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

CR-6833-2019 (O&M)
Reserved on : 02.08.2022
Date of decision : 06.08.2022

Naresh Kumar

.....Petitioner

Versus

Om Parkash

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. M.K. Verma, Advocate for the petitioner.

ALKA SARIN, J.

CM-22387-CII-2019

This is an application for condonation of delay of 28 days in refiling the petition.

For the reasons stated in the application, delay of 28 days in refiling the petition is condoned.

CM stands disposed off.

CR-6833-2019

The present revision petition has been preferred by the tenant-petitioner against the order dated 26.07.2017 passed by the Rent Controller and the order dated 16.07.2019 passed by the Appellate Authority ordering his eviction from the shop in dispute shown with red colour in the site plan annexed with the petition.

Before advertng to the facts of the present case it is pertinent to note that the order of ejectment was affirmed by the Appellate Authority on

16.07.2019 and the present revision petition was filed on 11.08.2019. Thereafter, the matter was repeatedly adjourned at the request of learned counsel for the tenant-petitioner. Eventually, on 17.05.2022 the following order was passed :

“The present revision petition is of the year 2019. Repeatedly, the case is being adjourned on the request of the learned counsel for the petitioner. In fact, none had put in appearance on 17.03.2020 and same was the position on 23.03.2022. Today also, none has put in appearance on behalf of the petitioner. However, an adjournment slip has been circulated on the ground that the counsel is suffering from fever.

In the interest of justice, adjourned to 02.08.2022.

It is made clear that no further adjournment shall be granted and in case the matter is not argued on the next date of hearing the same shall be dismissed for non-prosecution.”

Today, at the outset, learned counsel for the tenant-petitioner was put a query by the Court as to whether the eviction order stood executed. Learned counsel has candidly admitted that the tenant-petitioner since stands evicted from the premises. It is, however, stated that the counsel would like to argue the case on merits.

The brief facts relevant to the present *lis* are that the landlord-respondent filed an eviction petition under Section 13 of the Haryana Urban Control of Rent and Eviction Act, 1973 (hereinafter referred to as ‘1973 Act’) for eviction of the tenant-petitioner from the shop in dispute

being part and parcel of a building bearing House No.1476/A, Punjabi Market, Rewari, Tehsil and District Rewari. It was averred in the eviction petition that earlier the tenant-petitioner was a tenant in the shop situated in the North of the shop in dispute qua which neighbours Girdhari Lal & Devraj filed a civil suit and in order to escape the litigation the shop in dispute was given on rent verbally to the tenant-petitioner and the vacant possession of the shop to the North of the shop in dispute was handed over to the landlord-respondent. It was averred in the eviction petition that rent @ Rs.500/- per month from 01.12.2002 till the date of filing of the petition was due. It was further averred that the son of the landlord-respondent had completed his BCA in June 2010 and that the landlord-respondent intended to settle his son in the shop in dispute by joining two shops i.e. the shop in dispute and the shop towards North of the shop in dispute, for opening a computer centre for his son. The eviction petition was contested by the tenant-petitioner. It was averred in the written statement that both the shops i.e. the shop in dispute and the shop towards the North of the shop in dispute were in possession of the tenant-petitioner. It was further averred that the landlord-respondent had entered into an oral agreement to sell qua the shop in dispute against a sale consideration of Rs.1,40,000/- out of which the landlord-respondent had received an amount of Rs.90,000/- as earnest money. It was further averred that the shop in dispute had been reconstructed by the tenant-petitioner at his own expenses and hence the question of arrears did not arise. It was further averred that the rent was to be paid from 01.08.2003 which had duly been paid, however, no receipt was issued. It was further denied that the shop in dispute was required for the *bonafide* necessity of the landlord-respondent.

