

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

443

**CR No.6551 of 2011 (O&M)
Date of Decision: 10.2.2023**

Bhisham Kumar LR of deceased
Shri Mange Ram

... Petitioner

Versus

Anand Dev (Deceased) through
LRs and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Argued by: Mr. Chand Ram Olla, Advocate,
for the petitioner.

Mr. Yagsimant Attri, Advocate,
for the contesting respondents.

MANISHA BATRA, J.

1. The present petition has been filed by Sh. Bhisham Kumar one of the legal representative of deceased tenant Sh. Mange Ram, (hereinafter described as “petitioner”) directed against the order passed by learned Rent Controller, Hisar on 17.10.2007 and that of learned Appellate Authority, Hisar dated 07.09.2011. By virtue of the impugned order passed by the learned Rent Controller, the order of eviction had been passed against the petitioner. Appeal filed by the petitioner had been dismissed by the learned Appellate Authority. The petitioner assailed both the orders, namely order of learned Rent Controller and judgment of learned Appellate Authority.

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the respondents-Anand Dev and Om Parkash filed the ejectment petition under Section 13 of the Haryana Urban

(Control of Rent and Eviction) Act, 1973 (for short “Rent Act”) against the present petitioner and other legal representatives of deceased tenant Mange Ram on the averments that the shop in dispute was let out to Sh. Mange Ram, predecessor-in-interest of the present petitioner in or about the year 1979 on monthly rent of Rs.500/- besides house tax. Sh. Mange Ram had not paid rent w.e.f. 01.07.1997 and was in arrears of the same. The respondents required demised shop for the purpose of Dinesh Kumar son of respondent No.1 Anand Dev for running his business therein. The respondents owned 11 shops in the building in which the demised shop was existing but none of those shops were vacant and the same were occupied by different tenants. The respondents also did not own any other residential or non-residential building except the abovesaid building.

3. The present petitioner had filed reply to the petition contesting the same on the ground that the rate of rent was Rs.100 per month only including house tax. They had tendered the arrears of rent before the Rent Controller. It was denied that the demised shop was required for personal bone fide necessity as Dinesh Kumar was already running the grocery shop in Hisar. While controverting the averments in the petition, the dismissal of the same had been prayed for.

4. The learned Rent Controller had framed the following issues vide order dated 07.12.2000:-

“1. What is the rate of rent of the demised premises? OPA

2. Whether the respondent is liable to be ejected on the ground:

(a) that the tender made by the respondent on 6.6.2000

is short and invalid, if so its effect.

(b) that the petitioner needs the demised premises for his personal necessity as alleged? OPA

3. Whether the application is false and frivolous, liable to be rejected as alleged in para no.1 of the eviction application?
OPR

4. Whether the petition is not verified in accordance with law, if so its effect?OPR

5. Relief.”

5. In support of their case, the respondents had examined three witnesses whereas the petitioners examined four witnesses. Both of the parties also relied upon documentary evidence.

6. The ejectment petition filed by the respondents was allowed on the ground of personal bona fide necessity of the respondents and the petitioner was directed to vacate the demised premises within two months. The learned Rent Controller, however, had held that the respondents had failed to prove that the rent tendered by the petitioner was short or invalid. The Appellate Authority agreed with the findings of the learned Rent Controller and dismissed the appeal filed by the petitioners. Hence, the present revision petition. It will however not be out of place to mention here that during the pendency of the revision petition, the respondent No.1- Anand Dev had expired and his legal representatives were brought on record.

7. It was urged by learned counsel for the petitioner that the impugned orders were liable to be set aside as the same were not sustainable in the eyes of law. The learned Rent Controller and the Appellate Authority had mis-appreciated the evidence produced on record. It was well proved on

record that the respondents owned as many as 11 shops in the same building and Dinesh Kumar son of respondent No.1 who has since died was already occupying one shop and was running business of grocery and confectionery in the same and hence the need of respondents was not proved to be bona fide, but this fact was not taken into consideration. It had also come on record that during the pendency of the ejectment petition, two of the shops owned by the respondents had fallen vacant and the same could very well be occupied by them for the purpose of running business by the son of respondent No.1. The findings given by the authorities below were perverse and were liable to be set aside. Therefore, it was argued that the impugned orders were liable to be set aside and the revision petition deserved to be allowed.

8. Learned counsel for the respondents, on the other hand, argued that the concurrent findings recorded by the authorities below accepting the plea that the demised shop was bonafidely required for personal use and occupation of the son of respondent No.1 deserved to be upheld and did not warrant any interference as these findings did not suffer from any illegality or perversity. The power of this Court while exercising its revisional jurisdiction was restricted and it could not interfere with the findings of fact as recorded by the appellate authority when they were not perverse. In support of his argument, learned counsel for the respondents relied upon authorities cited as **Inderjit Singh v. T.R. Sachdeva and another**, 2019 (2) R.C.R. (Rent) 575; **Kamaljit Singh v. Karam Chand and others**, 2018(2) Law Herald 1611; **Arun Kumar v. Gurcharan Singh**, 2017 (3) R.C.R. (Civil) 898 and **Smt. Darshna Devi v. Kewal Krishan**, 2015 (2) R.C.R. (Rent) 285 and urged that the revision petition was devoid of any merit and

was liable to be dismissed.

