

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CR-6988-2010 (O&M)
Reserved on: 30.05.2022
Date of decision: 08.06.2022

BHAGWAN DASS (DECEASED) THROUGH LRS.

..Petitioner

Versus

M/S SETHI THE FASHION PEOPLE

..Respondent

2. CR-6989-2010 (O&M)

BHAGWAN DASS (DECEASED) THROUGH LRS.

..Petitioner

Versus

M/S SETHI THE FASHION PEOPLE

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akshay Bhan, Sr. Advocate
with Mr. Santosh Sharma, Advocate
Mr. Rohit Nagpal, Advocate
for the petitioner.

Mr. Ashish Aggarwal, Sr. Advocate
with Mr. Vaibhav Mittal, Advocate
for the respondents.

ANIL KSHETARPAL, J.

1. Two Civil Revision Nos.6988 and 6989 of 2010, filed by a common landlord against the same tenant shall stand disposed of. The learned counsel representing the parties are also common and the arguments were addressed jointly. In fact, two different rent petitions filed by the petitioner who has now died, with respect to two different shops, which are separated by a 10 ft. wide passage against a common tenant were consolidated by the Rent Controller on 10.05.2002, after noticing that the ground on which the eviction has been sought, is common. Both the rent

petitions were disposed of by the Rent Controller by a common judgment ordering eviction of the tenants. By the same judgment two appeals filed by the tenant were allowed, assailing the correctness of which two revision petitions have been filed.

2. In the considered opinion of the Court, the following issues arise for adjudication:-

1. Is it mandatory to plead and prove that the immediate relatives for whose bonafide requirement the ejectment has been sought are dependant on the landlord?

2. Whether eviction of tenant from the non-residential building with regard to the bonafide necessity for commercial purpose is maintainable particularly when the landlord wishes to reconstruct the building in such a manner that he shifts the passage in between the two shops on one side so as to utilize the non-residential premises in a proper manner.

3. Some peculiar facts are required to be noticed.

4. The petitioner died on 2.12.2012. Now, he is represented by his legal representatives. Herein, the parties will be referred to as the landlord and the tenant. The landlord filed two petitions in the year 1999 seeking eviction of the respondent, from his two shops situated on Rani Jhansi Road, Ludhiana, measuring 14ft. X 10ft. approximately each. It was asserted that he is a retired person, aged about 82 years and he wants the possession of two shops so as to enable him to run business along with his grandson Sh. Manish Kapoor and Daughter-in-law Smt. Monika Kapoor. It was also asserted that he along with his grandson and daughter-in-law entered into a partnership deed in order to run the said business. The two shops in question are separated by a 10ft. wide passage which connects to the residential house located behind the shops. It has been asserted that the landlord wishes to demolish the two shops and reconstruct them into one shopping complex while shifting the passage to only one side. The

respondent contested the petition while contending that the landlord does not have a bonafide requirement and the petition has been filed only to increase the rent. The Rent Controller ordered eviction of the tenants, whereas, the Appellate Authority has reversed the same.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the judgments passed by the Courts below.

6. On the one hand, the learned counsel representing the landlord contends that the Appellate Authority has erred in reversing the order of eviction on the ground which are not made out, whereas, on the other hand the learned Senior counsel representing the respondent has contended as under:-

1. The landlord has not pleaded that his daughter-in-law and grandson are dependant on him.

2. The conduct of the landlord disentitles him from the order of eviction particularly when a previous petition filed by the landlord was withdrawn when the rent was increased.

3. The tenant has filed applications under Order 41 Rule 27 in order to prove the photographs to show that the daughter-in-law has now started working as a medical practitioner and she also lets out the aforesaid premises as a paying-guest accommodation for girls. The tenant has also tried to produce the recorded conversation between the landlord and the tenant, wherein, the landlord has stated that he will withdraw the petition if

the rent is increased. In fact, the tape recorded conversation has already been produced and analysed by the Courts below. So, in substance, the tenant only wishes to produce three photographs in order to prove that Smt. Monika Kapoor is working as medical practitioner (in traditional sciences).

4. Eviction from a non-residential building cannot be sought for a residential purpose. The learned Senior counsel relies upon the judgment passed by the Supreme Court in *Koyilerian Janaki and others Vs. Rent Controller (Munsif) Cannanore and others, (2000)9 SCC 406, Nagendra Singh and others Vs. Kaushalya Devi 2021(2) RCR(Rent) 167* and *Joginder Pal Vs. Naval Kishore Behal, (2002)5 SCC 397.*

7. Before this Court proceeds to examine the contention of the learned counsel representing the parties, it is important to take note of the grounds on which the Appellate Authority has reversed the judgment passed by the Rent Controller.