On the basis of the pleadings of the parties the following issues were framed :

1. Whether the petitioner is entitled to an order of ejectment in their favour and against the respondents with respect to the suit property (disputed shop) which is part of building bearing house No.1476/A, situated at Punjabi Market, Rewari thereby directing the respondent to hand over the actual and physical possession of the disputed shop to the petitioner ? OPP
2. Whether the petition is not maintainable in the present form ? OPD
3. Whether the petitioner has no cause of action or locus standi to file this petition ? OPD
4. Whether the petitioner is estopped from filing the present petition by his own act and conduct ? OPD
5. Whether the petitioner is not entitled to an order of ejectment in his favour for having suppressed material facts and truth from this Court ? OPD
6. Whether this Court has no jurisdiction to entertain the present petition ? OPD
7. Relief.

The Rent Controller held that no evidence was led qua the payment of rent as alleged by the tenant-petitioner and the ejectment was ordered holding the need of the landlord-respondent to be *bonafide* and genuine. Aggrieved by the ejectment order dated 26.07.2017 passed by the

Rent Controller, an appeal was preferred by the tenant-petitioner before the Appellate Authority which also met the same fate and was dismissed vide order dated 16.07.2019. Hence, the present revision petition.

Learned counsel for the tenant-petitioner would contend that the arrears of rent stood paid as assessed by the Rent Controller. It is further the contention that the son of the landlord-respondent was working and hence, his need was not *bonafide* and genuine. Learned counsel for the tenant-petitioner would further contend that the ingredients of Section 13(3)(a)(i) of the 1973 Act have not been complied with.

Heard.

In the present case the landlord-respondent had proved by leading cogent evidence that his son had completed a diploma in computers and wished to open a computer coaching centre. It is also proved on the record that the shop towards North of the shop in dispute was in possession of the landlord-respondent and that by joining two shops i.e. the shop in dispute as well as the shop towards North of the shop in dispute, the landlord-respondent wished to open a coaching institute for his son. It has also further come on the record that the shop in dispute is situated in a commercial area.

The argument raised qua the *bonafide* necessity by the counsel for the tenant-petitioner is that the son of the landlord-respondent was an employee and hence the need could not be held to be *bonafide* and genuine. The said argument deserves to be rejected on the ground that a person cannot be expected to sit idle till the premises are vacated. In the case of **Inderjit Vs. Mahesh Gupta [2007 (1) PLR 690]** it has been held as under :

“10. There is no dispute regarding the proposition laid down in the judgments referred to by the learned counsel for the petitioner, but the requirement has to be examined in each case according to the facts proved on record. The requirement of a landlord in respect of the premises in dispute does not fall in any straightjacket formula. The requirement of a landlord has to be examined keeping in view the facts of each case by taking into consideration the status of the family, the requirement pleaded and to find out whether the requirement is so fanciful, unimaginable or is mere excuse to seek ejectment of a tenant. In the present case, the petitioner is a tenant of a small portion of an otherwise small Booth. Admittedly, the landlord is doing business in the remaining portion of the Booth. The requirement pleaded is of a grown up son with a view to expand the business and to settle him in life. Thus, there is nothing to presume that it is a mere wish or desire of the landlord.

11. It is well settled and known fact that it is the natural desire of the parents to settle their children. Therefore, the ejectment sought by the landlord for the purposes of settling his son in the premises, the part of which is already in possession of the landlord cannot be said to be fanciful so as to return a finding that the requirement pleaded lacks bonafide. Thus, I am of the

opinion that the requirement pleaded cannot be said to be whimsical, which may warrant interference by this Court in exercise of its revisional jurisdiction.”

Learned counsel for the tenant-petitioner has not been able to point any evidence on the record to show that the need of the landlord-respondent was not *bonafide*.

Regarding the argument of the counsel for the tenant-petitioner qua non-compliance of the ingredients of Section 13(3)(a)(i) of the 1973 Act, a perusal of the impugned orders passed by the Authorities below reveals that no such argument was raised by the tenant-petitioner before the Authorities and the same are being raised for the first time before this Court. Even the grounds of appeal before the Appellate Authority reveal that no such ground was raised or canvassed by the tenant-petitioner before the Authorities below.

In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

06.08.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

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