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Civil Revision No. 4628 of 2016 (O&M)

Neutral Citation No. 2023:PHHC:127332

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

Civil Revision No. 4628 of 2016 (O&M)

Date of Decision: 29.09.2023

Sahil Gupta

..... Petitioner

Versus

Sham Lal (since deceased) through his LRs

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Arihant Jain, Advocate
Mr. Arun Jindal, Advocate and
Mr. Kanish Jindal, Advocate
for the petitioner-landlord.

Mr. Rakesh Gupta, Advocate
for the respondent(s)-tenant.

HARKESH MANUJA, J. (ORAL)

The petitioner-landlord (*Sahil Gupta*), by instituting the present revision petition, seeks setting aside the order dated 18.05.2016 passed by the Appellate Authority, Sangrur (for short “Appellate Authority”), whereby an eviction order dated 17.08.2013 passed by learned Rent Controller, Sangrur (for short “Rent Controller”) was set aside, resulting into dismissal of his (petitioner) eviction petition.

FACTS:-

[2] Briefly stating, the petitioner-landlord, who claims himself to be the owner of demised shop situated at Nabha Gate, Sangrur, after having purchased it vide sale deed dated 16.05.2003, filed an eviction petition

against the respondent-tenant on the ground of arrears of rent as well as for his own personal *bona fide* necessity, while claiming himself to be neither owner nor occupier of any other vacant shop / premises situated within the urban area of Sangrur and also having not got vacated any other shop in the said area.

[3] Upon notice, the respondent-tenant appeared and filed detailed written statement, contesting the claim made by the petitioner-landlord, while submitting that the petitioner-landlord owned and occupied other properties belonging to Joint Hindu Family being the member, which were not disclosed in the eviction petition and thus, he was liable to be non-suited on account of concealment of material facts. In response, replication was filed on behalf of the petitioner-landlord. Relevant para-3 thereof is reproduced hereunder:-

“ 3. That para no. 3 of the reply as allege is wrong, hence denied. Petitioner owns no other shop except the shop mentioned in rent petitioner (sic – petition). It is wrong that petitioner owns shop no.8 situated at Kaula Park, Sangrur. The respondent can not dictate the terms to the landlord. The mother of the purchased shop no.8 with her own funds. It is wrong that said shop is lying vacant. Rather franchise of M/s Videocon Company has been opened.

The petitioner is not owner of adjoining shop rather mother of petitioner is owner of adjoining shop and his father is carrying the business in the said shop. The petitioner also assists him as petitioner is idle. It is wrong that Joint Hindu Family also own property behind the shop. Rather petitioner is owner of that shop which is on rent with silver printers. It is wrong that petitioner or

Joint Hindu Family is owner of residential plot measuring 320 Sq. Yards. Rather parents of the petitioner are owners of the residential plot. The respondent wants to make matter complicated by using Hindu Family although petitioner is not owner of any other property except mentioned in the rent petition. The shop in question is more suitable for the petitioner. It is also not usual to always depend upon the properties of parents. The petitioner worked at the shop of his father in the year 2006-07 and 2007-08 only and used to get salary during that period. ”

[4] The Rent Controller, vide judgment dated 17.08.2013, allowed the eviction petition filed at the instance of petitioner-landlord, while recording findings in his favour as regards his *bona fide* necessity *qua* the demised premises/shop. Aggrieved thereof, the respondent-tenant approached the Appellate Authority and the said appeal was allowed vide judgment dated 18.05.2016, resulting into setting aside of the eviction order passed by the Rent Controller.

CONTENTIONS:

ON BEHALF OF PETITIONER-LANDLORD

[5] Impugning the aforesaid order dated 18.05.2016 passed by the Appellate Authority, learned counsel for the petitioner-landlord submits that there is nothing on record to establish that any other property besides the demised premises was either owned or occupied or got vacated by the petitioner-landlord within the same urban area. He also submits that the Appellate Authority went wrong, while non-suiting the petitioner-landlord by referring to the properties owned and occupied by the parents of

petitioner, i.e. his mother and father. He further points out that mere non-appearance of the petitioner-landlord at the time of registration of sale deed dated 16.05.2003 besides he not having signed the said sale deed, could not be taken against him as the purchaser is not under obligation to sign the registered sale deed. He lastly submits that the demised premises was required for his (petitioner) own use and occupation so as to run his own independent business and to settle himself for future purposes and thus, the need was genuine.

