

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

**CR No.3246 of 2022 (O&M)**

**Reserved on : 18.08.2022**

**Date of Decision: 30.08.2022**

Narinder Kumar

....Petitioner

**VERSUS**

Kuldip Singh

....Respondent

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present: Mr. Ajay Jain, Advocate for the petitioner.

Mr. Divanshu Jain, Advocate for the respondent.

**ALKA SARIN, J.**

The present revision petition has been preferred by the tenant-petitioner against the orders dated 04.12.2019 and 21.07.2022 passed by the Rent Controller and the Appellate Authority respectively, whereby his ejectment has been ordered from the premises in dispute.

The brief facts relevant to the present *lis* are that the landlord-respondent filed an ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act') for eviction of the tenant-petitioner averring that he was owner and landlord of SCO No.152 Sector 24-D, Chandigarh and that the tenant-petitioner had been inducted as a tenant in the rear portion of the ground floor measuring 40% of the area and had an entry from the backside. It was further averred that the landlord-respondent purchased the SCO in the year 1998 and ever since the tenant-petitioner was paying rent @ Rs.750/- per month. The eviction of the tenant-petitioner was sought on the ground of personal necessity as the landlord-respondent wanted to expand his business which was being run from the front portion of the SCO. The ejectment petition was

contested by the tenant-petitioner by contending that no cause of action had arisen in favour of the landlord-respondent as the premises in dispute was taken on rent by the tenant-petitioner from one Jagtar Singh in the year 1988 @ Rs.100/- per month and thereafter the rent was increased from time to time. It was also stated that the landlord-respondent was also a tenant under the said Jagtar Singh and was in occupation of the front portion of the SCO in question and w.e.f. 1998 the tenant-petitioner started making payment of rent to the landlord-respondent and at that time the landlord-respondent told the tenant-petitioner to pay the electricity consumption charges of the entire ground floor as he was running short of finances after purchasing the SCO and that the tenant-petitioner in order to maintain harmonious relations with the landlord-respondent started making payment of electricity consumption charges of the entire ground floor. It was further averred that the tenant-petitioner asked the landlord-respondent to adjust his share of the electricity consumption charges paid by him, however, the landlord-respondent requested for some more time to make the adjustment. It was further averred that the ejectment petition had been filed by the landlord-respondent only to avoid the refund of his share of the electricity consumption charges. It was also stated that the landlord-respondent had filed an ejectment petition *qua* the second floor of the SCO in question on the ground of personal necessity of his son which ejectment petition was allowed on 31.08.2015 and that the second floor had now been rented out again to some other persons. It was also the stand taken by the tenant-petitioner that the ejectment petition had been filed only in order to get the rent increased. On the basis of the pleadings of the parties, the following issues were framed by the Rent Controller :

1. Whether the respondent is liable to be evicted from the demised premises on the ground of personal necessity ? OPP
2. Whether the petition is not maintainable ? OPD
3. Relief.

The Rent Controller vide the impugned order dated 04.12.2019 directed the tenant-petitioner to hand over vacant peaceful possession of the premises in dispute to the landlord-respondent within 60 days from the date of passing of the order. Aggrieved by the said order, an appeal was preferred by the tenant-petitioner which appeal also came to be dismissed vide order dated 21.07.2022 passed by the Appellate Authority. Hence, the present revision petition.

The star argument of learned counsel for the tenant-petitioner is that the landlord-respondent was misusing the provisions of the Act inasmuch as he had got the second floor of the SCO in question vacated and has now given the same on rent again. In support of his argument, learned counsel for the tenant-petitioner has referred to the application filed by him under Order XLI Rule 27 CPC for leading additional evidence to show that the second floor of the SCO in question, which had been got vacated, has been leased out by the landlord-respondent at the monthly rent of Rs.27,000/-. It is further the contention of learned counsel for the tenant-petitioner that the second floor of the SCO in question was got vacated on the ground that the same was required for the personal *bona fide* necessity of the son of the landlord-respondent and now the same has been let out to some other new tenants. It has further been contended that the intention and conduct of the landlord-respondent also needs to be seen in the present case

