

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

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**CR-6937-2017 (O&M)
Date of decision: 14.12.2022**

Davinder Kumar Sethi

.....Petitioner

Versus

Babu Rani

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Ms. Puneeta Sethi, Advocate
for the petitioner.

Mr. Lokesh Vohra, Advocate
for the respondent.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner-tenant is impugning the concurrent findings recorded by the Courts below i.e. Rent Controller and Appellate Authority, Ferozepur vide which he was ordered to be evicted from the demised shop (as detailed in para 2 of the judgment of the Rent Controller).

Parties to the *lis* hereinafter shall be referred to by their original positions in the rent petition.

The landlady filed eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short, 'the Act') on the grounds (i) that the tenant had failed to pay the arrears of rent from July, 2011 till date and had also not paid the house tax as well as the water tax charges despite her repeated requests to him (ii) that the landlady required the shop for the necessity of her son Kushal Pal, aged 23 years, who after completing his diploma in Computer Engineering had been unable to secure any job. Hence, the landlady wanted to settle

him by setting up a shop of computer and mobile accessories, so that he could not only earn his livelihood but also maintain himself as well as his mother i.e. the landlady. Besides this, it was also averred by the landlady that she did not own or possess any other suitable place in the area concerned nor had she vacated any such premises in the urban area of Ferozepur City.

On the other hand, the tenant opposed the eviction petition on the ground that requirement pleaded by the landlady was neither genuine nor bonafide. The tenant also took an objection that the rent petition was not maintainable as the landlady had not pleaded the necessary requirement of Section 13(3)(a)(ii) of the Act.

Upon consideration of the material and other evidence led, both the Courts below concurrently held that the requirement of the landlady was genuine and accordingly ordered the tenant to hand over the vacant possession of the shop to the landlady. Hence, the instant revision petition.

Learned counsel appearing for the tenant has vehemently contended that the concurrent findings recorded by the Courts below are illegal and perverse being contrary to the settled law, and deserved to be set aside.

Learned counsel further submits that the Courts below failed to appreciate that the landlady had mortgaged the adjoining shop to the tenant in the year 2011 from which it could be clearly inferred that the requirement of the landlady was not at all genuine else she would have not mortgaged the adjoining shop and would have instead used the same for the purpose for which she was now seeking the

eviction of the tenant. It has also been urged by the learned counsel that the landlady did not even have the financial capacity to start any business, therefore, the eviction of the tenant could not have been ordered. It has still further been argued by the learned counsel that in her eviction petition, the landlady had nowhere pleaded that her son was not in possession of any other shop or that he had vacated any such shop within the urban area of Ferozepur, without any sufficient reason. Learned counsel has, thus, vehemently argued that since the landlady had failed to plead the statutory requirement, no amount of evidence could fill in the said lacuna.

On the other hand, learned counsel for the landlady while controverting the submissions made by the counsel opposite, has contended that the son of the landlady completed his diploma in the year 2012, therefore, the necessity to settle him arose only thereafter. Hence, merely because the adjoining shop had been mortgaged by the landlady in the year 2011 it could not be a ground to question her bonafides to set up a business for her son in the demised shop. Learned counsel still further has submitted that the landlady as well as her son, Kushal Pal, while stepping into the witness box had clarified that neither were they in possession of any shop nor had they vacated any shop in the urban area of Ferozepur city, without sufficient cause. Thus, it has been urged that the statutory requirements under Section 13(3)(a)(ii) of the Act stood complied with, by the landlady.

I have heard learned counsel and perused the relevant material on record.

At the outset, it would be apposite to discuss the scope of

revisional jurisdiction of this Court to interfere with the concurrent findings recorded by the learned Courts below. Hon'ble the Supreme Court, in '***Hindustan Petroleum Corp. Ltd. vs. Dilbahar Singh***' 2014 (9) SCC 78, has held that High Court should loathe to interfere with the findings of fact unless and until such findings are blatantly perverse or it would result in gross miscarriage of justice if they are sustained. It would be apposite to reproduce the relevant observations and findings of the Hon'ble Apex Court in ***Hindustan Petroleum Corp.'s case*** (*supra*):-

“43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

Adverting to the instant case, this Court finds no force in the submissions made by the learned counsel for the tenant that since the landlady had mortgaged the adjoining shop with the tenant in the year 2011 hence, her requirement qua the demised shop was not genuine.

It needs to be pointed out here that the adjoining shop, which was lying vacant prior to the year 2011, was mortgaged by the landlady with the tenant and the possession was also given to him in lieu of a sum of Rs.4 lakhs, so that she could purchase 1/3rd share in the building, which fact stands substantiated from the sale deed dated 31.05.2011 (Ex.A-11) in respect of the said purchase. Still further, son of the landlady completed his diploma only in the year 2012, therefore, the necessity to set up his business only arose thereafter when he was unable to find any suitable employment and could not have possibly arisen prior thereto. Hence, the mortgage of the adjoining shop in the year 2011 would not in any manner adversely affect the case of the landlady and still further the necessity of the landlady cannot be doubted on the said ground.

It would be relevant to observe here that the requirement of a landlord/landlady is presumed to be genuine unless shown to the contrary, by way of cogent evidence. Further, the landlord/landlady being the best judge of his/her requirement, cannot certainly be dictated by a tenant as to how, where and in what manner he/she should or should not start his/her business. The tenant cannot also be allowed to question the financial capacity of the landlord/landlady in eviction proceedings. It is for the landlord/landlady to arrange the requisite

finances to set up his/her business and the tenant certainly has no concern as to whether the landlord/landlady has the financial capacity or not, or as to how the landlord/landlady would arrange for the finances to set up his/her business. In the present case the landlady, who is a divorcee, requires the demised premises to set up a business for her only son, so as to settle him. It is but natural for any parent to see his/her children settle in life. The necessity of the landlady in the circumstances does come across as being genuine and bonafide.

This Court also does not concur with the submissions made by the learned counsel appearing for the tenant that the rent petition deserves dismissal as necessary requirement of Section 13(3)(a)(ii) of the Act had not been pleaded by the landlady. In this regard, it would also be relevant to reproduce the relevant portion of the rent petition (which was reiterated by the landlady as well as her son in their deposition), which reads as under:-

“4(c) that the applicant do not own possess any other suitable place in the area for setting his son nor they have vacated any such premises in the urban area of Ferozepur city for the said purpose....”

It is apparent from a bare reading of the above extract that the rent petition at best can be said to have not been happily worded. Further, the tenant in his written reply has nowhere stated that the landlady had other suitable place for settling her son or that they had vacated any such premises without any sufficient cause after commencement of the Act. Even during the cross-examination of the landlady and her son neither any question qua the aforesaid facts was put nor any suggestion in the said regard given. In these circumstances,

merely because the ingredients were not pleaded in clear words, such technicality would not be a ground by itself to throw away the petition of the landlady. The tenant has also not been able to show as to what prejudice had been caused to him by such non-pleading of the statutory ingredients when it was not his case that the landlady or her son were in possession of any other non-residential building at the time of the institution of the rent petition or that they had previously vacated any such building without any sufficient cause.

As a sequel to the above, this Court does not find any illegality or irregularity in the concurrent findings recorded by the Courts below. Accordingly, the instant revision petition being devoid of any merit is dismissed.

14.12.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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