8. On a careful reading of the judgment passed by the Appellate Authority, it is evident that the following reasons have been recorded to reverse the judgment :-

1. Mere assertion of element of need is not sufficient. The landlord retired from service in the year 1976, whereas, the present petition has been filed in the year 1999, particularly when the landlord is already 81 years old. Hence, the requirement of the landlord is not

bonafide particularly when Smt. Monika Kapoor has failed to prove that she has acquired proper training for running the business of the boutique. It has also been recorded that the grand-son of the landlord-Sh. Manish Kapoor has already joined service on a handsome package, therefore, the landlord does not have bonafide requirement of the premises in question.

2. Smt. Monika Kapoor has not stepped into the witness-box to prove her bonafide necessity.

3. The bonafide requirement is not proved, there is a tape recorded conversation which has been denied by the landlord but such evidence is not created by the tenant at their own level i.e. it is not fabricated/created by the tenant. Hence, same cannot be kept out of consideration.

4. A part of the shop on reconstruction shall be converted into a passage for the residential purpose which is located behind these shops and vacation of a non-residential building cannot be sought for residential purpose.

9. In order to prove the case, the landlord has himself appeared as PW-4, whereas, his grandson-Sh. Manish Kapoor appeared as PW-5. Sh. Manish Kapoor has stated that he will leave the job, the moment he is able to get back the possession. In the present case, the landlord has proved the pleadings while appearing in evidence. His evidence is corroborated by Sh. Manish Kapoor. Despite searching questions in their cross-examination, the learned counsel representing the tenant failed to impeach their credibility.

The landlord in order to prove his bonafide requirement has also produced a partnership deed. Previously, the landlord filed a petition seeking eviction of the tenant on the ground of sub-letting which was subsequently withdrawn. In the considered opinion of the Court, such petition would not adversely effect the maintainability of the present petition. There is no reason to doubt the correctness of assertion made by the landlord with regard to his bonafide requirement. The petition was filed in the year 1999. At that time, Sh. Manish Kapoor was a student. After completing his MBA, it would not be appropriate to expect that he will wait for the eviction order, in order to settle in his life. Like in this case, it has taken 23 years to decide the matter. Sh. Manish Kapoor while appearing in evidence has stated that he will leave the job in order to start his own business. Smt. Monika Kapoor has even as per the case of the tenant, started practicing as a medical practitioner (in Indian traditional Medical science). In such circumstances, there is no reason to doubt the genuineness of the requirement of the landlord. Furthermore, once the requirement of the daughter-in-law and grandson have asserted the bonafide requirement of the premises, the death of landlord late Sh. Bhagwan Dass would not make any material difference.

10. The second reason assigned by the Court is with regard to the non-appearance of Smt. Monika Kapoor in the witness-box. It may be noted here that Sh. Tejinder Pal Singh has appeared and stated that she got her training in GHW Knitwears as well as Kapoor Selections. Once, her father-in-law and her son appeared in evidence, no adverse inference can be drawn against the landlord on account of failure of Smt. Monika Kapoor to appear and depose in evidence. The adverse inference can be drawn only if the landlord intentionally withholds the best evidence, in absence whereof the

order cannot be passed. In the present case, the Court finds that the order can be passed even in the absence of statement of Smt. Monika Kapoor. Furthermore, the landlord or his children are not required to prove that they have received requisite training or education before starting the business. The landlord in order to ensure that the future business plan does not fail, proved that Smt. Monika Kapoor has got sufficient training. Furthermore, Sh. Manish Kapoor is Masters in Business Administration. Now, he has got sufficient experience to run a business. In such circumstances, the Appellate Authority erred in drawing an adverse inference against the landlord.

11. The next reason assigned by the Appellate Authority is erroneous as the tape recorded conversation was never subjected to the proper analysis. The tape recorded conversation was not sent to prove that it has not been tampered with. No corroborative evidence has been produced to prove that the voice is of the landlord, particularly when the landlord has denied that the alleged recorded conversation is not in his voice. No request was made to the Court for getting voice sample of the landlord with a request to forward it to expert body for their opinion. The Appellate Authority even after noticing these facts, has relied upon the same, which is inappropriate.