and that by misusing the provisions of law the landlord-respondent has filed the present eviction petition only with a view to pressurize the tenant-petitioner for enhancement of the rent. In support of his contention, learned counsel for the tenant-petitioner has relied upon judgments of this Court in the cases of Inder Kaur vs. Bant Singh (now dead) through his LRs [2006 (6) RCR (Civil) 974] and Hasmat Rai & Anr. vs. Raghunath Prashad [1981 (2) RCR (Rent) 401] to contend that the subsequent events ought to be considered and that the requirement of the landlord must continue to exist throughout the process of litigation till the decree of the final court.

*Per contra*, learned counsel for the landlord-respondent has contended that there is no *iota* of evidence on record to prove that the need of the landlord-respondent was not *bona-fide*. Learned counsel would further contend that the landlord-respondent is running a business of selling cement and only with a view to expand his business the back portion of the SCO in question was required by the landlord-respondent who is running his business in the front portion, on the ground floor, of the SCO in question. It is further the contention of learned counsel for the landlord-respondent that the second floor of the SCO in question was got vacated on the basis of a settlement between the parties. It has further been contended that if at all anybody can raise a grouse *qua* letting out of the second floor, which was got vacated by the landlord-respondent, it would be the tenant who was evicted from the second floor and not the tenant-petitioner. In support of his contention, learned counsel for the landlord-respondent has relied upon the following judgments :

- (i) Kawaljit Singh vs. Kulwant Kaur [2015 (2) RCR (Civil) 161]

- (ii) Uday Shankar Upadhyay & Ors. vs. Naveen Maheshwari [2010 (1) SCC 503]
- (iii) Makhan Singh vs. Amar Kaur [2003 (2) RCR (Rent) 269]
- (iv) Dr. J.S. Sodhi vs. Mela Ram [2001 (2) RCR (Rent) 396]
- (v) M/s Bajaj Associates & Ors. vs. Vinod Kumar & Ors. [2008 (4) RCR (Civil) 221]
- (vi) Varinder Singh & Anr. vs. Surinder Kaur [2020 (1) RCR (Rent) 265]
- (vii) Manohar Lal Sanghi vs. Jaswant Rai Ahuja [2008 (1) RCR (Civil) 47]
- (viii) Surinder Kumar vs. Balbir Raj Saini [2018 (3) Law Herald 2579]
- (ix) Manish Ralhan vs. Ajay Kumar & Anr. [2020 (2) RCR (Rent) 476]
- (x) Harjit Singh vs. Kuldeep Singh [2016 (4) RCR (Civil) 1026]
- (xi) Balbir Kaur & Ors. vs. Roop Lal & Ors. [2012 (1) RCR (Civil) 279]
- (xii) M/s Satpal Vijay Kumar vs. Sushil Kumar [2011 (2) RCR (Civil) 82]
- (xiii) Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh [2014 (4) RCR (Civil) 162]

I have heard learned counsel for the parties.

In the present case, concurrently, both the Authorities below have found that the requirement of the landlord-respondent was genuine and that he required the back portion of the SCO in question for his personal *bonafide* necessity to expand his own business. The landlord-respondent stepped into the witness-box and tendered his affidavit (Ex.PW1/A) reiterating the grounds of personal requirement as taken in the ejectment petition. It was also stated in the affidavit that the second floor of the SCO in

question was not suitable for the requirement of the landlord-respondent. The testimony of the landlord-respondent could not be shaken despite lengthy cross-examination. Hon'ble Supreme Court in the case of Uday Shankar Upadhyay (*supra*) has held as under :

*“11. In our opinion, once it is not disputed that the landlord is in bona fide need of the premises, it is not for the courts to say that he should shift to the first floor or any higher floor. It is well-known that shops and businesses are usually (though not invariably) conducted on the ground floor, because the customers can reach there easily. The court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide. Hence, the view of the courts below that the sons of plaintiff No.1 should do business on the first floor in the hall which is being used for residential purpose was, in our opinion, wholly arbitrary, and hence cannot be sustained.”*

