

CR-3145-2013 (O&M)

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

CR-3145-2013 (O&M)

Reserved on:- 04.10.2023

Pronounced on:- 20.11.2023

Atam Parkash

....Petitioner

Versus

Arun Kumar Jain

...Respondent

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Akshay Bhan, Senior Advocate with
Mr. Shantanu Bansal, Advocate
for the petitioner.

Mr. Ajay Kumar Gupta, Advocate
for the respondent.

AMARJOT BHATTI, J.

1. The petitioner/tenant – Atam Parkash has filed civil revision against impugned judgment dated 24.04.2013 passed by learned Appellate Authority, Bhiwani vide which the appeal preferred by petitioner/tenant Atam Parkash was dismissed and the ejectment order passed by learned Rent Controller, Bhiwani vide judgment dated 08.05.2012 was upheld.

2. As per the facts of the case, Arun Kumar Jain, the landlord (petitioner in the main case) filed ejectment petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973 for the ejectment of respondent Atam Parkash from the demised shop situated at Kesri Bhawan, Railway Road, in front of Gurudwara, Bhiwani (detailed and described in head note of the petition). The said shop was let out to the father of respondent, namely, Chander Bhan at the rate of Rs. 69/- per month for running the business of Welding. Sh. Chander Bhan expired 10

years ago and after his death, the respondent Atam Parkash being his legal heir became tenant in the said shop and in this way, there existed the relationship of landlord and tenant. The petitioner sought the ejectment of the respondent from the said shop firstly on the ground that the respondent had changed the user of the shop as the father of respondent had taken the shop for running the business of Welding, whereas, the respondent was running the business of garments. The second ground taken by the petitioner was that he wanted to open his office of Chartered Accountant and also required the same for his marriageable children and family. The last ground taken by the petitioner for ejectment of respondent from the said shop was on the ground of nuisance as the respondent quarreled with his clients when they parked their vehicles. On the aforesaid grounds, it was prayed that the respondent may be ejected from the demised shop as detailed in the petition and he may be directed to handover the vacant possession in favour of the petitioner.

3. Notice of the petition was given to the respondent who contested the present petition and filed written reply, wherein he has denied the averments as mentioned in the rent petition. He submitted that the petitioner has no locus-standi to file the present petition. It was denied that the demised shop was let out for running the business of Welding. However, the relationship of landlord and tenant and rate of rent was admitted. It was denied that the respondent has made any addition or alteration in the demised shop. It was further denied that the petitioner required the demised shop for his personal need. The creation of nuisance by the respondent on the parking of the vehicles was also denied. It was prayed that the petition was not maintainable and the same deserved

dismissal with cost.

4. From the pleadings of the parties, following issues were framed by the Rent Controller :-

(1) *Whether the respondent has changed the user of the shop in dispute without the consent of the petitioner?* OPP

(2) *Whether the shop in dispute is bonafidely required by the petitioner for his own use and occupation?* OPP

(3) *Whether the respondent is creating nuisance in the shop in dispute?* OPP

(4) *Whether the petition is not maintainable in the present form?* OPR

(5) *Whether the petitioner has no cause of action and no locus-standi to file the present petition?* OPR

(6) *Relief.*

5. In order to prove the rent petition, the petitioner Arun Kumar Jain himself stepped into the witness box as AW-2. He also examined Anand Aggarwal as AW-1 and Kanwar Pal, Draftsman as AW-3. Thereafter, learned counsel for the petitioner closed the evidence after tendering documents Mark-A to Mark-E.

6. In order to rebut the case of the petitioner, the respondent examined himself as RW-1. He also examined Chaman Lal Kaushik as RW-2 and Naresh Kumar as RW-3. Thereafter, learned counsel for the respondent tendered documents i.e. Ex.D3 to Ex.D6 and Mark-D1 to Mark-D8 and closed the evidence.

7. In rebuttal evidence, the learned counsel for the petitioner tendered document Mark-F and closed the rebuttal evidence.

8. After hearing the arguments advanced by learned counsel for both the parties, the petition filed by the petitioner/landlord was allowed vide judgment dated 08.05.2012 and the respondent/tenant was directed to

hand over the vacant possession of the demised shop to the petitioner/landlord within two months from the date of passing of judgment.

