

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

Civil Revision-3942-2022

Date of decision : September 16, 2022

Meenu Thakur

...Petitioner

Vs.

Manjit Singh

...Respondent

CORAM : HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Dinesh Mahajan, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for setting aside the order dated 31.1.2020 passed by the Rent Controller, SAS Nagar, Mohali as well as the order dated 23.8.2022 passed by the Appellate Authority vide which the order of eviction has been passed while allowing the petition filed by the respondent-landlord under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, as amended upto date.

Brief facts of the case are that the respondent-landlord filed the eviction petition on the ground that the premises in dispute, i.e. House No.837, Phase-II, Mohali (HIG Ground Floor) was taken on rent by the petitioner-tenant on 15.11.1999 at a monthly rent of Rs.3,200/-, excluding electricity and water charges. A rent note was executed in this regard, which was renewed later on by enhancing rent @ 3,520/- per month.

The grounds for eviction are that the petitioner-tenant has not paid the rent w.e.f. October, 2010; secondly, the landlord is residing at New Delhi along with his family which consists of his married son and

two married daughters. The house at New Delhi is small one and, therefore, with the expansion of family, they need the premises in dispute for their personal necessity. It is also stated that on an earlier occasion, a rent petition was filed in 2011 for the personal necessity of the son, however, the same was dismissed on 18.7.2013.

It is also stated that the petitioner and his wife has taken a small accommodation consisting of two bed-rooms on monthly rent of Rs.16,000/- and the respondent, despite promise has failed to vacate the premises in question.

The petitioner-tenant contested the petition on the ground that the rent has been paid upto January, 2010. Later on, the Rent Controller assessed the rent vide order dated 23.11.2011 and the outstanding amount was paid by the tenant. Again, the rent was tendered in the Court proceedings and by giving the details it is stated that till January, 2017, the rent is paid, however, some amount is paid in excess, which is liable to be adjusted.

The trial Court framed the following issues :-

- "1. Whether the respondent is liable to be evicted from the premises on the ground of non-payment of rent ? OPP.
2. Whether the premises are required the petitioner for personal necessity ? OPP.
3. Whether the petition is not maintainable ? OPD.
4. Relief."

Vide order dated 15.5.2019, the following additional issues were framed :-

- 2-A. Whether the petition is barred by principle of *res judicata* ? OPR

2-B. Whether the petitioner has received excess rent ? OPR.

The landlord examined three witnesses, including himself and also produced on record the documents Ex.P1 to Ex.P9. Similarly, the present petitioner examined, one SI Narinder Singh apart from herself as RW1 and tendered Exs.R1 to R5.

The Rent Controller under Issue No.1 recorded the findings that the same is not pressed by the landlord.

Under Issue No.2A and 2B, the Rent Controller recorded a finding that the plea raised by the tenant that the landlord is not having a *bona fide* requirement of the house, in view of the well settled law that it is for the landlord to see his necessity and, therefore, held that there is nothing to suspect the *bona fide* necessity of the landlord to seek eviction of the tenant for personal necessity. Accordingly, the Rent Controller ordered the eviction of the respondent and gave two months time to vacate the premises.

In appeal, the lower Appellate Court, on re-appreciation of evidence, again held that the landlord has successfully proved that the premises is required for his *bona fide* necessity as he has shifted to Mohali and want to lead a retired life. Both the Courts below have recorded a categorical finding that the principal of *res judicata* is not applicable in the present case as the earlier petition was filed on account of the *bona fide* requirement of the son, whereas in the present petition, it is the landlord, who himself is seeking eviction on the ground of personal necessity.

Counsel for the petitioner has argued that though in the petition, the landlord has claimed that the tenant is in arrears of rent, however, issue No.1 was not pressed, which show that he was intentionally claiming excessive rent. It is next argued that the landlord

on an earlier occasion has filed a rent petition which was dismissed and, therefore, the second petition is barred by the principle of *res judicata*. It is also argued that the rent note was not registered under the new Act and, therefore, no tenancy can be created by writing an agreement.

It is next argued that shifting of the landlord to Mohali and taking a house on rent by him is not proved, neither any rent deed is proved nor any such information is given to the police for verification. Counsel for the petitioner has relied upon a judgment of this Court 2003(1) RCR (Rent) 729 **Dhani Ram Vs. Madan Lal** to submit that where the conduct of the landlord is not fair and has claimed rent for a period which was not due, the eviction petition was dismissed.

After hearing the counsel for the parties, I find no merit in the petition.

There is no dispute with regard to the judgment in **Dhani Ram's** case (*supra*), however, the facts of the said case are altogether different as the eviction was sought on the ground of non-payment of rent, whereas in the instant case, apart from non-payment of rent, the eviction petition is on the ground of personal necessity. Needless to say that the Issue No.1 was not pressed, which was with regard to non-payment of rent and was not contested between the parties.

Both the Courts below have recorded a finding of fact that a tenant cannot challenge the personal necessity of the landlord in view of the well settled principle of law and it is the landlord who can assess his personal necessity. Both the Courts have also recorded a finding that the landlord has led sufficient evidence to prove his personal necessity and in order to prove the same, it has come on record that the landlord has retired and has already shifted to Mohali by taking a house on rent,

which is much higher side than the rent paid by the petitioner and, therefore, the personal necessity is proved.

The Courts below have also recorded a finding that the landlord has proved that due to expansion of his family, the space in his Delhi flat is not sufficient. It has also come in evidence that the landlord has three children and all of them are married and his family requires more accommodation and for that purpose the landlord himself has shifted from Delhi to Mohali.

Both the Courts below have also recorded a finding that under Issue No.2A that the petitioner has failed to prove that the present petition is barred by the principle of *res judicata* as the grounds in the previous petition was for seeking eviction on account of the personal necessity qua the son of the petitioner, whereas in the present petition, which is filed after 07 years, personal necessity is pleaded on account of the fact that the petitioner himself has retired and has already shifted to Mohali for which he requires his house.

Finding no merit in the concurrent findings of fact recorded by both the Courts below, the present petition is dismissed.

September 16, 2022
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No