

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

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**CR No. 2382 of 2019 (O & M)
Date of Decision :13.12.2022**

*Kuldeep Singh**..... Petitioner**versus**Lala Ram Saran Dass Dharamarth Trust, Gurdaspur**..... Respondent***CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. G.S. Bal, Senior Advocate with
Mr. Laxman Chaudhary, Advocate, for the petitioner

Mr. M.S. Bedi, Senior Advocate with
Mr. Abhishek Thakur, Advocate, for the respondent

TRIBHUVAN DAHIYA J. (ORAL):

This is a tenant's revision petition against the order of eviction passed by the Rent Controller dated 28.3.2016 and the order of Appellate Authority dated 12.3.2019, affirming the same.

2. The respondent/landlord (hereinafter referred to as 'the landlord') filed an application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') seeking ejectment of the petitioner/tenant (hereinafter referred to as 'the tenant') from the shop in question (hereinafter referred to as 'the demised premises'). The landlord is a Charitable Trust and a registered body under the Societies Registration Act (XXI of 1860). The ejectment application was filed on the pleadings that the tenant, who was inducted in the demised premises at the rate of Rs.325/-per month in the year 1993, had been running the business of car battery repair, in the name and style

of M/s Kuldeep Auto Electricals. The landlord sought eviction on the ground of *bona fide* necessity as it was in dire need of the demised premises to construct and run a dispensary/mini hospital to help the public in general, and provide free medicines to the poor as well as the aged persons. It was also pleaded that the landlord had already got vacated three shops from tenant Murta Singh, vide order dated 1.9.2012 (Ex.R-1) passed by the Rent Controller, Gurdaspur. The shops were located towards North and South sides of the demised premises. The said three shops along with the demised premises would together be used by the landlord for running the dispensary/mini hospital for the stated purpose.

3. The application was contested by the tenant, who admitted his tenancy as also the fact that he was running business of motor vehicles and battery repair there.

4. Both the authorities below have concurrently held that the demised premises was required by the landlord for the *bona fide* purpose of opening a dispensary/mini hospital in the demised premises along with three other adjoining shops. The aims and objects of the Trust required it to help poor patients in hospitals and work for welfare of the public in general, and also to provide medical facilities.

5. Learned senior counsel for the petitioner/tenant has argued that the landlord's need to require the demised premises was not *bona fide*. One of the adjoining shops got vacated earlier, was sold to Kewal Krishan in the year 2010-11. This shows the purpose of filing the ejectment application is to get the premises vacated and sell it. It has next been contended that an earlier ejectment application filed by the landlord against the tenant already stood dismissed vide order dated 1.9.2012 (Ex.R-1). Therefore, the instant application is hit by the principle of *res-judicata* and not maintainable.

6. *Per contra*, learned senior counsel for the landlord has argued that

eviction has been rightly ordered by the authorities below, and the impugned judgments are well reasoned which do not call for any interference by this Court.

7. Learned counsel for the parties have been heard and record perused.

8. To consider first submission of learned senior counsel for the tenant, it needs to be noted that *bona fide* need of the landlord stands duly established on record by way of cogent evidence. The memorandum of association of the landlord/Charitable Trust as well as the copies of its rules and regulations, are on record as Ex.A-7 and Ex.A-8 respectively. As per aims and objects of the Trust, it is required to act for welfare of the poor and the aged by providing them medical facilities and free medicines. In case the demised premises is required, along with three other adjoining shops, for opening dispensary/mini hospital in furtherance of its aims and objects, no exception can be taken to it. Further, there is no evidence on record that any of the adjoining shops was sold to any person. As far as the admission said to have been made by Administrative Manager of the landlord/Trust, Raman Sharma, AW-1, before the Rent Controller, that his brother Vinod Kumar was occupying the property lying on the Eastern side of the demised premises, is concerned, it needs to be noted that sale deed with respect to the shop in favour of Vinod Kumar is of the year 2009, as duly established by his cross-examination itself. Whereas, the eviction application in question was filed only in the year 2012. Therefore, the said sale of the property cannot have any bearing on the *bona fide* need of the landlord in respect of the demised premises. Besides, it had come in cross examination itself, that the said shop was located on Eastern side of the demised premises, whereas shops adjoining the demised premises, on its North and South sides, were got vacated, and the same were lying vacant. The

demised premises was required to open the dispensary/mini hospital along with these three shops. Therefore, sale of some other property, that too much prior to filing of the ejectment petition, cannot in any way cloud *bona fide* need of the landlord which stands concurrently upheld by both the Authorities below.

9. To consider next submission of learned senior counsel for the tenant; it is not established on record that the ejectment application in question is hit by the principle of *res-judicata*. A perusal of the order dated 1.9.2012 (Ex.R-1) dismissing the earlier ejectment application between the parties, shows that it was filed on the grounds of arrears of rent, impairment in value and utility of the shop and personal necessity. Although it was pleaded therein that the Trust was in dire need of the shop in question to run its own charitable activities and to raise further construction over it to enhance its finances, it was not pleaded that the shop was required to run a dispensary/mini hospital there. The earlier application was dismissed because nature of the charitable work for which the shop was required, was not disclosed therein. Therefore, the element of need was missing; in the absence whereof the requirement of *bona fide* need was held to be not established. It is for the first time that the plea of *bona fide* necessity for running a dispensary/mini hospital in the demised premises along with adjoining shops, which are lying vacant, has been pleaded in the instant ejectment application. It is, therefore, apparent that the two ejectment applications were filed on different grounds altogether. Dismissal of the earlier application cannot attract the principle of *res-judicata* against the landlord to bar filing of the second/instant ejectment application against the tenant.

10. No other argument was raised by learned senior counsel for the appellant/tenant.

11. In view of the aforesaid, there is no ground to interfere with the well-reasoned judgments of the authorities below which do not suffer from any

error of law.

12. Dismissed.

13. Pending miscellaneous application(s), if any, stands disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

13.12.2022
Ashwani

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