

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.109

Date of Decision: 02.12.2022

1) CR No.3534 of 2022

Pawan Kumar Gupta (since deceased)
through his LR

.... Petitioner

Versus

Sudha Seth

... Respondent

2) CR No.3537 of 2022 (O&M)

Rajwinder Singh Gogna

.... Petitioner

Versus

Sudha Seth

... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. J.S.Thind, Advocate
for the petitioner(s).

TRIBHUVAN DAHIYA, J. (ORAL)

The aforesaid petitions are being decided by this order since they pertain to the demised properties adjacent to each other from which eviction has been sought by the respondent on the same grounds.

2. The petitioner/tenant (hereinafter referred to as the 'tenant') has challenged the order of eviction passed by Rent Controller vide judgment

dated 24.05.2018, and the order in appeal passed by Appellate Authority dated 27.02.2020.

3. The respondent/landlord (hereinafter referred to as the 'landlord') filed eviction petitions with respect to two adjacent shops in the property bearing Municipal Corporation No.B-XXXI/7-B, situated near SBI, G.T. Road, Phagwara, on the grounds of non-payment of rent and *bona fide* necessity. Apart from pleading that the tenant was in arrears of rent, it was pleaded that the premises, along with other adjoining shops, were required by the landlord to open a boutique and readymade garments shop for trading. Separate eviction proceedings have been preferred against the other adjoining shops.

4. Upon leading of evidence by the parties, the Rent Controller ordered eviction of the tenant on both the grounds of non-payment of rent as well as *bona fide* necessity. The Appellate Authority, however, held that the tenant was not in arrears of rent, as the provisionally assessed rent stood deposited by him. Eviction on the ground of non-payment of rent was held to be not maintainable. At the same time, the eviction order was maintained on the ground of *bona fide* necessity by holding that the landlord was able to establish her *bona fide* necessity to start business in the demised premises as also in the adjoining shop.

5. The impugned orders have been challenged by the learned counsel by contending that *bona fide* necessity of the landlord has not been established on record, since an agreement to sell dated 12.02.2010 stands executed by the landlord for sale of an adjoining shop. Therefore, it cannot be said that the premises was required by the landlord for starting the business. Instead, she intended to sell the premises after getting the tenant

evicted therefrom. It has further been argued that the fact of execution of the agreement to sell was concealed by the landlord at the time of filing the eviction petition. The fact does not find mention either in the pleadings or in evidence led by her.

6. The argument raised by learned counsel has no merit, since the agreement to sell in question was executed on 12.02.2010, and the ejectment petition was filed on 15.11.2013. Further, learned counsel has not disputed that based on the agreement to sell, no sale deed was executed by the landlord, nor was the adjoining property sold. That being the position, there was no requirement for the landlord to mention the fact in the pleadings before the Rent Controller, nor can the *bona fide* need and necessity to occupy the demised premises on her part be disputed by referring to the agreement to sell, which is even otherwise more than two and a half years old.

7. Reliance placed by learned counsel on the judgment of this Court passed in *Harnam Singh v. Mohinder Singh* 1997(2) R.C.R (Rent) 200, does not advance the tenant's case in any manner. As that was the case where landlord's assertions with respect to commencement of tenancy, rate of rent, date from when the rent was payable, were found to be false. Thereupon, it was held that the rent petition could be dismissed on that score alone. No such situation arises for consideration in the instant petition, since there is no false averment on the part of the landlord.

8. No other argument has been raised by the learned counsel.

9. In view thereof, there is no ground to interfere with the well reasoned findings recorded by the Rent Controller as well as the Appellate Authority ordering eviction on the ground of *bona fide* necessity.

- 10. Petitions stand dismissed.
- 11. Pending application(s), if any, stand disposed of as having been rendered infructuous.
- 12. A photocopy of this order be placed on the connected file.

(TRIBHUVAN DAHIYA)
JUDGE

02.12.2022
Maninder

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