

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

CR No. 209 of 2021(O&M)

Date of Decision: February 09 , 2021.

Puran Chand Pandey

..... PETITIONER

Versus

Smt. Savitri Jain and another

..... RESPONDENTS

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vipin Pal Yadav, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Petitioner-tenant has filed this revision petition being aggrieved of his ejectment, ordered by the learned Rent Controller, Narnaul vide order dated 19.05.2016 which stands upheld by the learned Appellate Authority, Narnaul vide order dated 09.01.2020.

Respondent No.1-Savitri Jain widow of Ramesh Chand Jain preferred a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short, the 'Act') seeking ejectment of the petitioner from the shop in question as described in the petition, on the ground of non-payment of rent, subletting, *bonafide* personal necessity and the premises being unfit and

unsafe for human habitation and business. It is pleaded that the shop in question was taken on rent in the year 1963 by the predecessor-in-interest of the present petitioner from the initial owner, Smt. Ram Bai on a rent of Rs.50/- per month. Rent note was also executed on 04.05.1984 with the term of tenancy being twelve months. Details of how respondent No.1 became the absolute owner and landlady of the property in question were described. Same are not detailed in this order as no dispute has been raised regarding relationship of landlady and tenant by the present petitioner. Petition was resisted by the petitioner-tenant as well as respondent No.2, his son. Joint written statement was filed by them and averments in the petition regarding the grounds for ejectment were denied.

Learned Rent Controller allowed the petition on the ground of personal *bonafide* necessity of the landlady, inasmuch as premises were held to be required for use and occupation by landlady's widow daughter-in-law, another son and daughter-in-law. It was held that present petitioner had sublet the premises to his son as it came on record that the petitioner had purchased a three-storey building and business was being carried on in the tenanted premises by the petitioner's son. Learned Rent Controller further held that the tenanted shop had become unsafe and unfit for human habitation on the basis of evidence led by the landlady including the photographs of the disputed property. Ejectment of the petitioner was hence ordered. Appeal preferred by the petitioner was also dismissed by the learned Appellate Authority, Narnaul.

Aggrieved therefrom, present petition has been filed by the petitioner-tenant.

Learned counsel for the petitioner vehemently argues that rent in

question has been regularly paid and as it is the petitioner's own son who is running the business in the demised premises, it cannot be said that premises have been sublet. The petitioner himself, it is submitted, has become unwell and physically disabled, therefore, the petitioner's son was running the business in the disputed premises. Thus, it cannot be said that the premises stood sublet. Furthermore, question of personal *bonafide* necessity of the landlady did not arise. It is submitted that the landlady's daughters-in-law and son did not even testify before the learned Rent Controller to prove the necessity. It is further submitted that one of the daughter-in-law and son of the landlady wish to carry on their profession as an Advocate and use the premises for consultation and library, which is highly improbable as there is no question of a lawyer seeking to carry on his profession from a shop. It is further submitted that the landlady has seven other shops in a very busy market place where her son and daughters-in-law can very well carry on their business. Learned counsel further submits that in case the premises are dilapidated and unfit for human habitation, there is no question of the landlady putting it to use in any manner. It is further submitted that evidence of the building expert examined by the petitioner has been wrongly ignored by both the learned courts below. It is thus prayed that the present revision petition be allowed and impugned judgments dated 19.05.2016 and 09.01.2020 passed by the learned Rent Controller, Narnaul and learned Appellate Authority, Narnaul, respectively, be set aside, consequently dismissing petition under Section 13 of the Act filed by the landlady.

I have heard learned counsel for petitioner and have gone through the file with his assistance.

