

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

101

CR No. 3900 of 2007 (O & M)
Date of Decision : 27.2.2023

Shankar Dass (deceased) through LR Ashok Kumar *Petitioner*

versus

Pardeep Kumar and others *Respondents*

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Sandeep K. Sharma, Advocate, for the petitioner
Mr. H.K. Aurora, Advocate, for respondents no. 1 and 2

TRIBHUVAN DAHIYA J. (ORAL):

1. This is landlord's revision petition against the orders dated 12.8.2005 passed by the Rent Controller dismissing the eviction petition and against the order dated 20.11.2006 passed by the Appellate Authority, affirming the same.

2. Facts of the case in brief are, the petitioner/landlord (hereinafter referred to as 'the landlord') filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act'), for eviction of the respondents/tenants (hereinafter referred to as 'the tenants') from the shop, portion of Plot no. ED-290, Old Railway Road, Jalandhar City (hereinafter referred to as 'the demised premises'). The eviction was sought on two grounds; on account of non-payment of arrears of rent w.e.f. 1.8.1994 and house tax w.e.f. 1.4.1991, and that the demised premises was required by the landlord for his grandson, Vivek Prasher, who was studying in final year of B.A.M.S. at the time of institution of the petition on 17.4.1997. It was averred that on completion of degree in May 1997, he would start his medical practice in the

demised premises. It was *bona fide* and earnest desire of the landlord to settle his grandson at Jalandhar. It was also pleaded that the landlord had no other suitable accommodation for running the clinic for his grandson. He was living in the locality since long and had a large number of acquaintances in the vicinity of the demised premises which would help his grandson in establishing himself as a medical practitioner.

3. The eviction petition was contested by the tenants, *inter alia*, on the ground that no rent note was executed by them on 1.4.1991, as alleged. The arrears of rent and house tax were statedly tendered to avoid ejectment, but they had a right to recover the excess amount paid to the landlord. Regarding personal necessity of the landlord, it was stated that the demised premises was not required for his grandson. The landlord was in occupation of six other shops, of which three were owned by him and other three had been rented out. One of the shops owned by the landlord was lying vacant, which could have been occupied by his grandson.

4. The landlord filed replication admitting that he was in possession of three shops as a tenant, wherein a *dhaba* business was being run. Ownership of the other three shops was denied by him. It was, further, pleaded that M/s Ashoka Tent House was being run in two shops since 1960, and some material like bamboos etc. was lying in the open as fire had broken out in the premises earlier. It was also pleaded that one shop was in possession of M/s Dayal Paint and Hardware, running its business there since 1974, which was adjacent to the demised premises.

5. On pleadings of the parties, following issues were settled by the Rent Controller:

1. What is the rate of rent? OPA
2. Whether the respondents are in arrears of house tax and rent?
OPA

3. Whether the premises are required for the personal use of the landlord? OPA
4. Relief.

6. On leading evidence, none of grounds of eviction could be established by the landlord, and the ejectment petition was dismissed. The findings were affirmed by the Appellate Authority on both the counts. In the instant revision petition, however, the landlord has confined his arguments only to challenge the adverse findings of the Authorities on the *bona fide* need of the landlord to occupy the demised premises.

7. Learned counsel for the parties have been heard.

8.1 A perusal of the judgments passed by the authorities below show that *bona fide* need of the landlord to occupy the demised premises has been held to be not proved on account of the following:

- (i) The business of M/s Dayal Paint and Hardware was closed after the fire broke out in the year 1996-97, i.e., prior to filing of the present petition, and this fact stood proved by way of evidence on record, and also stood admitted in the replication filed by the landlord that fire had broken out in his shop in the year 1996-97.
- (ii) DW-1, Sudesh Kumar, Clerk from the office of Assistant Excise and Taxation, Jalandhar, had testified that the firm M/s Dayal Paint and Hardware ceased to file return w.e.f. the year 1999-2000 and its license was cancelled. Once the license stood cancelled, it was difficult to accept that the firm was running its business.
- (iii) Tenant Pardeep Kumar while appearing as RW-5 stated that the said shop was lying vacant for the last many years, i.e., even prior to filing of the eviction petition.

(iv) When the tenant had specifically pleaded that no business of paints and hardware was being run in the shop adjacent to the shop in question, the landlord could have examined his son Ashok Kumar to produce the record and show that he was carrying on business of Paints and Hardware, but it had not been done for obvious reasons.

(v) PW-2 Vijay Kumar, Clerk in the Branch of a Bank opposite the demised premises, specifically stated in his cross-examination that the building owned by the landlord consisted of four shops. He also stated that some material, such as paint and *shamiyana*, was lying in one of the shops for the last about several years. He, however, denied the suggestion that the Paint shop was lying closed. It was, therefore, held that the statement made by PW-2 fully corroborated the tenant's plea that the said shop was lying vacant even prior to institution of the petition.

8.2 In view of the above, the Authorities below have held that the evidence on record established that license of the firm M/s Dayal Paint and Hardware, which was being run in the adjoining shop by the landlord's son Ashok Kumar, was cancelled in the year 1999-2000, and that the said business stood closed before filing of the eviction petition. Therefore, the landlord should have provided that shop to his grandson. It was also held, even if assumed that the business was closed only in the year 1999-2000, the said shop was lying vacant for the last five-six years. The landlord could easily have shifted his grandson there to set up his medical practice. Since it was not done, the landlord's *bona fide* need to occupy the demised premises was not established. It was also held, the evidence indicated that he did not want to shift his grandson in the demised premises and the ejectment petition had been filed

only to evict the tenant.

9.1 Perusal of the record establishes that the findings recorded by the authorities are not based on the evidence led.

9.2 Firstly, the fact of a fire having broken out in the demised premises in the year 1996-97, i.e., prior to filing of the instant ejectment petition, has not been conclusively established on record. PW-2 Vijay Kumar in his testimony, dated 5.8.1999, while being cross-examined has stated that there was a fire in the shop about one year back. That would only mean that the fire broke-out somewhere in August 1998. Further, PW-4 Amarjit Giri, Assistant Manager (Accounts), FCI, independent witness, stated in his cross-examination that the shop caught fire in the year 1996. Apparently, there are contradictory versions with respect to the year in which fire statedly broke-out in the shop M/s Dayal Paint and Hardware. Besides, there is no evidence on record to establish that due to fire, business of M/s Dayal Paint and Hardware was closed. Therefore, there was no basis for the Authorities below to record that fire broke-out in the year 1996-97, and that business of M/s Dayal Paint and Hardware was closed thereafter. The two facts are different and unconnected. Merely because a fire had broken-out in the said shop, it was no ground to hold that the firm ceased to do any business there subsequently. The fact of breaking-out of fire, in itself, is not of any consequence so far as closure of business by the firm is concerned. The authorities below have wrongly relied upon the fact of breaking-out of fire to assume closure of business by the firm.

9.3 Secondly, it is clear from the statement of DW-1, Sudesh Kumar, Clerk from the office of Assistant Excise and Taxation, Jalandhar, that the firm M/s Dayal Paint and Hardware ceased to file returns after 1999-2000, and its sales tax number had since been cancelled. He further stated that as per record, the firm was not functioning since 1999-2000. Therefore, on the basis of

evidence on record, it was only from 1999 that the firm M/s Dayal Paint and Hardware stopped functioning. On the day eviction petition was filed, 17.04.1997, there was no evidence to establish that the shop was closed or the firm ceased to do business.

9.4 Thirdly, the self-serving testimony of the tenant, RW-5, to the effect that the shop in question was lying vacant for the last many years and even prior to filing of this petition, cannot be given credence in view of the categorical evidence of DW-1, official from the office of Assistant Excise and Taxation, that it was only in 1999-2000 that the firm stopped doing business.

9.5 Fourthly, PW-2, Vijay Kumar, Clerk of a Bank in the opposite building, has testified that he had seen demised premises and there were four shops in the said building. Shankar Das was running a business in two of the shops. One of the shops was on rent with the tenant herein. In one other shop, there was paint material. He did not know that the shop was lying vacant for long. Some material was lying there such as paint and *shamiyana* for the last about one year. The same material was lying in the shop for the last seven years. On the basis of this vague testimony of PW-2, the conclusion drawn by the Authorities that the shop in question was lying vacant even prior to the institution of the petition, is baseless. It is complete mis-reading of evidence, which does not in any manner establish the conclusion drawn.

9.6 It is, therefore, clearly established that findings of the Authorities holding that the adjacent shop, wherein business of M/s Dayal Paint and Hardware was being run, stood closed after breaking-out of fire there in 1996-97, i.e., prior to filing of the eviction petition on 17.04.1997, were in the absence of any evidence to that effect, and, consequently unsustainable. The impugned judgments, accordingly, suffer from error of law being based upon no evidence to support the findings recorded. In the absence of any evidence that

the adjacent shop was lying vacant, which could have been utilized by the landlord for starting medical practice of his grandson, it cannot be held that *bona fide* need of the landlord to occupy the demised premises was not established.