9. Feeling aggrieved of this judgment, the respondent/tenant filed Rent Appeal No. 216 of 2012, instituted on 09.06.2012/01.11.2012. During the pendency of appeal, vide order dated 06.08.2012 passed by learned Additional District Judge, Bhiwani application to lead additional evidence filed by the appellant/tenant was allowed and parties were directed to record the additional evidence before the trial Court. Accordingly, the tenant Atam Parkash examined four witnesses namely Kailash Chand, Vijay Rajora, Daya Chand and Krishan Ram as DW-4 to DW-7 respectively. Thereafter, learned counsel for respondent tendered documents Mark-A to Mark-Z and closed additional evidence.

Thereafter, in rebuttal evidence, the landlord examined himself and also examined Mukhtiar Singh, Sunder Lal, Parma Nand and Sushil Kumar as PW-4 to PW-7 respectively. After hearing arguments, vide judgment dated 24.04.2013, the appeal filed by the appellant/tenant was dismissed and the claim of the landlord was upheld by the Appellate Authority. Feeling aggrieved of this judgment, the present civil revision has been filed by the present petitioner/tenant.

10. The learned counsel for the petitioner/tenant argued that initially Arun Kumar Jain, the landlord had filed ejectment petition on the ground regarding change of user of the shop in dispute without the consent of the petitioner/landlord, secondly that the landlord required the shop in dispute for his own use and occupation and thirdly on the ground that the respondent created nuisance in the shop in dispute. However, the learned

Rent Controller, Bhiwani passed the ejectment order on the ground that the respondent/landlord required the demised shop for his personal use and necessity and on that ground the ejectment order was passed, whereas, the other two grounds of ejectment raised by the landlord were disbelieved. Feeling aggrieved of this ejectment order dated 08.05.2012, the present petitioner filed appeal before the Appellate Authority and the same was dismissed confirming the judgment passed by the Rent Controller vide impugned judgment dated 24.04.2013. It is argued that the facts of the case and the evidence on record were not rightly considered by the learned Rent Controller, Bhiwani as well as by the learned Appellate Authority. From the evidence on record, it is clear that the respondent/landlord tried to conceal material facts from the Court and on that ground the respondent/landlord is not entitled to any relief. The present petitioner/tenant took specific stand that the landlord has got a residential flat in Gurgaon and he was working there. This fact was proved on record by examining Chaman Lal Kaushik as RW-2 who proved on record the allotment letter Ex.D-1 regarding allotment of dwelling unit No. D103, Plot No. GH-45, Sector 56, Gurgaon and the possession was also delivered to him vide Certificate Ex.D-2. Later on, Arun Kumar Jain again stepped into the witness box as AW-2 and confirmed his residential unit in Gurgaon. However, initially the respondent/landlord tried to conceal this fact. In-fact, he did not require the demised premises for his personal use and necessity. Therefore, he was not entitled to the relief claimed for. To support this argument, the learned counsel for the petitioner/tenant has relied upon authority cited in **2012(4) R.C.R.(Civil) 588, Supreme Court of India**, case titled **“V. Chandrasekaran and Anr. Versus**

Administrative Officer and Ors.”, where in that case in paras No. 34 and 35 it was observed that :-

*“34. The appellants have not approached the court with clean hands, and are therefore, not entitled for any relief. Whenever a person approaches a Court of Equity, in the exercise of its extraordinary jurisdiction, it is expected that he will approach the said court not only with clean hands but also with a clean mind, a clean heart and clean objectives. Thus, he who seeks equity must do equity. The legal maxim "Jure Naturae Aequum Est Neminem cum Alterius Detrimeto Et Injuria Fieri Locupletiore", means that it is a law of nature that one should not be enriched by causing loss or injury to another. (Vide: **The Ramjas Foundation & Ors. v. Union of India & Ors.**, AIR 1993 Supreme Court 852; **Nooruddin v. (Dr.) K.L. Anand**, 1995(2) R.R.R. 556 : (1995) 1 SCC 242; and **Ramniklal N. Bhutta & Anr. v. State of Maharashtra & Ors.**, AIR 1997 Supreme Court 1236).*

35. The judicial process cannot become an instrument of oppression or abuse, or a means in the process of the court to subvert justice, for the reason that the court exercises its jurisdiction, only in furtherance of justice. The interests of justice and public interest coalesce, and therefore, they are very often one and the same. A petition or an affidavit containing a misleading and/or an inaccurate statement, only to achieve an ulterior purpose, amounts to an abuse of process of the court.”