There is no dispute regarding the demised premises i.e., a shop as described in the petition being taken on rent at the rate of Rs.50/- per month in the year 1963 by the predecessor-in-interest of the present petitioner from the predecessor-in-interest of respondent No.1-landlady. As the rent provisionally assessed by the learned Rent Controller was paid, the ground of non-payment of rent has been rightly stated to be not available to the landlady. Respondent-landlady specifically pleaded and successfully proved the ground of personal *bonafide* necessity. It is her specific case that she required the demised premises for use and occupation by one of her daughter-in-law, who is a widow, for running the business of cosmetic and general store, besides her son, Mahabir and daughter-in-law, Monika being Advocates also requiring the premises to carry on their profession and use the premises for consultation office and library. Respondent-landlady duly testified before the learned Rent Controller as PW6 and clearly revealed her personal *bonafide* necessity. Petitioner could not extract anything in his favour from her cross-examination. Merely because her son and daughters-in-law did not testify, does not in any manner detract from her case. Equally untenable is the argument raised on behalf of the petitioner that the landlady's son and daughter-in-law are not practicing Advocates and as they did not have a flourishing practice, they did not require the premises. Such a contention is noticed only to be rejected. It would indeed be a paradox to hold that for establishing a *bonafide* necessity to use the premises, a flourishing practice would first have to be proved. It is a matter of record that sufficient evidence has been led in the form of power of attorneys etc. in various cases, (ExPA to Ex.PD), to show that son and daughter-in-law of the landlady were

practicing advocates. One of her daughter-in-law is admittedly a widow.

Similarly, argument that respondent-landlady is in possession of a number of other shops, is not substantiated by any evidence on record. Learned counsel for the petitioner is unable to point out any such evidence on record and in any case, the petitioner cannot dictate the landlady in this respect. Furthermore, it is a matter of record that the petitioner while deposing as RW1 before the learned Rent Controller has clearly admitted that he is the owner of a three-storey building in one Ganpati Plaza. Learned counsel for the petitioner, at this stage, submits that though sale-deed of the said three-storey building is admittedly in favour of the petitioner, owner of the said building is, in fact, the petitioner's son, therefore, it cannot be said that the petitioner has any other suitable premises to carry on business. The stand taken by the petitioner is clearly paradoxical and untenable. This is so for the reason that on the one hand, it is sought to be argued that the petitioner has become physically handicapped (though there is no evidence on record in this respect) and is unable to carry on his business, therefore, his son is carrying on business at the demised premises and on the other hand, it is sought to be urged that the petitioner's son is in possession of three storey building and petitioner is carrying on his business at the demised premises and has no other suitable premises. In this respect both the learned courts below have rightly referred to the testimony of PW5 Harnarayan, Process Server, who effected service on the petitioner's son who was found present at the demised shop. Petitioner in his testimony, further admitted that no part of the three-storey premises has been given on rent to anybody and he is in possession of all the three floors. It is apparent that the petitioner is in possession of a three-storey

building and has adjusted his son in the demised premises.

Both the learned courts below have rightly relied upon evidence of the building expert, PW4 P.R.Gupta, who has reported the demised shop to be a C-Class building not less than 100-110 years old and opined it as totally unfit and unsafe for human habitation and use. Photographs Ex.PW4/C to Ex.PW4/T have been referred, to observe that the shop in question is dilapidated and its roof which is constructed of wooden battens, had developed big cracks and had broken at many places. Big cracks in the walls and opening of the joints are mentioned. Both the learned courts below have been duly cautious and sensitive to the fact that there is a general tendency of a private expert deposing in favour of the person who engages them. It is in this scenario that learned Appellate Authority has taken note of the admission of the petitioner-tenant and his son that rain water seeps into the disputed shop besides the photographs etc. placed on record to uphold the finding of the premises being unfit and unsafe for human habitation and use. It is rightly observed by the learned Appellate Authority that the landlady is not expected to wait till the building in question collapses. Learned courts below have rendered the respective impugned judgments after proper appreciation of the evidence on record.

Hon'ble Supreme Court in Hindustan Petroleum Corporation Limited v. Dilbahar Singh, (2014) 9 SCC 378 while delineating the scope of revisional jurisdiction of the High Court, where two courts have returned concurrent findings of fact, has observed that the High Court would normally not interfere in concurrent findings of fact until and unless it is shown that there is gross misreading of evidence or ignoring of material evidence on record which

renders the finding of the courts below to be perverse.

Learned counsel for the petitioner is unable to point out any illegality, perversity or infirmity in the impugned judgments dated 19.05.2016 and 09.01.2020 passed by the learned Rent Controller, Narnaul and learned Appellate Authority, Narnaul, respectively, which call for interference by this Court in exercise of revisional jurisdiction.

No other argument has been raised.

Revision Petition is accordingly dismissed with no order as to cost.

February 09 , 2021.
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(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No