10. Learned counsel for the tenant has argued that the landlord did not specifically deny in para 3(ii) that the shop in question, where the business of Paints and Hardware was being run, was not lying vacant. A perusal of the written statement filed by the tenant and the pleadings of para 3(ii) show that there are no specific pleadings to that effect. It is not specified as to which of the shops owned by the landlord is lying vacant. In the absence of specific pleadings, there cannot be a specific denial. The argument raised, therefore, has no basis.

11.1 It has further been argued by learned counsel for the tenant that subsequent events after filing of the petition before this Court, establish that the landlord is not in *bona fide* need of the demised premises in question. In that regard, he has referred to an application, CM No. 20787-CII of 2009, filed before this Court on 29.8.2009 to place on record an affidavit of the tenant Pardeep Kumar along with photographs, deposing that the landlord's grandson, Dr. Vivek Parashar, has, in fact, shifted his practice to the shop adjoining the demised premises. Therefore, the need to occupy the demised premises is no longer there.

11.2 In response, the landlord filed an application, CM No. 5199-CII of 2019, stating that long time ago the landlord's grandson had shifted his clinic from the adjoining shop back to Bashirpura, where he used to practice earlier. Photographs of both the shops as on 11.2.2019 (Annexure R-2) were also placed on record to establish this fact of his shifting back. Besides, on behalf of the landlord, two affidavits dated 27.2.2019, one by the grandson Dr. Vivek

Prasher and the other by his father Ashok Kumar, have been filed, stating that due to shortage of accommodation in the shop adjoining the demised premises, the deponent faced great difficulty in running the clinic, and closed the same in 2014. It was further stated that the shop where Ashok Kumar was running business in the name and style of M/s Dayal Paint and Hardware, was lying closed. On vacation of the demised premises, the deponent will merge the two adjoining shops, i.e., the tenanted premises and the adjacent shop where business in the name and style of M/s Dayal Paint and Hardware was being run, into one shop for setting-up his clinic.

11.3 The aforesaid subsequent events, even if taken into consideration, do not establish that the shop adjacent to the demised premises stands occupied by the landlord or his grandson, or that the demised premises is no longer required for setting up his medical practice. However, this Court is not required to go into the issue on account of the settled preposition of law that need of the landlord to occupy the demised premises is to be seen on the date of filing of the eviction petition. Merely because on account of pendency of the eviction petition before the Courts leading to the landlord or his family members entering into other business or starting their business in alternative accommodation, cannot be the basis to contend that *bona fide* need of the demised premises no longer subsists. In case the demised premises is not vacated due to the proceedings pending before the Court, the landlord or his family member is not required to sit idle and wait for final adjudication of the petition. If he/she looks for alternate accommodation or takes up any other vocation to establish and earn for himself/herself, that cannot be a circumstance against the landlord, nor can that be a ground to decline ejection of the tenant. The argument of learned counsel for the tenant is, therefore, rejected being misconceived.

11.4 In this regard it is apposite to refer to the Supreme Court judgment in *Gaya Prasad vs. Pradeep Srivastava*, 2001 (2) SCC 604, holding that *bona fide* requirement of landlord is to be seen on the date of filing of the petition. This was a case where at the time of filing of the petition, the landlord's son was a medical graduate for whose medical practice the demised premises was required. The litigation continued for twenty three years and son joined government service in the meanwhile. In these circumstances, the Supreme Court held that need of the landlord would not fade, and crucial date for deciding the *bona fide* requirement of landlord was the date of filing of the petition. Relevant paragraph no. 10 of the judgment reads as under:

10. We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred *pendente lite*, because the

opposite party succeeded in prolonging the matter for such unduly long period.

12. In view of the discussion above, the impugned judgments of the Rent Controller as well as the Appellate Authority are hereby set aside, and the petitioner/landlord's eviction petition/application is allowed. The respondent/tenant is directed to handover vacant possession of the demised premises to the landlord within three months from today.

13. The petition stands allowed.

14. Pending miscellaneous application(s), if any, stands disposed of accordingly.

(TRIBHUVAN DAHIYA)
JUDGE

27.2.2023

Ashwani

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