The learned Rent Controller as well as learned Appellate Authority, Bhiwani failed to appreciate this fact and wrongly passed ejectment order holding that the respondent/landlord had bonafide necessity for the use and occupation of the shop in question.

The learned counsel for the petitioner/tenant pointed out that the respondent/landlord is doing his business of Chartered Accountant at Gurgaon. He is having a flat and he is residing there along with his family. He has no requirement for the shop in dispute. It is further pointed out that the elder son of the respondent/landlord is a Computer Engineer working in Delhi. Therefore, the claim of respondent/landlord that he require the

shop for his own use and occupation or for the settlement of his sons does not hold any ground. The respondent/landlord is already having two rooms in his possession from where he is carrying on his business and the first floor of the premises are also in his possession. Therefore, without considering the aforesaid factual position, the learned Rent Controller, Bhiwani has passed the ejectment order and the appeal preferred by the appellant-tenant has been wrongly dismissed. It is prayed that the judgments passed by the Courts below may kindly be set aside and the ejectment application filed by the respondent/landlord may kindly be dismissed.

11. On the other hand, learned counsel for respondent/landlord argued that in revision, this Court cannot appreciate the evidence on record which is already appreciated by the learned Rent Controller and the learned Appellate Authority unless and until the findings arrived at by the Courts below are unreasonable or without justification. To support this argument, the learned counsel for respondent/landlord has relied upon the authority cited in **1998(2) R.C.R.(Rent) 533, Supreme Court of India**, case titled **“Sarla Ahuja versus United India Insurance Company Limited”**, where in a similar case, the revision was pending before the High Court against the order of Rent Controller. It was explained in para No. 11 of the said judgment as under :-

“11. Learned Single Judge of the High Court in the present case has reassessed and re-appraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact finding court is wholly unreasonable. A reading of the impugned order shows that the High Court has over-stepped the

limits of its power as a revisional court. The order impugned, on that score, is hence vitiated by jurisdictional deficiency.”

He has relied upon another authority on this point cited in **2014(4) R.C.R.(Civil) 162, Supreme Court of India**, in case titled **“Hindustan Petroleum Corporation Ltd. Versus Dilbahar Singh”**, where again in a case under Haryana Urban Control of Rent and Eviction Act, 1973 Section 15(6), East Punjab Urban Rent Restriction Act, 1979 Section 15(5), it was reiterated that *‘High Court has no power to re-appreciate the evidence to come to a different conclusion but its consideration of evidence is confined to find out legality, regularity and propriety of the order.’* It was further held that *‘where the High Court is required to be satisfied that the decision is according to law, it may examine whether the impugned order before it suffers from procedural illegality or irregularity.’*

It is pointed out that the facts of the case and the evidence on record was rightly appreciated by the Rent Controller as well as the First Appellate Court. Therefore, the judgment passed by the Courts below cannot be set aside.

The learned counsel for the respondent/landlord pointed out that there was no concealment of material fact before the Rent Controller. The shop in dispute is situated within the municipal limits of Bhiwani. The learned counsel for the appellant-tenant has led undue emphasis to the flat owned by the respondent/landlord at Gurgaon. It is not required for the landlord to disclose all the properties which are situated at different places. So far as the property situated within the municipal limits of Bhiwani is concerned, nothing has been concealed from the Rent Controller. On this point, he has relied upon the authority cited in **2013(2) Land L.R. 666 of**

Coordinate Bench, in a case titled “**Arjun Dass versus Smt. Birinder Kaur & Anr.**”, where it was held that ‘*it is not the requirement under law that a landlord must declare the properties under his or her ownership.*’ Therefore, the stand taken by the petitioner/tenant regarding concealment of material fact is without any merits.

It is pointed out that the respondent/landlord rented out the shop in question more than 50 years ago at a monthly rent of Rs. 69/- per month which was never increased for the last more than 31 years. The respondent/landlord is having two grown-up sons who were of marriageable age and they were to be settled, for which suitable accommodation was required. It is further pointed out that he wanted to shift his own office in the demised shop, whereas, he wanted to settle down along with his wife on the ground floor due to their old age and he wanted to adjust his both sons on the first floor. The petitioner/tenant cannot say that the need and requirement of respondent/landlord is not genuine. To support his argument, he has relied upon the authority cited in ***2013(2) Land L.R. 359 of Coordinate Bench***, in case titled “**Musadi Lal versus Girraj Parshad and Anr.**”, where it was held in para No. 6 that ‘*the landlord’s son wanted to shift his profession from home to demised premises*’. It was held that ‘*a tenant cannot dictate to a landlord that a person who carries on his profession at home must continue to do so and he will not set up a practice in an independent building. The eviction was upheld.*’ In the case in hand, the landlord needed the premises for his own use and occupation and further to settle down his grown-up sons. Therefore, the learned Rent Controller, Bhiwani rightly appreciated the facts of the case and came to the conclusion that the need of