9. I have given due deliberations to the contentions as raised by both the sides and have perused the record carefully. It is revealed from a perusal of pleadings of the parties that the fact that the respondents were owners and landlords of the demised shop was not disputed by the petitioners in the written statement filed by them before learned Rent Controller. The respondents have not challenged the findings given by learned Rent Controller with regard to the rate of the rent and valid tender thereof. The findings as given by learned Rent Controller and the learned Appellate Authority with regard to bona fide personal necessity of the respondents for requiring the demised shop have been assailed. The learned Rent Controller as well as the learned Appellate Authority had observed that the demised shop was required by the respondents for setting up business of son of respondent No.1 who was unemployed. No doubt, it had come on record that two of the shops owned by the respondents had fallen vacant during the pendency of the rent petition. However, that could not be stated to be a reason for compelling the respondents to withdraw their claim for ejectment of the petitioner from the demised shop. It is well settled proposition of law that it is for the landlord to decide regarding the suitability of the premises and he is the best judge of his requirement. A tenant cannot dictate as to how the landlord can satisfy his need by using other portion of the property. Neither the Court nor the tenant can curtail the genuine and bona fide need of the landlord. When a petition for ejectment on the ground of personal necessity is filed, the Court would not proceed with a presumption that the same is not genuine. All that is required is that the assertion made by the landlord that he requires his building for his own

occupation and the said requirement is bona fide. It is not for the tenant to dictate terms to the landlord as to how such he can adjust himself without getting possession of the tenanted premises. Reference in this regard can be made to **Atma S.Berar v. Mukhtiar Singh**, 2003 (1) R.C.R. (Rent) 42 wherein it was observed that the landlord is the best judge of his residential requirements and has a complete freedom in the matter. It is no concern of the Court to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. It is also well settled that it is right and privilege of the landlord to choose nature of business and place and the tenant cannot dictate the terms and advise him what kind of action he should follow. Similar was the proposition of law as laid down in **Inderjit Singh's** case (Supra), **Kamaljit Singh's** case (Supra), **Arun Kumar's** case (Supra) and **Smt. Darshna Devi's** case (Supra), as cited by the respondents.

10. The learned Rent Controller as well as learned First Appellate Authority had observed that the need of the respondents-landlords for the demised shop was bona fide as they required the demised shop for starting some business for the son of respondent No.1. Only due to the reason that some other shops owned by the respondents had fallen vacant during the pendency of the petition, there was not a ground for the petitioner to say that the respondents were not entitled to seek ejectment. There are concurrent findings recorded by the learned Rent Controller and learned Appellate Authority accepting the plea of the respondents that the demised shop was bonafidely required for personal use and occupation of the respondents. Learned counsel for the petitioner has been unable to point out any ground

findings of fact returned by both the Courts below.

11. The matter is to be looked from one more angle. It is relevant to note that the Hon'ble Apex Court in **Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh**, 2014 (4) RCR (Civil) 162, while examining the scope of revisional jurisdiction of this Court reiterated that power was indeed limited one. Pure finding of fact until and unless perverse and opposed to the evidence on record could not be interfered with. It was observed that examination or consideration of the evidence by the High Court in revisional jurisdiction under the Rent Acts was confined to find out that finding of facts recorded by the Court/authority below was according to law and did not suffer from any error of law. A finding of fact recorded by the authority below, if perverse or having arrived at without consideration of the material evidence or such finding being based on no evidence or misreading of evidence or on being grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction. It was also observed that the Rent Act did not entitle the High Court to interfere with the findings of fact recorded by the First Appellate Court/authority because on re-appreciation of the evidence, its view is different from the Courts below. Revisional power is not and cannot be equated with the power of re-consideration of all questions of fact as a Court of First Appeal. It was held that where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity. Keeping in view the facts and circumstances of the case, it is held that the ejectment of the petitioner has rightly been ordered by both the learned Courts below who rendered concurrent findings of fact against the

petitioner on a wholesome and proper appreciation of evidence on record. These findings do not suffer from any procedural irregularity much less illegality warranting intervention of this Court in exercise of limited revisional jurisdiction. As such, in the absence of any illegality, infirmity or perversity in the impugned order dated 17.10.2007 passed by learned Rent Controller and impugned judgment dated 07.09.2011 passed by learned Appellate Authority, it is held that no ground has been made out to interfere. Accordingly, the revision petition is dismissed with no order as to costs.

10.2.2023
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(MANISHA BATRA)
JUDGE

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