

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

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**CR-767-2021 (O&M)
Decided on : 09.05.2022**

Dr. Harish Vashisht

. . . Petitioner(s)

Versus

Gaurav Gupta and another

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Surinder Mohan Sharma, Advocate
for the petitioner(s).

MANJARI NEHRU KAUL, J. (ORAL)

The instant revision petition has been filed by the petitioner (landlord) against the judgment and order dated 06.01.2020, passed by the learned Appellate Authority, Panchkula in Rent Petition No. 352 of 2013, vide which it allowed the appeal preferred by the respondent (tenants), against the judgment dated 29.01.2015, passed by Rent Controller, in a petition u/s 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for brevity 'the Act'), wherein, they were ordered to be ejected from the demised premises i.e. Shop No. 29, situated in abadi of village Abhaypur, Industrial Area Phase-I, Panchkula.

The pleaded case of the petitioner in the rent petition filed before the Rent Controller, Panchkula, may be noticed thus:-

That he was owner of the demised premises, which was purchased by him in the year 1998. Since the petitioner wanted to sell the demised premises and the respondents were interested in purchasing the same, an agreement to sell dated 09.01.2008 was executed between him and the father of the respondent No.1, for a total consideration of Rs.13,50,000/-, out of which a total sum of Rs.10,25,000/- was received by him as part payment. A sum of Rs.3,25,000/-, however, still remained outstanding. On the request of the father of respondent No.1, the date of execution of the sale-deed was repeatedly extended. Since they failed to execute the sale-deed, the petitioner served a legal notice dated 26.03.2011, upon the respondent to execute the sale-deed after making payment of the

balance sale consideration of Rs.3,25,000/-. The respondent No.1 and his father were also informed that in case they failed to do so, the entire sale consideration received by the petitioner shall stand forfeited and ejectment proceedings from the demised premises would be initiated against them by the petitioner. It was also alleged that respondent had taken the ground floor of the demised premises on rent @ Rs.1000/- p.m. pursuant to a rent agreement executed between the parties on 09.04.2008. Thereafter, the first and second floors of the demised premises were also let out to the respondent No.1 in June, 2008, on his request. The rent of the triple storey Shop i.e. the demised premises was fixed at Rs.3000/- p.m.. The respondent was running a chemist shop in the name and style of M/s Shivam Medicos in the demised premises. The petitioner sought ejectment of the respondent on the ground of non-payment of rent and personal necessity by alleging that the respondent was in arrears of rent w.e.f. 01.07.2008 to 30.04.2011 @ Rs.3000/- p.m. and hence, he was liable to pay arrears in the sum of Rs.1,02,000/-. With regard to personal necessity, the petitioner sought ejectment of respondent on the ground that since the former was running an educational institute, he required the demised premises, as it was more suited in comparison to the premises, where he was presently running his institute.

The respondent No.1 while filing his written statement controverted the averments made by the petitioner by submitting that he had not approached the Court with clean hands and had in fact, concealed true and material facts. It was submitted that an agreement to sell dated 09.01.2008 was executed between the parties with regard to the property in question for a total consideration of Rs.13,50,000/-. Rs.2,00,000/- was paid to the petitioner as earnest money through cheque dated 07.01.2008. It was agreed between the parties that the last date for execution and registration of the sale-deed would be 22.02.2008. However, on 21.02.2008, the petitioner approached the respondent with a request to pay him Rs.5,75,000/- and then with the mutual consent of both the parties, the date of execution and registration of the sale-deed was extended to 07.03.2008. On 16.04.2008, the last date for execution and registration of the sale-deed was again extended to 15.05.2008. Even though, the respondent No.1 and his father were ready and willing to perform their part of the contract, however, the