respondent/landlord regarding use and occupation of the demised shop was bonafide and accordingly, the appeal was also declined by the learned Appellate Authority, Bhiwani. There is no reason to interfere in the findings given by the Courts below and the civil revision preferred by the petitioner/tenant deserves dismissal.

12. I have considered the arguments advanced by learned counsel for both the parties and have gone through the record carefully. In the case in hand, the learned Rent Controller, Bhiwani by passing judgment dated 08.05.2012 has passed the ejectment order of the demised shop in favour of Arun Kumar Jain, respondent/landlord on the ground of personal use and necessity. The appeal preferred by the tenant Atam Parkash has been dismissed by passing impugned judgment dated 24.04.2013. Therefore, the matter in controversy is whether the respondent/landlord require the demised shop for his personal use and necessity and further whether the need of the respondent/landlord is bonafide and genuine or not.

In order to prove the facts of the case, Arun Kumar Jain, the respondent/landlord has stepped into the witness box to prove his own version. He categorically stated that he is running office of Chartered Accountant in two rooms situated behind the demised shop and he is having residential house on the first floor. As per his version, he is father of two grown-up sons who are of marriageable age. He wanted to settle down his sons in the residential portion on the first floor and he along with his wife being in old age wanted to shift in the two rooms already in their occupation in which he was running his office of Chartered Accountant and further wanted to shift his office in the front portion i.e. in the demised premises. It has come in evidence that the shop in question was given on

rent long time back in the year 1960-65. The tenancy was oral. The shop was rented out at the rate of Rs. 69/- per month. There is nothing on record to show that prior to this, the respondent/landlord filed any ejectment application with the intention to disturb the petitioner/tenant. After the lapse of so many years, the respondent/landlord filed this ejectment application on the ground of personal use and necessity to settle down his sons as well as his own business and residence on the ground floor including the demised shop.

During the course of arguments, the learned counsel for the petitioner/tenant laid emphasis on the ground that the respondent/landlord is having a flat in Gurgaon and this fact was concealed by him. Later on the evidence was led to establish that he is having a flat in Gurgaon but he tried to conceal this fact and for this reason, he is not entitled to the relief of ejectment from the demised shop. It is rightly pointed out by learned counsel for the respondent/landlord that the demised shop is situated within the revenue limits of Bhiwani, therefore, if the respondent/landlord had any property in any other district outside the municipal limits of Bhiwani, he was not under obligation to disclose about all the properties owned by him. Therefore, the said concealment will not affect the merits of the present case.

The only thing which is required to be seen is whether the need of respondent/landlord regarding the shop in dispute is genuine and bonafide. The respondent/landlord being father of two grown-up sons has a moral duty to settle them down by creating comfortable space in the residential house. It cannot be ignored that the respondent/landlord and his wife are also in their old age and in case they wanted to shift their

residence to the ground floor then their requirement cannot be said to be unjustified. It is duly established on record that the respondent/landlord is running office of Chartered Accountant having staff member along with trainee students. Therefore, he needed suitable accommodation for running his office i.e. the demised shop situated in the front portion. In case the respondent/landlord is visiting different places in connection with his business that cannot be considered adversely regarding his requirement for personal use and necessity of the demised shop. All the aforesaid facts and circumstances of the case are duly considered and rightly dealt with by the Courts below.

Therefore, I do find any illegality or perversity in the judgment dated 24.04.2013 rendered by the learned Appellate Authority, Bhiwani or the ejectment order vide judgment dated 08.05.2012 passed by the learned Rent Controller, Bhiwani. The facts of the case and the evidence on record were rightly dealt with. No other substantial question of law is involved in it. Therefore, I do not find any reason to interfere in the concurrent finding of the two Courts below. Resultantly, the Civil Revision filed by the petitioner/tenant Atam Parkash is accordingly, dismissed.

Pending application(s), if any, shall stand(s) disposed of.

The photocopies of records received from the two Courts below be sent back to the concerned quarters.

20.11.2023

lalit

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes
Yes