

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

Civil Revision No. 7913 of 2017

Date of decision : 23.07.2021

Lavneesh Gulati

...Petitioner

Versus

Anita Rani

...Respondent

Coram : Hon'ble Mr. Justice Arun Monga

Present : Mr. Vikas Mohan Gupta, Advocate, for the petitioner.

None for the respondent.

(Presence marked through video conference)

Arun Monga, J. (Oral)

A landlord is in revision before this Court against concurrent judgments rendered by the Court of learned Rent Controller and the learned Appellate Authority dismissing his ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 filed on the grounds of non-payment of arrears of rent and personal necessity.

2. Brief facts first, as noticed by the Courts below. Respondent was inducted as a tenant in the shop in question in the year 1992 at a monthly rent of Rs. 350/-. The rent was thereafter enhanced from time to time. In the year 2008, the rent was increased to Rs. 2,000/-. However, the enhanced rent was paid by the respondent only for one year i.e. upto 2009. She did not pay any rent thereafter and thus the arrears of rent. The second ground taken in the ejectment petition by the petitioner is that the shop in question is *bonafidely* required for his personal necessity, use and occupation for establishing his business of selling ready-made garments.

3. The respondent-tenant strenuously resisted the claim and pleaded *inter alia* that the upper portion of the demised premises is also let

out by the petitioner. Therefore, the need of the petitioner is not *bonafide*.

The petitioner, in fact, wanted to enhance rent yet again to Rs. 2500/-. On her refusal to pay such an exorbitant rent, the ejectment petition was filed.

4. Based on the pleadings, the following issues were framed by the learned Rent Controller:

- “1. Whether there exists a relationship of landlord and tenant between the parties ? OPA
2. Whether the respondent is an arrears of rent w.e.f. January 2009 @ Rs. 2000/- per month ? OPA
3. Whether the shop in question is *boafidely* required for the personal use and occupation of the petitioner ? OPA
4. Whether the petition is not maintainable in the present form ? OPR
5. Whether the petitioner has not come to the Court with clean hands? OPR
6. Relief.”

5. Learned counsel for the petitioner submits that both the Courts below have erred in not considering the pleadings and evidence in a right perspective especially, with respect to the other shop. It is an admitted fact that the property consists of 5 shops and a residential area on the back side of the shops. In order to have ingress and egress to the said residential area, *diode* (a runway) exists between three shops on one side and two shops on the other. The shop in question exists along with *diode* on the side where three more shops exist. The middle shop is in possession of another tenant Sohan Lal, against whom separate eviction petition was allowed on the ground of personal necessity. Third shop on extreme end is lying vacant and is already in possession of the petitioner. However, since the said shop alone is not sufficient to commence his business, therefore, the *bonafide* requirement of three shops on one side of the *diode* was pleaded. Neither the

other two shops, which are on the other side of the *diode* are/were required for personal use of the petitioner nor the petitioner is in possession of those shops. The petitioner has duly proved non-requirement of these two shops, but both the Courts below have not considered this vital piece of evidence. He further argues that the Courts below failed to consider similar judgment Ex.P16, passed by the learned Rent Controller, wherein on the similar facts and circumstances as in the instant case, the ejectment petition qua another tenant Sohan Lal was allowed. There is thus no concealment, whatsoever, on the part of the petitioner.

6. Having heard learned counsel for the petitioner, no ground to interfere is made out for the reasons stated hereinafter.

7. After considering the respective evidence adduced by the parties, the learned Rent Controller dismissed the eviction petition, *inter alia*, holding that the need of the petitioner landlord is not *bonafide*. The learned Rent Controller after appreciating the evidence, has given cogent findings relevant of which are extracted below for ready reference:-

“15. Thus taking into account the above mentioned law it is clear that the petitioner/landlord was required to plead in his petition regarding such vacant accommodation which was available with him and as to how the same were unsuited for his purpose. However no such pleading was made by the petitioner/landlord in his entire petition. Thus this legal requirement was not fulfilled by him. On the other hand from the evidence on record it has been established that Lavneesh Gulati had even vacant accommodation available with him. It has clearly come on record that one shop which was being used as PCO by his father is still lying vacant. Further it has also come on record that one shop was got vacated by tenant Gurpreet Singh in April 2013 i.e. six months before filing the present petition. Hence it is clear from above that the

petitioner had vacant accommodation for running his business but despite that he suppressed this material fact from this court. It has been argued by the counsel for the petitioner Sh. P.P.S. Chahal Advocate that Anita Rani has clearly admitted in his cross examination that Lavneesh Gulati had no other shop except the shop in question. That she also admitted that the petitioner is temporarily working in some private concern. That she also admitted that the petitioner wants to start the business of selling the readymade garments. Hence it has been contended by the counsel for the petitioner that in view of the admission of the respondent, rent petition filed by the petitioner be allowed. However this court is not satisfied with his contentions. The petitioner was required to prove his case. He cannot derive any strength from the weakness of the other side. As mentioned above the petitioner/landlord concealed the material facts from this Court regarding availability of other accommodation. Rather it has clearly come on record that he had two vacant shops at the time of filing the present rent petition. However all these facts were concealed by the petitioner. Hence these facts shows that the intention of the petitioner/ landlord are not bonafide.

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16. Thus in view of the above mentioned discussion it is clear that the petitioner has not approached this Court with clean hands. Rather he has concealed the material facts regarding availability of other accommodation with him. Even no pleading qua this fact was incorporated in his petition. Hence in view of the above mentioned discussion the need of the petitioner/ landlord is not bonafide. Accordingly, issue no. 1 is decided in favour of the petitioner and against the respondent and issue 3 and 5 is decided against the petitioner and in favour of the respondent.”

8. Against above findings, an appeal filed by the petitioner-landlord was also dismissed by the learned Appellate Authority, Ludhiana.

9. Learned Rent Controller as well as Appellate Authority have rightly dismissed the rent petition on the ground of concealment. It transpires that it ought to have been *bona-fidely* mentioned by the petitioner himself that he has another pre-existing tenanted shop but the same was deliberately concealed. It is only when the concealment was brought to the notice of the Court, as an afterthought the concealment was sought to be justified, ostensibly on the ground that even though indeed there was third tenanted shop, but the same was not required by the petitioner/owner and therefore, the factum of said third tenancy was deliberately not mentioned in the rent petition. Another feeble attempt has also been made to justify the concealment stating that the third shop is not required, because there is certain *rasta*, which leads to the residence of the owner of the shop in question and, therefore, the shop in question is more suitable.

10. Be that as it may, what flies in the face of the aforesaid justification is a deliberate concealment, which cannot be overlooked and condoned. Onus of proving the *bonafide* necessity is on the petitioner and therefore, he ought to have approached Court with clean hands, by full disclosure with regard to other similar tenanted property i.e. third shop. Having mischievously not disclosed the same, there is and cannot be any premium for indulging in such a misconduct.

11. As an upshot of the above discussion, the present petition is dismissed.

23.07.2021
VS

(Arun Monga)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No