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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3417-2014
Date on which reserved: 18.07.2022
Date of Pronouncement: 04.08.2022

Sumer Chand through his legal representatives.... Petitioner (Landlord)

Versus

M/s Mela Ram Dharam Sarup and another ..... Respondent (Tenant)

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. Kanwaljit Singh, Sr. Advocate with
Ms. Neha Anand Mahajan, Advocate
for the petitioner.

Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunal Mulwani, Advocate and
Ms. Sehaj Sandhawalia, Advocate
for the respondent.

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MANJARI NEHRU KAUL, J.

The instant revision has been filed by the landlord to impugn the concurrent findings recorded by the Rent Controller as well as the Appellate Authority in a petition filed under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (hereinafter referred to as the 'Act') by him vide which he had sought the eviction of the respondent-tenant from Shop No. 583 situated at Lower Bazar, Kalka, District Panchkula. Parties shall be referred to by their original positions in the rent petition.

In brief the case of the petitioner-landlord may be noticed as thus; Shop No. 583 situated at Lower Bazar, Kalka, District Panchkula, consists of two parts. A part of the aforementioned shop had been rented out to the respondent-tenant at the rent of Rs.700/- per annum to begin with (hereinafter referred to as the demised premises) whereas in the other part, the landlord was running a confectionary shop in the name and style of M/s Sandeep Confectionary. On 24.09.1998, a compromise was effected between the parties and the rent was enhanced to Rs.150/- per month w.e.f. 01.10.1998, which was to be enhanced at the rate of 10% every three years. The landlord after constructing his house over shop No. 583 had been residing therein. The landlord sought eviction of the tenant from the demised premises primarily on the grounds that (i) the tenant had not paid rent to the landlord from 01.04.2020 to 31.12.2020 @ Rs.200/- per month; (ii) that the demised premises was required by the landlord for his personal use as he wanted to expand his business and also settle his two married sons, namely Sandeep and Vinay. It was also claimed that the landlord was not in occupation of any other commercial building within the municipal area of Kalka, except the one mentioned in the petition, nor had he got any other premises vacated since the enforcement of the Act, without any reasonable cause.

The respondent-tenant in his written statement did not dispute the relationship of landlord and tenant between the parties. He took the defence that the entire shop marked by letters ABCDEFGH bearing House Tax No. 583 (ground floor), to begin with, had been in the occupation of respondent No.1- firm i.e. M/s Mela Ram Dharam Sarup. In the year 1965, the landlord got the portion marked by letters EFGHIJ vacated for his personal necessity. Thereafter, the landlord and his son namely Sandeep started their business of confectionary in a part of the shop No. 583 while the remaining portion marked by letters ABCDEJIH continued to remain with the tenant. Subsequently, the landlord let out the portion marked by letters EFIJ to 'Regal Jeans'. In the year 1998, the tenant yet again vacated the portion marked by letters CDEJ, where the son of the landlord, namely Vinay was now running his business of Auto Spare parts. It was alleged that all the four sons of the landlord were well settled as the landlord along with his sons was running the business of auto spare parts in the name and style of Aman Autos as well as a confectionary shop in the name and style of Sandeep Confectionery. Besides this, the landlord was also a supplier of Vita & Verka Milk. It was further alleged that the landlord had got some of his shops vacated and let out to other tenants while some shops were still lying vacant and were in his possession. It was asserted that the landlord was a 75 year old man who had failed to bring to the fore any *bona fide* necessity to get the demised premises vacated as he was actively involved in the business of all his four sons and had been functioning in an advisory capacity.

On the basis of the material and evidence led, both the courts below dismissed the petition filed by the landlord, holding that the tenant had successfully rebutted the claim of the landlord qua any *bona fide* need of the demised premises for expanding his business and for settling his sons. It was further held that since both the sons of the landlord i.e. Sandeep and Vinay were very well settled in their businesses, the need of the landlord was not *bona fide.*

Learned senior counsel for the landlord while impugning the concurrent findings recorded by both the courts below has vehemently argued that the courts gravely erred in ignoring the following admitted facts:-

i) The demised shop marked as BGIJ shown in site plan Ex.P1 was admittedly given to the tenant on rent and was facing the main Kalka-Shimla highway.

ii) It was not disputed by the tenant that the landlord was indeed running a confectionery shop marked by letters EFGH as shown in the site plan Ex.P1 which was a part of shop No. 583, i.e. demised premises.

iii) It was also not disputed by the tenant that portion marked as CDEF which had been rented out to 'Regal Jeans' did not open towards the main Kalka-Shimla highway but towards Gali Devi Dass Road facing South.

iv) The tenant also admitted that portion marked as ABCD on which M/s Aman Autos exists and which was being run by one of the sons of the landlord, also did not open towards the main Kalka-Shimla highway but towards Gali Devi Dass Road facing South.

In support, learned senior counsel drew the attention of this court to the site plan Ex.P1. The learned senior counsel still further while drawing the attention of this court to the cross-examination of RW1 Ajit Kumar Jain (Tenant), wherein he had categorically admitted that both Sandeep and the other son of the landlord Vinay for whom the landlord was seeking eviction of the tenant, had no concern with property No.709 submitted that the courts below failed to notice the material and blatant contradictions between the written statement filed by the tenant and his testimony. He argued that in para No.3 of the preliminary objections to the written statement filed by the tenant it had been submitted that the landlord along with his sons was doing the business of spare parts under the name and style of Aman Autos, running a confectionery shop under the name and style of Sandeep Confectionery and also was in the business of supply of Vita and Verka milk whereas in para No.4 of the written statement interestingly the tenant had come up with an altogether different version that the two sons of the landlord i.e. Sandeep and Vinay were doing their respective businesses viz. Sandeep was doing the business of confectionery in an independent shop while Vinay was carrying on his business of spare parts, independently in a separate shop. It was argued that RW1 Ajit Kumar Jain (Tenant) during his cross-examination admitted and identified the shop under his tenancy shown in red colour in the site plan Ex.P1 and also admitted that the landlord was running his shop under the name and style of Sandeep Confectionery in the portion shown in green colour in the same site plan Ex.P1. It was further argued that the contention of the tenant that in the year 1965 the landlord had got a portion of the shop marked by letters EFGH and CDEF vacated on grounds of personal necessity for his son Sandeep to support the business of confectionery and still further that as per their written statement that in the year 1998 the landlord had got vacated a portion of a shop marked as ABCD for setting up the business of his other son Vinay, where now he was running an Auto spare parts shop, stood falsified from the fact that his son Sandeep for whom he had allegedly got vacated a portion of the shop marked as EFGH was not even born in the year 1965 as his date of birth was 27.09.1970, which stood duly accepted by the tenants themselves in Ex.RW3/B. Qua the other portion marked as ABCD, learned senior counsel submitted that it was a matter of record that M/s Aman Autos, which was being run in the said shop, was not in the name of Vinay but in the name of Umesh, who was the other son of the landlord, and the said fact stood proved from the Registration Certificate dated 11.03.2010. While drawing the attention of this court to the observations made by the courts below, learned senior counsel further submitted that the courts had made certain very strange observations that since the sons of the landlord were earning, they had sufficient means and thus, no *bona fide* need to settle them was made out. He further argued that the courts gravely erred by holding that since the family of the landlord was a joint family, joint income tax returns should have been filed under the head 'Hindu Undivided Family', however, since no such returns had been placed on record, an adverse inference would have to be drawn against the landlord. In support of his submissions, learned senior counsel placed reliance on the following judgments:-

1) Smt. Darshna Devi v. Kewal Krishan (Civil Revision No. 281 of 2014, DOD 10.12.2014).

2) Usha P. Kuvelkar and others v. Ravindra Subrai Dalvi (Civil Appeal No.5326 of 2007, DOD 20.11.2007).

3) Harjit Singh v. Kuldeep Singh (CR No. 6473 of 2016 (O&M), DOD 19.10.2016).

4) Amrik Singh and another v. R.R.Gulati and other, 2012 (1) R.C.R. (Rent) 25.

5) M/s Goyal Sanitary Stores & Others v. Chander Kanta Talwar & Others (CR No. 1861 of 2016 (O&M), DOD 06.01.2022.

Learned senior counsel for the tenant while opposing and disputing the submissions made by the counsel opposite submitted that the concurrent findings recorded by both the courts below were well reasoned and did not warrant any interference. It was vehemently argued that the landlord had concealed material facts regarding the availability of another premises within the municipal limits of Kalka and the filing of an ejectment petition qua the said premises. It was submitted that an ejectment petition had been filed by the son of the landlord namely Umesh titled as 'Umesh Kumar v. Piar Kaur' for the ejectment of the tenant from property No. 709, Lower Bazar, Kalka, and it was allowed vide judgment dated 13.04.2005. Learned senior counsel for the tenant drew the attention of this court to the testimony of Anil, the second son of the landlord, recorded in the aforementioned ejectment petition i.e. 'Umesh Kumar v. Piar Kaur' wherein he had deposed that both his brothers i.e. Sandeep and Vinay were well settled as one of them was running a dairy and the other one was running a shop of spare parts. It was argued that his deposition would have to be seen in conjunction with the pleaded case of the landlord in the instant petition as the landlord was wanting the ejectment of the tenant from the shop in dispute for expanding his business and for settling his sons Sandeep and Vinay. Learned senior counsel argued that evidently Sandeep and Vinay were already well settled in their respective businesses, which fact found support from their income tax returns, insurance policies and school admission forms of their children. In support, the learned counsel invited the attention of this court to the relevant documents which were produced by way of evidence before the Rent Controller. It was argued that in the aforementioned circumstances the landlord had miserably failed to prove any *bona fide* necessity and rather it was apparent that he wanted to get the shop in question vacated just to fulfil his wishes. It was also submitted that the landlord owned many other properties in the municipal vicinity of Kalka which he had intentionally not disclosed in his petition. Not only this, it was submitted that all along it was the pleaded case of the landlord that he wanted to settle his two sons Sandeep and Vinay, however, strangely none of the two sons even stepped into the witness box in support thereof.

Lastly, it was urged by the learned senior counsel for the tenant that since the landlord had expired in 2015 during the pendency of the instant petition, his ground for getting the shop in question vacated for personal necessity no longer survived as the situation qua the requirement of the landlord had changed. In support of his contentions, learned counsel has placed reliance on the following judgments:-

1. Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh (Civil Appeal No. 6177 of 2004, DOD 27.08.2014).
2. Ajit Singh and another v. Jit Ram and another, 2008 (4) R.C.R. (C9v9l 390.
3. Baba Kashinath Bhinge v. Samast Lingayat Gavali (Civil Appeal No. 3711 of 1984, DOD 30.09.1993).
4. Dr. Rakesh Sondhi v. Ramesh Kumar (CR-1301-2022, DOD 08.07.2022).

Heard and perused the relevant material on record.

For the facility of reference, Section 13 (3) (a)(i) of the Act is reproduced hereunder:-

"**13. Eviction of tenants:-**

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(3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession -

(a) in the case of a residential building, if, -

(i) he requires it for his own occupation, is not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area.

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Thus, what flows from a reading of the above provisions of Section 13(3)(a)(i) of the Act is that the landlord must satisfy that the demised premises is required by him for his own occupation. The "requirement" postulated therein should not be a mere wish or desire, rather it must be a *bona fide* one. Still further, the expression "his own occupation" would also cover the need for occupation of the demised premises for his family members. Whether the need is *bona fide* or a mere wish or a desire would be a question to be determined in the facts and circumstances of each individual case and no straight jacket formula can be laid down for the same.

In the instant case the landlord by way of a petition under Section 13 of the Act has sought eviction of the tenant not only on grounds of *bona fide* requirement for the expansion of his business, but also for settling his two sons i.e. Sandeep and Vinay. It would be relevant to point out here that during the pendency of the instant revision petition the landlord expired, however, his death would not in any manner extinguish his requirement qua settling his two sons, Sandeep and Vinay.

