there was no medical advice that he should reside on the ground floor. In the absence of medical evidence, the learned appellate authority was not justified in holding that need of the landlord was proved. Moreover, the statute bars conversion of a commercial property into residential property. Finally, it has been argued that the landlord has passed away on 15.04.2019 and his personal necessity has ceased to exist. Subsequent events can be taken note of and accordingly, the revision petition deserves to be succeeded.

Learned counsel for the respondent submits that there was no concealment regarding filing of the earlier petition as is evident from para No.7 of the eviction petition. No objection regarding impermissibility of conversion of a commercial property into residential property has been raised in the written statement. The landlord has also not been cross-examined on this aspect. Even, the grounds of revision do not contain a challenge to the judgment of the appellate authority on this point. Thus, the tenant cannot raise this issue at the time of arguments. Reliance has been placed upon Deepak Tandon and another Vs. Rajesh Kumar Gupta 2019 (5) SCC 537. Further, the examination-in-chief of the

landlord shows that he is 89 years old. He has not been cross-examined on the aspect of his age nor has any suggestion been put to him. The medical record Ex.AW-5/1 mentioned the landlord to be 84 years old. Being an aged person, even in the absence of any medical advice, the desire to live on the ground floor is natural. The appellate authority thus, cannot be faulted on this score. Regarding the passing away of the landlord, it has been submitted that the personal necessity survives, even after the landlord has passed away. Reliance has been placed upon Shakuntala Bai and others Vs. Narayan Dass and others 2004 (1) RCR (Rent) 580 and M/s Gagan Traders and another Vs. Jaspreet Singh and another 2010 (1) RCR (Rent) 521. It has also been submitted that revisional jurisdiction is limited in scope. In exercise of this power, evidence cannot be re-appreciated. In respect of this proposition, a judgment of the Supreme Court in Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh 2014 (4) RCR (Civil) 162 has been referred.

There is no dispute that under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Rent Act'), the power of the High Court is confined to examining the legality or propriety of an order passed under the Act or proceedings taken under the same Act. The expression 'legality or propriety' has been examined by the Constitution Bench in Dilbahar Singh's case (supra) and it has been held that re-appreciation of evidence is not permissible in exercise of revisional authority. Evidence may be considered or examined only with the aim of examining the legality of the findings of

the subordinate Courts. It can also be referred to for returning a finding of perversity.

Arguments of the parties have to be dealt with within the limited scope of jurisdiction being exercised. Learned counsel for the petitioner has submitted that the finding regarding bona-fide personal necessity is perverse, because even though, the landlord did not disclose the filing of the earlier petition, it has been held that the earlier petition had not been concealed. During his cross-examination as AW-4, the landlord has admitted his signatures on the earlier petition and the finding that the filing of the earlier petition had been disclosed is contrary to the evidence on record.

The record has been called for and I have gone through the contents of the eviction petition. The same does not specifically mention the details of the earlier petition, but in para No.7 thereof, it has been stated that the present application is without prejudice to the earlier ejectment petition. In his cross-examination, the landlord has admitted his signatures on the earlier petition and considering both these facts together, the learned appellate authority was justified in concluding that the earlier petition had not been concealed. The finding cannot be termed perverse and cannot be reversed in exercise of revisional jurisdiction.

Regarding the impermissibility of conversion of commercial premises to residential premises, reliance has been placed upon Section 11 of the Rent Act, which states that no person shall convert a residential building into a non-residential one without permission in writing of the Rent Controller. The statutory provision is converse.

This objection has not been raised in the written statement nor the landlord has been examined on this aspect and the Supreme Court in Deepak Tandon's case (supra) has held that an objection, which has not been raised before the Rent Controller or the appellate authority, cannot be raised for the first time before the revisional authority. The judgment is squarely applicable in this case and thus, the argument is rejected.

The final question is, whether, upon death of the landlord, it can be said that the personal necessity has ceased to exist. In Shakuntala Bai's case (supra), it has been held that once, a decree for eviction has been passed, the legal heirs would be entitled to execute the same as it forms a part of estate of a deceased, but in Kedar Nath Aggarwal (Dead) and another Vs. Dhanraji Devi (Dead) by LRs and another, 2004 (2) RCR (Rent) 498, the Supreme Court has held that subsequent events like death of landlord can be taken note of. Both are judgments of Bench of two honourable Judges. In Kedar Nath Aggarwal (supra), the landlord as well as his wife had died during pendency of proceedings before the High Court and they were survived by three married daughters living in their respective matrimonial homes. Moreover, Section 21(7) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, prescribes that in case of death of landlord, his legal representatives were entitled to prosecute the case based on their own need. The High Court had not acted in accordance with this provision and thus, the matter was remanded. No such provision exists in the Rent Act. The judgment is also distinguishable on facts as in the instant case legal heirs are available to occupy the premises. It is, thus, held that despite death of

the landlord, the legal heirs are entitled to execute the decree the same being part of his estate.

For the aforementioned reasons, the revision petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

26.08.2021
Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes / No
Yes/ No