ON BEHALF OF RESPONDENT-TENANT

[6] Learned counsel for the respondent-tenant submits that though in the eviction petition, it was averred that the petitioner-landlord does not own or occupy any other vacant shop for his own business within the urban area of Sangrur, however, while appearing as AW-1, the petitioner-landlord deliberately chose not to mention the factum of occupancy of any other shop in the same urban area, i.e. Sangrur and the only fact mentioned in the affidavit of examination-in-chief was that he (landlord) does not own any other shop except the shop in dispute. He also submits that non-mentioning of the factum of occupancy of any other shop in the same urban area by the petitioner-landlord in his affidavit was a deliberate attempt to conceal the factum of occupancy of shop situated at Nabha Gate, Sangrur, wherein the business was being exclusively run by him (petitioner-landlord) in the name of M/s. Mahavir Electronics, having occupied the said shop. In support, learned counsel for the respondent(s) submits that on an application moved by the respondent-tenant, the mother of landlord-petitioner was called upon

to produce the statement of accounts of Mahavir Electronics besides its rent note, so as to establish that the said premises was leased out to the father of petitioner-landlord as stated by him. By referring to the order dated 11.02.2012 passed by the Rent Controller, learned counsel also submits that no such rent note was ever produced by the mother of petitioner-landlord, whereas from the Statement of Accounts, it could easily be made out that all those documents were relating to the petitioner, thus, establishing the fact that the business of Mahavir Electronics was being run exclusively by the petitioner-landlord himself being in occupation of the said shop situated at the Nabha Gate, Sangrur, which was owned by his mother and thus, the need *qua* the demised shop was not genuine. He further points out that the bills, which were produced on record as Ex. R-1 (colly) by the petitioner-landlord himself while appearing as AW-1 pertaining to Mahavir Electronics, were all in his own name and under his signatures.

[6.1] Learned counsel for the respondent(s) again submits that even the property in question was purchased out of the funds of Mahavir Electronics, which could be easily traced out from the Statement of Accounts produced by the mother of petitioner-landlord himself. Learned counsel, by referring to those Statement of Accounts, also points out that though an attempt was being made by the petitioner-landlord to project himself being an employee of Mahavir Electronics, however, no such case was ever pleaded in the eviction petition. He, therefore, claims that the entire eviction petition was based on concealment of facts and thus, the petitioner-landlord was liable to be non-suited. In support, learned counsel

placed reliance on the observations made in para-11 of judgment rendered by the Hon'ble Supreme Court in **Civil Appeal No. 5680 of 2008**, titled "**Ajit Singh & Anr. Versus Jit Ram & Anr.**", reported as **2008 (9) SCC 699**, which reads as under:-

"11. From the aforesaid decision of this Court, it is therefore, clear that this Court has laid down authoritatively that a non-residential premises, if required by a son for user by him would cover the requirement of words used in the Section, i.e. "for his own use" in reference to a landlord. Therefore, if "his own use" has been interpreted by this Court in the above-said manner, then the requirements as laid down in Section 13(3)(a)(ii)(b) and (c) of the Act has to be interpreted in the same manner to hold that (a) the son of the landlord has to plead in the eviction petition that, (b) he is not occupying in the urban area concerned for the purpose of his business any other such building or rented land as the case may be; and (c) he has not vacated such a building or rented land without sufficient cause after the commencement of the Rent Act, in the urban area concerned. "

[6.2] Learned counsel for the respondent-tenant also relied upon a decision rendered by this Court in **CR No. 3863 of 2003**, titled "**Jaspreet Takhar Versus Ghai Enterprises**", reported as **2013 (2) RCR (Civil) 650**, to contend that at the best, the matter in hand was required to be remanded before the Appellate Authority.

DISCUSSION & REASONING:

[7] After hearing learned counsel for the parties and going through the record of the Courts below, I find substance in the submissions made on behalf of the petitioner-landlord.