12. That last reason assigned by the Court is implausible. As already noticed, the two shops are divided by a passage, which is 10ft. wide. The said passage leads to a residential building where the landlord along with his family resides. Now, while reconstructing the building, the landlord wants to shift the passage to one corner of the premises, so as to construct the commercial premises as a compact block. In absence of any bar in the statute, it was not appropriate for the Appellate Authority to hold that such

step by the landlord is not permissible. The passage is in the control of the landlord. The passage will be shifted to one side. Hence, it is not the case where eviction of the tenant is for the purpose of using a non-residential building for residential purpose.

13. This Bench now proceeds to examine the argument of the learned counsel representing the tenant.

14. It may be noted here that Section 13 of the East Punjab Rent Restriction Act, 1949, does not provide that a landlord will be entitled to seek eviction only of those members who are dependant on him. In such circumstances, if we examine the judgments passed in **Koyilerian Janaki's case (supra)**, it is evident that the aforesaid case arose from the provisions of Kerala Building (Lease and Rent Control) Act, 1965. In para 2 of SCC report, Section 11(3) of the Act has been extracted which provides that the landlord can apply for putting him in possession, if he bonafidely needs the building for his occupation or for the occupation of any member of his family dependent on him. In that context, the Supreme Court interpreted the said provision. In absence of such requirement in the statute, it would not be appropriate to follow the judgment without analyzing the provision. Similarly, in **Nagendra Singh's case (supra)**, the Delhi High Court was hearing a revision petition of the tenant against the order refusing leave to defend. The Court found that the tenant has made out a *prima facie* case for grant of leave to defend. In these circumstances, the Delhi High Court made observations that whether the grandson is dependant on the landlord is a triable issue. In such circumstances, the aforesaid judgment has no application. The last judgment relied upon the learned counsel representing the petitioner is the judgment in **Joginder Pal's case (supra)**. While

interpreting the provisions of the East Punjab Rent Restriction Act, 1949, the Court held that the bonafide requirement of the landlord is not restricted to himself but it includes the requirement of a member of the family or of a person on whom the landlord is dependant or who is dependant on the landlord. While interpreting the provision, the Court held that the bonafide requirement of the family members is also included in the own requirement of the landlord. In the considered opinion of the Court, the judgment goes against the tenant. The aforesaid judgment does not lay down that the landlord is required to assert in the eviction petition that a member of family is dependant on the landlord while filing the application with a prayer to order eviction of the tenant. In para 24, the Supreme Court explained the concept and expounded the law in the following manner:-

“24. We are of the opinion that the expression 'for his own use' as occurring in Section 13(3)(a)(ii) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove we have found the pari materia provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependents and kith and kin in the requirement of landlord as "his" or "his own" requirement and user. Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the

requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire : (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close inter-relation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act.”

15. It is evident from the careful reading of para 24 that the requirement of the landlord includes the bonafide requirement of a member of the family. It is not the requirement of the law that the landlord must assert that either he is dependant on the family member or the family member is dependant on him. In fact, in the later part of para 24, the Court has culled out the two tests. In such circumstances, the judgment relied upon does not advance the case of the tenant.

16. This Bench now proceeds to examine the arguments of the learned counsel representing the respondent.

17. In the considered view of the Court, the first argument already stands elaborately discussed and therefore, needs no further deliberation.

18. With regard to the second argument, it may be noted that the previous petition was filed on a different ground and withdrawal of the previous petition does not prove that the requirement of the landlord is not

bonafide. As regards the application for leading additional evidence, it may

be noted that it is not appropriate for the Court to expect that the family member of the landlord would wait for so many years altogether and would not in the meantime, take up some work/job in order to sustain in his life. The litigation in the Court takes its own time to get decided which sometimes turn into years. In such circumstances, even if the landlady started practicing in the Indian traditional Ayurveda medicine, it will not debar the Court from continuing with the said petition.

19. The last argument has also been discussed in detail and hence, does not need further deliberation.

20. Keeping in view the aforesaid facts, both the revision petitions are allowed.

21. The judgment passed by the Appellate Authority is set aside and that of the Rent Controller is restored. The application filed by the tenant for additional evidence has already been considered on merits and is disposed of as such. The photographs sought to be produced does not advance the case of the tenant.

22. All the pending miscellaneous applications, if any, are also disposed of.

08th June, 2022

Ay

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*