

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5068-2012(O&M)
Date of decision:30.08.2022

Firm Garg Timber and Iron Industries and another

...Petitioners

Versus

Nemi Chand and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. M.L.Sarin, Sr. Advocate with
Ms. Hemani Sarin, Advocate
for the petitioners.**

**Mr. M.K.Mittal, Advocate
for the respondents.**

ANIL KSHETARPAL, J (Oral)

The tenant is the petitioner before this Court. While invoking the revisional jurisdiction, the petitioner assails the correctness of the judgment/final order passed by the Appellate Authority, Rewari, while ordering his eviction on the ground of personal necessity as well as addition and material alterations.

The original petition was filed by Shri Ram son of Sh. Devi Sahay. The Rent Controller dismissed the petition vide judgment dated 29.01.2008. Shri Ram filed an appeal before the Appellate Authority assailing the correctness of the judgment passed by the Rent Controller. During the pendency of the appeal, Shri Ram died. Sh. Nemi Chand and Sh. Ram Dass sons of late Shri Ram were brought on record as his legal representatives. Late Shri Ram, while filing the petition, sought the petitioner's eviction on the ground that his son has been discharged from

Military service and he wishes to open a garage in the tenanted premises. During the pendency of the appeal before the Appellate Authority, three other shops, which are a part of the same plot of land became available as various other tenants handed over the possession to the landlord. Applications for permission to lead the additional evidence were filed. The Appellate Authority allowed the petition on the ground that the aforesaid three shops have fallen to the share of the other brother, namely, Sh. Ram Dass. Sh. Nemi Chand has been allotted two shops including the shop in dispute. The Appellate Authority also reversed the judgment of the Rent Controller on the ground of material alteration as the petitioner has closed a door.

During the pendency of the present revision petition, another application for additional evidence has been filed with the assertion that the 4th shop in possession of the tenant has also been vacated and the possession thereof has been handed over to Sh. Nemi Chand son of late Shri Ram. Notice of the application was issued and the reply to the application has been filed. In the aforesaid reply, this fact has not been specifically denied. However, it has been asserted that the petitioner retired in the year 1999 and since then, he has been running from pillar to post to get the shop vacated.

It may be noted here that before the Appellate Authority it has been asserted that the three shops have fell to the share of his brother, whereas two shops have fell to the share of the petitioner. Now out of total 5 shops, the landlord can utilize any one shop out of alleged 4 shops available to him. It may be noted here that the petitioner has also alleged that Sh. Nemi Chand has already opened a shop of mobile repairs.

The family settlement was pleaded by the respondents, for the

first time, before the Appellate Authority while filing reply. There is a significant development which has a bearing on the result of the case.

Keeping in view the aforesaid facts, it is considered appropriate to remit the matter back to the Rent Controller to permit the parties to lead further evidence, if any, required. The application for additional evidence is allowed.

Let the Rent Controller decide the matter afresh within a period of 6 months, on reappreciation of evidence including the additional evidence, if any, led by the parties. This course has been adopted in order to give an opportunity to both the parties to lead further evidence, so as to prove the subsequent developments. The respondent-landlord will get an opportunity to prove a family settlement, whereas, the tenant will get an opportunity to prove that the various other shops which have become available with the landlord.

Let the tenant lead evidence to prove such application.

In view thereof, the judgments passed by the courts below are set aside.

The parties through their counsels are directed to appear before the Rent Controller, on 12.09.2022.

With these observations, the revision petition is disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

30th August, 2022
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No