

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

CR No.1011 of 2020 (O&M)
Date of decision: 5th September, 2022

Satnam Dass

... Petitioner

Versus

Jagdev Singh & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Ajaivir Singh, Advocate for the petitioner.

Mr. Amit Jain, Senior Advocate with
Mr. Chetan Salathia, Advocate for the respondents.

MANJARI NEHRU KAUL, J.

Petitioner has challenged the judgment dated 18.11.2019 passed by the learned Appellate Authority reversing the findings of the learned Rent Controller dated 09.11.2017 whereby the petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as, 'the Act') filed by the respondents was dismissed.

The landlord/respondent sought eviction of the petitioner/tenant from the demised premises on the ground of personal requirement.

As per the pleaded case of the landlord, the demised premises had earlier been in his as well as his brother Kamaljeet Singh's joint ownership and possession. Subsequently, the demised

premises had fallen to the share of the petitioner vide family partition dated 15.12.2010. Hence, since then there existed a relationship of landlord and tenant between the parties. As per the landlord, the shop in question was required by him to start a business of cloth and readymade garments for his son i.e. respondent No.2, who was unmarried and had no independent business of his own. It was also averred that the landlord did not possess any other shop within the Municipal limits of Ahmedgarh except one. Besides this, he had not vacated any other shop or building after the commencement of the Act without any sufficient cause and still further, he had not taken possession of any other shop on the ground of personal necessity.

While disputing the averments made by the landlord, the petitioner/tenant in his written statement denied the factum of any family partition between the landlord and his brother. He disputed the maintainability of the rent petition. It was also denied that the son of the landlord i.e. respondent No.2 had no independent business and rather submitted that the landlord and his son were cloth merchants and were running a big showroom at Ahmedgarh. In spite of this, it was also submitted by the tenant that the landlord and his son were owners in possession of non-residential properties within Ahmedgarh, however the landlord had intentionally not disclosed the factum of the aforesaid properties in the rent petition and hence, he had made material concealment while filing the petition in question.

On the basis of material on record and evidence led by the parties, the Rent Controller dismissed the rent petition on the ground of non-disclosure of other properties in the ownership and possession of the landlord and his son as well as on the ground that the landlord had sold some shops during the pendency of the rent petition. The Rent Controller concluded that the bonafide requirement for ejectment of the petitioner was thus not made out. In the appeal, which was preferred against the order of the Rent Controller, the Appellate Authority reversed the findings of the Rent Controller and ordered eviction of the petitioner. Hence, the instant revision petition.

Learned senior counsel appearing for the petitioner/tenant has challenged the impugned order passed by the Appellate Authority primarily on the following grounds:-

- (i) That the Appellate Authority had erred and misread the evidence led by the parties while reversing the well-reasoned findings of the Rent Controller by failing to take note of the fact that the landlord was owner of a shop measuring 4' x 40' at Mahavir Road and even his son i.e. respondent No.2 was in possession of a shop measuring 5' x 12' at Gaushala Road, which was just 100 yards away from the demised shop.

- (ii) That the respondent No.2 in his examination in-chief stated that the shop measuring 5' x 12' in his possession was at Bazigar Basti Road however the said fact stood belied during his cross-examination wherein he admitted that the shop was located at Gaushala Road.
- (iii) That the landlord had neither disclosed that he and his son were in possession of the aforementioned shops nor did he disclose about the other properties under their ownership within Ahmedgarh. Hence, the landlord had failed to plead the necessary ingredients of Section 13 of the Act coupled with the fact that he had made blatant concealment in the petition.

Learned senior counsel further, vehemently argued that the Appellate Authority had erroneously ordered eviction of the petitioner/tenant by failing to take into account that during the pendency of the rent petition, the landlord had sold as many as four shops which further raised a big question mark qua his so called bonafide requirement. He submitted that the landlord neither took any permission from the Rent Controller nor even intimated about the sale of the shops and had even failed to furnish any plausible explanation as to why those shops were not fit for him or his son to start their business of cloth. Learned senior counsel still further submitted that it was a well

settled principle of law that a litigant, who did not approach the Court of law with clean hands, should be denied any relief and thrown out at the threshold.

It was also submitted by the learned senior counsel that the landlord was infact a partner in the firm of Hardev Singh Raghbir Singh along with his brother Kamaljeet Singh and a false and fabricated story had been coined to the effect that he was working as an employee there. It was submitted that in the aforementioned facts and circumstances of the case, it was abundantly clear that the requirement of the landlord was neither genuine nor bonafide as his son i.e. respondent No.2 was working along with his father in the cloth showroom and earning a handsome income. Therefore, the ground on which the petition had been filed for ejectment of the tenant i.e. it was required for starting an independent business for his son i.e. respondent No.2, was infact a mere wish and desire and not at all digestible. A prayer was therefore made for setting aside the impugned order passed by the Appellate Authority. In support of his submissions, learned senior counsel relied upon **‘Dalip Singh vs. State of Uttar Pradesh & others’ 2010(2) SCC 114; ‘Ms. Nisha vs. State of Haryana & others’ 2009(1) RSJ 42; ‘Hatti Singh & another vs. Rakesh Kumar & others’ 2010(33) RCR (Civil) 142; ‘Randhir Singh Rohilla vs. Rajbir’ 2015(33) RCR (Civil) 112; ‘Babli & others vs. Kumari Ruchi Bansal & another’ 2016(2) RCR (Rent) 487; and ‘Jaspreet Takhar vs. Ghai Enterprises & others’ 2013(2) RCR (Civil) 650.**

Per contra, learned senior counsel appearing for the respondent/landlord while opposing and controverting the submissions made by the counsel opposite, submitted that there had been no concealment on his part as in the rent petition it had been specifically mentioned that the landlord did not possess any other shop within the Municipal limits of Ahmedgarh except one. He further submitted that it is not the requirement of law that the landlord should disclose the properties which he owns, rather the only requirement is that he must disclose the properties which are in his possession. He further submitted that the landlord was also not required to disclose the property in the possession of his son, for whose requirement eviction from the demised premises has been sought. He further submitted that even otherwise, the landlord as well as his son i.e. respondent No.2 in their evidence had clarified and disclosed about the shops in their ownership and possession, therefore, it could not be said that they had made any concealment while filing the petition in question or that the necessary ingredients of Section 13 of the Act had not been pleaded by the landlord. Qua the sale of some shops by the landlord during the pendency of the rent petition, learned senior counsel submitted that it would be of no consequence as the landlord had every right to deal with his other properties and the Act nowhere prohibits sale of other properties owned by a landlord during the pendency of proceedings under the Act. He also submitted that there was no requirement for the landlord to seek permission of the Rent Controller for selling his

properties or even intimate it about any such sale. Learned senior counsel submitted that merely because some shops had been sold, could not be a ground to raise a question mark qua the bonafide requirement of the landlord. He submitted that the factum of sale of properties was beyond the pleadings of the petitioner as he had not taken any such ground in his written statement. Still further, the sale deeds were never put to the landlord and his son in their cross-examination and no question whatsoever in that regard was put to them. Learned senior counsel also submitted that it was abundantly clear from the oral testimony of brother of the landlord i.e. AW-4 Kamaljeet Singh that the landlord was not a partner in his cloth business and rather he was just his employee. The respondent No.2 was also working as an employee and drawing a meager salary of ₹ 6,000/- per month. Therefore, the landlord and his son wanted to grow in their life and start an independent business. It was urged that in the circumstances, the tenant had no right to stop them from growing in their life and in their profession. In support of his submissions, learned senior counsel for the respondent has relied upon **‘Hindustan Petroleum Corp. Ltd. vs. Dilbahar Singh’ 2014 (9) SCC 78; ‘Suresh Chand Goyal vs. Kali Charan & another’ 2019 (1) RCR (Rent) 391; ‘M/s Satpal Vijay Kumar vs. Sushil Kumar’ 2011 (2) RCR (Civil) 82; ‘M/s Narinder Kumar Shiv Kumar Dhawan vs. Sunita Chopra’ 2007(1) RCR (Civil) 867; and ‘Raj Kumar vs. Budha Mal’ 2010 (4) PLR 773.**

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

The submissions made by the learned senior counsel for the petitioner that there had been material concealment by the landlord as he had failed to disclose all the properties owned by him and his son in the rent petition, is devoid of any merit. It would be apposite here to reproduce Section 13(3)(a) of the Act:-

“13. Eviction of tenants. –

XXXX XXXX XXXX

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

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

(a) he requires it for his own occupation;

(b) he is not occupying another residential building, in the urban area concerned; and

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;

(d) it was let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment:

Provided that where the tenant is workman who has been discharged or dismissed by the landlord from his service or employment in contravention of the provisions of the Industrial Disputes Act, 1947, he shall not be liable to be evicted until the competent

authority under that Act confirms the order of discharge or dismissal made against him by the landlord.”