It has further been held in the case of Dr. J.S. Sodhi (*supra*) as under :

*“15. On the contrary, the stand of the landlord right from the very date of the filing of the application, was that his need is vis-a-vis both the ground floors of SCO Nos.809-810. Though he has filed an ejectment application vis-a-vis SCO No.809 but he would file the application also vis-à-vis SCO No.810. It appears that the business of M/s Bakeman could not flourish rather it*

*went to losses. Therefore, M/s Bakeman handed over the possession of the ground floor to the landlord whose need could not be met by the vacation of a ground floor of SCO No.810. Therefore, he continued with his ejectment application with regard to SCO No.809. The purpose for which the rented premises was required by the landlord, was to start his business of general store. Such a business is difficult to be run on the first floor of the building, therefore, it is not a valid argument for Mr. Sarin to say that the need of the landlord has diminished or had ceased with the vacation of the first floor of SCO No.810. Be that as it may, at this juncture, I must say that the application under Order 6 Rule 17 CPC was rightly declined by the learned Rent Controller and the first appellate authority took into consideration the effect of the vacation of the ground floor of SCO No.810 while dismissing the appeal of the tenant. Resultantly, I repel the first argument raised by the learned counsel for the tenant.”*

It is trite that the landlord is the best judge of his needs and *qua* the suitability of the premises and the tenant is no one to suggest that he should use the first floor or the second floor of the premises. In the case of Manohar Lal Sanghi (*supra*) it has been held as under :

*“13. The landlord is master of his choice in respect of suitability of the premises. Even if the premises on the first floor has been described as office room, in the site*

*plan PW-2/A produced in the suit against Shambhu Dayal, still the requirement pleaded is of shop portion. It is the landlord's choice to use the ground floor i.e. shop portion for setting up of his business. The tenant cannot suggest that the first floor would be suitable for the purpose of business of the landlord. Therefore, even if the first floor is available, the tenant cannot judge need of the landlord and assert that the landlord must establish his business on the first floor of the building.”*

The argument of learned counsel for the tenant-petitioner that the conduct of the landlord-respondent needs to be seen in the present case keeping in view the subsequent events as brought out in the application for additional evidence, deserves to be rejected on two counts - firstly, the grouse, if any, *qua* the premises not being utilized for the purpose for which it was got vacated could be raised by the person who was evicted from the said premises and it would not lie in the mouth of the present tenant-petitioner to raise the said objection. Secondly, the purpose for which the eviction of the tenant-petitioner has been sought in the present case is for expanding the business of dealing in cement which business is being carried on by the landlord-respondent in a portion of the ground floor of the SCO in question. The second floor or the first floor of the SCO in question could hardly be said to be suitable for expanding the said type of business. That being so, the argument of learned counsel for the tenant-petitioner cannot be accepted. The reliance placed by learned counsel for the tenant-petitioner upon the case of Inder Kaur (*supra*) would not apply in the present case inasmuch as in the said case the ejectment sought was from a residential

premises and it was held that when a suitable accommodation in the same premises becomes available the landlord cannot be permitted to say that he would not accommodate himself in the same premises. The said decision would have no applicability to the facts of the present case. The judgment referred to by learned counsel for the tenant-petitioner in case of Hasmat Rai (*supra*) would also have no applicability in the present case inasmuch as it cannot be said that the requirement of the landlord-respondent does not exist as of today. In the present case the second floor of the SCO in question cannot be held to be an alternate accommodation for the purpose of expanding a business and, hence, it cannot be said that the requirement of the landlord-respondent no longer exists.

In view of the above, I do not find any illegality or infirmity in the orders passed by both the Authorities below. There is no ground which has been made out by learned counsel for the tenant-petitioner for this Court to interfere in the concurrent findings of fact recorded by both the Authorities below.

The present civil revision petition is accordingly dismissed. Pending applications, if any, also stand disposed off.

**30.08.2022**  
jk

**( ALKA SARIN )**  
**JUDGE**

NOTE : Whether speaking/non-speaking : Speaking  
Whether reportable : YES/NO