[8] In the present litigation, the specific and categorical case set up by the petitioner-landlord in the eviction petition was that he after having purchased the demised premises by virtue of sale deed dated 16.05.2003 was seeking eviction in order to set up his own independent business therein. It was also pleaded in the eviction petition that the petitioner-landlord was helping his father in his business of electronics and now wanted to set up his own separate business, so as to settle himself in life, besides pleading that he was not owning or occupying any other similar property in the urban area of Sangrur. Relevant portion from the eviction petition is re-produced hereunder:-

“ 2.(i)

(ii)*The petitioner requires the shop in dispute urgently for his independent settlement. Father of the petitioner is carrying on business of electronic items adjoining the shop in dispute. Petitioner has sufficient experience in this line as petitioner used to assist his father during vacations. Petitioner required the shop for doing business of sale and purchase of electronics items.*

3.*The petitioner does not own or occupy any other vacant shop for his own business within the Urban Area of Sangrur nor the petitioner has vacated any other shop within the Urban Area of Sangrur.”*

[9] Further, from the evidence available on record in the shape of bills Ex. R-1 (colly), which pertain to the year 2011 and signed by the petitioner-landlord on behalf of Mahavir Electronics as well as the Statement of Accounts produced by his mother, showing ledger accounts in the name of petitioner-landlord besides one reflecting him against salary from Mahavir Electronics, the same are in consonance with the case set up by the petitioner-landlord in his eviction petition, wherein, he admits that he has been helping his father in his electronics business, being run in the name of Mahavir Electronics and he (petitioner) having gained experience from it, intended to set up his own independent business in the premises in question. Thus, by any stretch of imagination, the petitioner-landlord having worked with his father in Mahavir Electronics, cannot be termed to be in occupation over the said premises. The word ‘occupation’ used under Section 13 (3) (a) of the East Punjab Urban Rent Restriction Act, 1949 has to be interpreted as “exclusive, independent, ultimate and authoritative control” over the property, but not as that of an employee or a person assisting the occupant of the premises in any manner. Hence, in the facts and circumstances for non-mentioning of shop in occupation of his father, no concealment can be attributed to the petitioner-landlord for non-suiting him in the eviction petition.

[10] Moreover, though the mother of petitioner-landlord was called upon at the instance of respondent-tenant to produce the Statement of Accounts which were relied upon by the tenant to support the plea that the business of Mahavir Electronics was being exclusively run by the petitioner-

landlord, yet the same was not made out. At Page-138 of the record shows that the petitioner-landlord was being paid salary by Mahavir Electronics. No steps were ever taken by the respondent-tenant to call upon the mother of petitioner to effect cross-examination upon her, so as to counter her with the entries made in the Statement of Accounts nor even an effort was made to put those to petitioner in his cross-examination and thus, the same needed to be considered as such and nothing contrary to it can even be thought off to record that the petitioner-landlord was running the business of Mahavir Electronics on his own in an independent capacity occupying the premises at Nabha Gate, Sangrur, which was owned by his mother.

[11] A perusal of the judgment rendered by the Appellate Authority goes on to reflect that the other properties owned and possessed by the parents of petitioner-landlord weighed the reasoning, while reversing the findings recorded by the Rent Controller, which was patently incorrect. The same could not have been relied upon so as to non-suit the petitioner-landlord, who was seeking eviction of the tenanted premises, having pleaded that the property (in question) was the only one, owned by him. The Appellate Authority also went wrong while recording that the sale deed dated 16.05.2003 not signed by the petitioner-landlord, yet signed by his father could not be relied upon. It is settled proposition of law that no statutory provision mandates or enjoins the purchaser to sign the sale deed and as such, it made no difference whether the sale deed was signed by the petitioner-landlord or his father and thus, could not be discarded on this ground.

[10]

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[12] This Court, after perusing the judgments cited by the learned counsel for respondent-tenant, also finds that the same are not applicable in the facts and circumstances of the present case.

[13] In nutshell, from the record, it is made out that *bona fide* and genuine need of petitioner-landlord has been established *qua* the demised premises/shop in question, who intends to open his own independent business of electronics having gained experience while working with his father in Mahavir Electronics and neither owns or occupying any other property of similar nature in the same urban area.

[14] In view of the discussion made hereinabove, finding the judgment dated 18.05.2016 passed by the Appellate Authority being perverse and against the evidence available on record besides its misreading as well, the same is, therefore, set aside and the order dated 17.08.2013 passed by the learned Rent Controller is hereby upheld, passing the eviction order against the respondent-tenant.

[15] **Disposed off**, accordingly.

September 29, 2023
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(HARKESH MANUJA)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes