

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

(110)

**CR-5048-2022 (O&M)
Date of Decision:-22.11.2022.**

Ramesh Chand

.....Petitioner

Versus

Kamlesh Rani

.....Respondent

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Parminder Singh-1, Advocate for the petitioner.

Mr. Divanshu Jain, Advocate for the caveator-respondent.

ALOK JAIN, J. (Oral)

The present revision petition has been preferred challenging the order dated 01.10.2022 passed by the Appellate Authority under the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short 'the Act of 1973'), whereby the First Appellate Court has set aside the order dated 20.03.2017, vide which the Rent Controller had dismissed the petition seeking eviction of the petitioner. However, the First Appellate Court, vide impugned order dated 01.10.2022, has reversed the finding and has directed the petitioner to hand over the vacant possession of the demised premises within two months. Aggrieved by the said order, the petitioner is before this Court.

The brief facts of the case as narrated by the counsel for the petitioner are that the petitioner is a tenant of the shop in question at a monthly rent of ₹ 5,600/- and the landlady approached the petitioner for eviction of the said premises on two grounds firstly non-payment of rent

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and secondly for the *bona fide* requirement for the son for doing business on the ground that there was no other suitable property for the son to do his business. As conceded by both the counsels, that during the pendency of the proceedings, the ground of non-payment of rent has ceased to exist and the counsel for the petitioner as well as the counsel for the respondent-landlord being on caveat, have confined their arguments only on the ground of personal necessity.

Counsel for the petitioner has relied upon certain photographs (Annexure P-1) and the findings recorded by the Rent Controller to vehemently argue that the personal necessity, as alleged, is not *bona fide* on the ground that the husband of the petitioner has number of shops adjoining each other which are lying vacant and it has come in evidence that the son is already doing business with his father. He relies upon the statement of the landlady wherein during cross-examination, she admitted that they are living together and she further admitted that the son is also in the same business and supplies ghee and oil from the shop of his father to the customers. He has further submitted that the landlady failed to bring her son in the witness-box to corroborate the said personal necessity and, hence, an adverse inference has been rightly taken by the Rent Controller.

Counsel for the petitioner has also raised the issue that there was non-compliance of Section 13 (3) (a) (i) of the Act of 1973 and the landlady had failed to specifically plead and prove the contents thereof. He further submits that only bald and vague averments have been made moreso, in the light of the fact that the husband, wife and son were residing together, it is beyond comprehension as to why the son could not start his

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independent business in any of the vacant shops which are in the possession of his father, though he concedes to the position that the landlady has only one shop in her name. Counsel for the petitioner has also tried to distinguish the judgment passed by the Hon'ble Supreme Court of India in the case of **Mehmooda Gulshan Vs. Javaid Hussain Mungloo, AIR 2017 (S.C.) 1047**, by asserting that in the said judgment it was a case where the landlady had been deserted by the husband and her son was unemployed and there was no source of income of the landlady after desertion by the husband. Therefore, in those facts and circumstances, the Hon'ble Supreme Court of India enlarged the scope and held that mere non-examination of the family member, who intends to do the business cannot be taken as a ground for repelling the reasonable requirement of the landlord. He relies upon the said judgment to submit that the requirement should be a genuine requirement and not merely a desire for the reason that the eviction will cause loss of right to earn his livelihood for the petitioner. On the strength of the above arguments, the petitioner has prayed for setting aside the order passed by the First Appellate Court and to maintain his tenancy.

Per contra, learned counsel for the caveator-respondent has vehemently opposed that the photographs now being propounded were never a part of the proceedings and, hence, this Court while exercising powers under Section 15 of the Act cannot look into the same. He relies upon Section 15 (6) of the Act to submit that the Hon'ble High Court as a Revisional Authority can call for and examine the record relating to any order passed or proceedings taken under the Act of 1973 for the purpose of satisfying itself as to the legality and propriety of such order. He

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emphasizes on the words 'examine the record' to contend that there is no application under Order 41 Rule 27 of CPC and, hence, the said photographs cannot be relied upon being not part of record. Counsel for the caveator-respondent has opposed the averment with regard to the non-compliance of Section 13 (3) (a) (i) of the Act of 1973 and has submitted that it is a pleaded case of the landlady that she does not occupy any other building and has not vacated any such building without sufficient cause and moreso, her son has to establish his business for which the said premises are required. He further submits that it is settled principle of law that for deciding the *bona fide* requirement, the crucial date is the date of application for eviction. The subsequent events, inasmuch as the demise of the husband of the landlady cannot be looked into.