petitioner again approached the respondent No.1 with a request that he was still unable to execute and register the sale-deed. The respondent No.1, on the other hand, wanted to start a chemist shop and also he requested the petitioner to at least hand them over the possession of the demised premises, as they required lease-deed/title-deed of the shop in question for getting the requisite license from the authorities concerned. A complaint was also subsequently made to the Superintendent of Police, Panchkula, against the petitioner by the respondents alleging that he was not executing and registering the sale-deed as per the agreement arrived at between the parties. Thereafter, the petitioner acknowledged before the police *qua* the receipt of the sale-consideration and also undertook to execute the sale-deed on or before 04.04.2011 or as per the convenience of the respondent. A duly sworn-in affidavit *qua* the aforesaid undertaking was given by the petitioner. Despite the undertaking given by the petitioner by way of his affidavit, on 28.04.2011, when the respondent No.1 and his father went to the Sub-Registrar office, Panchkula, for the execution and registration of the sale-deed, the petitioner did not turn up. Resultantly, the respondent No.1 along with his father, got their presence marked in the Sub-Registrar Office by way of an affidavit dated 28.04.2011. The respondent No.1 did not dispute the execution of a rent-deed between him and the petitioner, but asserted that it was only for the purpose of obtaining a licence for running their chemist shop. The respondent, thus, categorically denied that the existence of any relationship of landlord and tenant between the parties.

Learned counsel for the petitioner submits that the Appellate Authority erred in allowing the appeal solely on the ground that a suit for specific performance instituted by the respondent No.1 against the petitioner had been decreed and the appeal preferred against the same also stood dismissed. Still further, he contends that enough cogent evidence had been led before the Court below to establish that there existed a landlord – tenant relationship between the parties, which had been erroneously ignored by the appellate Court. Learned counsel submits that no doubt an agreement to sell dated 09.01.2008, had indeed been entered into between the petitioner and the respondent No.1 and his father, however, the said agreement to sell stood terminated by him, as he had served an advance notice dated 26.03.2011 upon the respondents. It was thus submitted that since the

agreement to sell was non-existent, the petitioner being the landlord had every right to get the demised premises vacated on grounds of non-payment of rent as well as personal necessity.

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

Admittedly, an agreement to sell dated 09.01.2008 was executed between the petitioner and the respondent & his father with *qua* to the demised premises. Out of the total consideration of Rs.13,50,000/- agreed upon between the parties, it is not disputed by either of the parties that an amount of Rs.10,25,000/- was paid by the respondent and his father to the petitioner and only Rs.3,25,000/- remained to be paid. It is also a matter of record that not only the date for the execution of the sale-deed was extended several times on the request of the petitioner, but there is an endorsement to the said effect on the agreement to sell also. The said fact with respect to the endorsement on the agreement to sell has not been disputed by the petitioner.

The petitioner has sought the ejectment of the respondent on the grounds of non-payment of rent and personal necessity. As per the pleaded case of the petitioner, a rent agreement (Mark 'A') dated 09.04.2008, was executed between the parties. The respondent denied the relationship of a landlord – tenant between the parties and the rent assessed by the Rent Controller was deposited by him under protest. It is the case of the respondent that the rent agreement was executed between the parties on 09.04.2008, after the petitioner had received substantial part of the payment of the total consideration pursuant to the agreement to sell with respect to the property in dispute. Since the petitioner had been repeatedly seeking extension of time and on the other hand, the respondent No.1 was wanting to start his chemist shop in the demised premises, for which he was required to give either a rent-deed or title-deed of a property, to obtain the necessary license, the petitioner agreed to execute a rent-deed (Ex.D1) for giving it to the drug inspector. This fact finds due corroboration from the deposition of the petitioner himself, who while stepping into the witness-box as PW-1, admitted that he had got the rent agreement executed because it was required by the respondent for getting a license for running his chemist shop. Not only this, the petitioner also admitted that it was in this

background, the possession of the demised premises was given to the respondent and the rent agreement (Ex.D1) was executed for furnishing it before the Drug Inspector. By way of additional evidence before the Appellate Authority, the respondent No.1 tendered into evidence Ex.PX (certified copy of judgment & decree dated 12.02.2018), whereby, the suit for specific performance filed by the respondent and his father with regard to the premises in question was decreed. Therefore, it is evident that the parties had no intention to enter into a relationship of landlord-tenant and the rent agreement was entered into just to enable the respondent No.1 in getting a license for chemist shop.

This Court, on a minute perusal of the material on record, concurs with the findings recorded by the Appellate Authority. It may also be pointed out that Regular Second Appeal, filed by the petitioner against the aforesaid judgment & decree dated 12.02.2018 already stands dismissed by this Court vide order of even date i.e. 09.05.2022. Once the respondent has been declared to be the owner of the property in question, then the question of the petitioner being the landlord of the demised premises does not arise.

Consequently, finding no merit in the present revision petition, same is hereby dismissed.

(MANJARI NEHRU KAUL)
JUDGE

May 09, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*