It is perspicuous from the above reproduced provisions that a landlord seeking eviction on the ground of personal necessity should not be “occupying” any other property of similar nature in the urban area concerned. It clearly comes across that it is required of the landlord to disclose as to whether or not he is occupying any other property of similar nature in the urban area. Therefore, there can be no manner of doubt that the landlord is not required to make a disclosure of all the properties whether residential or non-residential in his ownership and such non-disclosure, if any, would be of no consequence and cannot be termed as material concealment of facts on the part of the landlord.

The landlord in para No.8 of the rent petition has clearly stated that *“petitioner do not possess any other shop within the municipal limits of Ahmedgarh except one nor has the petitioner vacated any such shop or building after the commencement of the Rent Act without any sufficient cause and he has not took the possession of any other shop on the ground of personal necessity in the area of Ahmedgarh”*. Therefore, the landlord has pleaded all the statutory requirements of Section 13(3)(a) of the Act.

Coming to the next argument of the learned senior counsel for the petitioner qua the landlord being in possession of other shops, a

perusal of the above extracted averments made by the landlord in para No.8 of the rent petition further clarifies that the landlord had disclosed about the possession of one other shop in Ahmedgarh. It was further clarified by the landlord during his testimony that the shop measuring 4' x 14' was situated at Mahavir Road and was in his possession. Still further, even respondent No.2 in his examination in chief, disclosed about his ownership of a shop measuring 5' x 12' situated at Bazigar Basti though in his cross-examination he stated that it was situated at Gaushala Road.

However, it is clear from the conjoint reading of the examination in chief and cross-examination of the respondent No.2 that the said shop at Gaushala Road and the one at Bazigar Basti is one and the same and thus, it cannot be said that they are two separate shops. The landlord during his cross-examination further explained that the shop at Bazigar Basti was in the shape of Gali covered with ballas and bricks and was being used as a store. In one of the shops, it was also admitted by the landlord, that there was a staircase which was being used as a passage for giving access to the first floor. Hence, in the circumstances this Court does not concur with the submissions made by the learned senior counsel for the petitioner that there had been any material concealment on the part of the landlord.

Coming to the next limb of arguments raised by the learned senior counsel for the petitioner qua the sale of other shops by the landlord during the pendency of the eviction proceedings, this Court

does not find any force qua the same as well. As has been rightly pointed out by the learned senior counsel for the respondent, there was no provision under the Act or any other law which prohibited a landlord from selling his other properties during the pendency of the eviction proceedings. The Appellate Authority has also rightly observed that the Legislature had not created any kind of embargo upon the landlord to disclose the factum of sale and purchase of any property and that connotation of sale/purchase could not be equated with the term “Eviction”. It would also not be out of context to observe here that the landlord is not required to take permission from the Rent Controller to sell any other property owned by him, much less intimate him qua the sale of any of his properties. Merely because the landlord had sold some shops during the pendency of the eviction proceedings, thus cannot be a ground to doubt his bonafide requirement and definitely cannot be termed to be a material concealment in any manner whatsoever.

The petitioner has also moved an application for additional evidence under Order 41 Rule 27 CPC for placing on record 2 sale deeds (Annexures A-1 and A-2), allegedly executed by the landlord qua some properties. However, as discussed hereinbefore the sale of his other property by the landlord during pendency of the eviction petition would not displace the case of the landlord and thus, would not be relevant for adjudication upon the question of his bonafide requirement.

Hence, the said application for additional evidence (CM No.3404-CII of 2020) is dismissed.

It would also be relevant to note here that this Court cannot act as a Court of second appeal while exercising its revisional jurisdiction. The Hon'ble Supreme Court in '**Hindustan Petroleum Corporation vs. Dilbahar Singh**' (2014) 9 SCC 78, has held that revisional power of the High Court is not and cannot be equated with the power of reconsideration of all questions of fact as a Court of first appeal. The revisional jurisdiction is confined to find out that finding of facts recorded by the Court/authority below is in accordance with law and does not suffer from any error of law.

In the instant case, the findings of Appellate Authority do not suffer from any illegality much less perversity. Accordingly, the instant revision petition being devoid of any merit is dismissed.

(MANJARI NEHRU KAUL)
JUDGE

September 5, 2022

rps

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