From the arguments of the counsel for the parties, the following question is carved out:-

Whether non-appearance of the son in the witness-box could be taken to be fatal viz.-a-viz. the bona fide personal necessity/requirement expressed by the landlady?

Counsel for the petitioner has primarily relied upon judgments passed by this Court in the case of **Ajit Singh and another Vs. Jit Ram and another, 2008 (4) RCR (Civil) 390**, **Rajiv Gupta Vs. Jiwan Ram, 2015 (1) RCR (Civil) 762** and **Brij Bhushan and another Vs. SnajayHarjai, 2015 (2) RCR (Civil) 68**, to contend that since the son of the landlord for whom the requirement of personal necessity was pleaded never stepped up into the witness-box to face the test of cross-examination as to whether he was in possession of any other property, the requirement is not *bona fide* and it is a

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wish or not desire. However, on perusal of the judgment passed by the Hon'ble Supreme Court of India in the case of **Mehmooda Gulshan Vs. Javaid Hussain Mungloo 2017 (1) RCR (Rent) 272**, it is clear that the Hon'ble Supreme Court of India considered the judgment passed in Ajit Singh's case (supra) and in para 14 has held as under:-

“14. Mere non-examination of the family member who intends to do the business cannot be taken as a ground for repelling the reasonable requirement of the landlord. Under the Act, the landlord needs to establish only a reasonable requirement. No doubt, it is not a simple desire. It must be a genuine need. Whether the requirement is based on a desire or need, will depend on the facts of each case.”

The Hon'ble Supreme Court of India while considering the judgment passed in **Joginder Pal Vs. Naval Kishore Behal 2002 (1) RCR (Rent) 582**, summarizing its guidelines which have been followed and laid down authoritatively that a non-residential premises, if required by the son for use by him would cover the requirement of the words used in the Section that is for his own use in reference to the landlord. Consequently, the Hon'ble Supreme Court of India in para 21 held as under:-

*21. Two decisions by Delhi High Court though dealing with requirement for residential purpose may yet be noted for their utility. Section 14 (I) (e) of Delhi Rent Control Act, 1958 contemplates the landlord requiring the suit premises bona-fide for himself as a ground of eviction. In **Smt. Krishna Devi V. Smt. Parmeshwari Devi, 1977 (2) RCJ 529**, the landlady*

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required the premises for the family of her married daughter to come and live with her as she was unable to look after herself and thus the requirement which she pleaded was for herself covered within the meaning of the word “himself”. It was held that the relationship was immaterial so long as the requirement was a genuine one and was meant to serve the need of the landlady.”

Before parting with the judgment, the contention raised by the counsel for the respondent who vehemently opposed that the Court does not has power to see the photographs of the site as under Section 15 of the East Punjab Urban Rent Restriction Act, the Court can “.....call for and examine the records relating to any order passed or proceedings taken.....”. However, since the said photographs were not on record, the Court is not empowered to look into the same. The said issue is kept open to be adjudicated in an appropriate case although prima facie, the contention of the respondent is negated for the reason that this Court while exercising powers under Section 15 has to do substantial justice and adjudicate the matter for which the assistance with the help of the photographs would not amount to any misreading of evidence, at least not in this case.

Appreciating the entire case law and the settled ratio by the Hon’ble Supreme Court of India, there is no doubt left that the non-appearance of the son in the witness-box could not be fatal to the bona fide requirement of the landlady. It is a settled law that the landlord is the best judge of his/her own requirement and the bona fide need. Admittedly, the

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landlady does not own or possess any other property and her requirement for her son is bona fide. The fact that the son is doing business with the father cannot be taken to be against her for the simple reason that the young blood needs his own space to rise and settle in his occupation and business. The landlady as a mother has all the right and responsibility to establish her son and, hence, the learned First Appellate Court has rightly held that the landlady herself stepped into the witness-box and has expressed and proved the bona fide requirement.

Consequently, finding no merit, the present revision petition is dismissed. No order as to costs.

Pending miscellaneous application, if any, shall also stand disposed of.

(ALOK JAIN)
JUDGE

November 22, 2022.

Sandeep

Whether speaking/reasoned:- Yes/No

Whether Reportable:- Yes/No