Both the courts below in the impugned orders held that the sons of the landlord (Sandeep and Vinay) were very well settled in their businesses. Hence, the need/requirement of the landlord was not genuine or *bona fide*. However, this court does not concur with the findings recorded by the courts below in the facts and circumstances of the case. The courts while arriving at the aforementioned conclusion have relied upon the

Income Tax Returns of Sandeep and Vinay wherein net profit of more than Rs.1,00,000/- per annum stands reflected. It is not disputed rather is an admitted fact that both Sandeep and Vinay are married and blessed with two children each and are living in a joint family with the landlord. The landlord, therefore in the circumstances would definitely wish to settle his sons since their families have grown. It is but natural for any parent to see his children prosper and grow in their business or profession, as the case may be, and be well settled in their lives.

In resisting the plea of ejectment the learned senior counsel for the tenant vehemently argued that the landlord's sons are already well settled, which argument in the opinion of this court to say the least, is preposterous, for a tenant cannot be allowed to put a cap on the financial well being and prosperity of a landlord or his family members. The tenant cannot certainly be allowed to have a say as to whether the earnings and the income of the landlord or his family members are sufficient or enough for them. The landlord is the best judge of his requirement and the tenant as such cannot dictate his terms to the landlord. No doubt the object and purpose of the Act is to protect the tenants from arbitrary eviction on mere wishes or desires of the landlord, but at the same time the interest and requirement of the landlord is also to be safeguarded and cannot be overlooked. An equilibrium has to be achieved while adjudging the conflicting interest of the parties and while doing so the scales cannot be allowed to tilt in favour of one party to the detriment of the other.

Still further, the landlord in his petition has specifically pleaded that he is neither occupying any other building in the urban area concerned nor has he vacated any such building without sufficient cause. The tenant has been unable to falsify the above stand of the landlord by leading any cogent evidence qua the same. It is a matter of record and not disputed by the tenant as well, that property No. 709, Lower Bazar, Kalka, is in the possession of the other two sons of the landlord i.e. Umesh Kumar and Anil. Hence, it cannot be said that another suitable building/premises is in possession of the landlord which can be used for expanding his business and for settling his two sons, namely Sandeep and Vinay.

It is evident that the tenant has enjoyed the fruits of his tenancy for a long time and it is now high time that the landlord who has been relegated to one corner of the shop starts enjoying it for his own benefit and his sons moreso when as already observed earlier both these sons i.e. Vinay and Sandeep are married and have children. Moreover, it needs to be emphasized that as and when eviction is sought by a landlord on the ground of *bona fide* necessity for expanding his business or even establishing a new business whether for himself or like in the case in hand, for settling his two sons, a presumption must be drawn that the need of the landlord is genuine and *bona fide* unless otherwise proved. It would not be out of context to refer to the provisions of Section 13(6) of the Act which categorically protects the tenant in case after the tenant's ejectment, the landlord fails to occupy the premises in question within the stipulated period of one year or rents it out to some other tenant. In such an eventuality there is nothing which prevents the tenant from approaching the Rent Controller for restoration of the possession of the demised premises.

This court is conscious of the limitation on the scope of interference by it at this stage. However, if it is found that the courts below have not applied the statutory provisions to the evidence on record in the right and proper perspective, then the findings regarding *bona fide* requirement would cease to be a mere finding of fact and the superior court would be justified in upsetting the judgment/order in the exercise of its revisional jurisdiction, as has also been held by the Hon'ble Apex Court in ***Deena Nath v. Puran Lal*** 2001 (2) RCR (Rent) 130.

As a sequel to the above, this court has no hesitation in holding that the landlord has duly satisfied the statutory requirement for the eviction of the tenant from the demised premises and that the demised premises is indeed required by him for settling his two sons, namely, Sandeep and Vinay.

Consequently, this petition is allowed. The impugned orders dated 09.11.2012 passed by the Rent Controller, Panchkula, and dated 07.03.2014 passed by the Appellate Authority, Panchkula, are set aside. The tenant is ordered to be evicted from the demised premises within a period of three months from the date of passing of this order.

(MANJARI NEHRU KAUL)
JUDGE

04.08.2022
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Note: Whether speaking/reasoned Yes / No
Whether Reportable: Yes / No