

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

CR-7627-2016(O&M)

Date of decision:-27.1.2023

Inam Ali

...Petitioner

Versus

Harbhajan Kaur

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Nikhil K.Chopra, Advocate
for the petitioner.

None for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that petitioner/landlady Harbhajan Kaur, a Non Resident Indian(hereinafter referred to as NRI), residing in USA through her attorney Sh.Avinash Kumar had brought a petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act) against respondent/tenant Inam Ali, seeking ejectment of the latter from the shop No.3 having area measuring 10 ' x 10' (hereinafter referred to as the demised shop) out of the portion of the property No.115, Jawala Nagar, Maqsudan, Jalandhar as detailed in the head note of the petition and shown in red colour in the site plan attached therewith.

2. As per the version of the petitioner, she has been residing in USA with her family for the last many years; she had purchased property no.115, Jawala Nagar Maqsudan, Jalandhar of which the demised shop

formed the part, in the year 1980; after the purchase of the said property, the petitioner constructed three shops over the main road and the remaining construction is still required to be carried out for the purpose of residence of family of the petitioner; the demised shop was rented out to respondent/tenant vide rent agreement dated 22.10.1992 on monthly rent of ₹800/-; although the boundaries of the demised shop were inadvertently wrongly mentioned in the agreement but it has been correctly described in the head note of the petition as well as in the site plan attached therewith. The petitioner/landlady sought ejectment of the respondent/tenant on various grounds, first being that he is in arrears of rent since March 2010; secondly the petitioner being an old aged lady and a senior citizen suffering from various diseases, now intends to settle down in India permanently in the evening of her life and has decided to raise construction for her residential purpose in the property by demolishing the demised shop. According to the petitioner, she asked the respondent to vacate the demised shop for the reason that she requires it for her own *bona fide* use and occupation but he refused to do so, as such, the petitioner had to approach the Rent Controller, Jalandhar seeking ejectment of the respondent/tenant by way of filing the petition in question.

3. On notice, the respondent appeared and filed a written reply contesting the petition raising various legal objections, to wit that petition is not maintainable; the site plan attached with the petition is wrong. On merits, the respondent refuted that petitioner is an NRI, rather stated that she is a permanent citizen of India. The rent agreement pleaded by the

petitioner is dubbed as result of fraud and fabrication. It is denied that any rent agreement was entered into between the parties; the tenancy is claimed to be oral. The respondent denied that the petitioner requires the demised shop for her own use and occupation contending that the petitioner is bed ridden and getting regular treatment from USA and there are no chances of her returning to India. Refuting the remaining averments, the respondent prayed for dismissal of the petition.

4. On the pleadings of the parties, following issues were framed:

1. Whether the petitioner is liable to be ejected from suit property as prayed for by the petitioner? OPP.
 2. Whether the present petition is not maintainable? OPR.
 3. Whether the site plan attached is wrong? OPR.
 4. Relief.
5. Both the parties led evidence in respect of their claims.

During the course of evidence of the petitioner, Sh.Avinash Kumar, Attorney of petitioner got his statement recorded as PW1 submitting his affidavit Ex.PW1/A in which he repeated on oath the case of the petitioner as given in the petition. He proved on record copy of power of attorney dated 06.11.2013 Ex.P1, certified copy of sale deed dated 20.02.1980 Ex.P2, rent agreement dated 22.10.1992 Ex.P3, site plan Ex.P4, identification card Ex.P5 and copies of passports Ex.P6 to Ex.P7. The second witness examined by the petitioner happened to be PW2 Romi, HRC Branch, DC Office, Jalandhar, who brought the original record with regard to registration of sale deed dated 7951 dated 20.2.1980,

proving its certified copy as Ex.PW2/1. The plaintiff further examined PW3 Sanjiv Kumar Sharma, Draughtsman, New Court, Jalandhar, who proved site plan Ex.P4 stating that he had prepared the same on 11.11.2013 after visiting the spot.

With that the evidence of the petitioner got concluded.

In rebuttal, Javed Ali son of the respondent appeared as RW1 and tendered in evidence his affidavit Ex.RW1/A in which he supported the case of the respondent on material points. Respondent Inam Ali got his own statement recorded as RW2 submitting his affidavit as Ex.RW2/A in which he repeated on oath his case as given in the written reply and proved on record receipts Ex.R1 to Ex.R83, bank vouchers Ex.R84 to Ex.R86. Thereafter, the evidence of the respondent stood closed.

Counsel for the petitioner tendered in evidence a certified copy of ejectment order of co-tenant dated 30.01.2016 in case titled as 'Harbhajan Kaur Vs. Gurdeep Singh' as Ex.PX and closed the rebuttal evidence of the petitioner.

6. After hearing arguments, learned Rent Controller, Jalandhar vide judgment/order dated 14.9.2016 decided issues No.1 and 3 in favour of the petitioner and against the respondent, whereas issue No.2 was decided in favour of the petitioner. Resultantly, the petition was accepted and the respondent was ordered to be ejected from the demised shop directing him to hand over the vacant possession thereof to the petitioner within a period of two months from the date of order, failing which, the petitioner would be entitled to seek possession with assistance of the Court.

7. This order left the respondent/tenant aggrieved and he has approached this Court by way of filing the present revision petition, praying that the same be accepted, the ejectment order passed against him by the Rent Controller, Jalandhar be set aside and the petition in question be dismissed.

8. Notice of the revision petition was given to the respondent, who had put in appearance through counsel earlier but subsequently such counsel stopped putting in appearance. Since the revision petition happens to be quite old relating to the year 2016, I proceed to decide it after hearing counsel for the petitioner and going through the record.

9. In this case the relationship of landlord and tenant between the parties is admitted. Although the respondent/tenant claims that it was an oral tenancy and no rent agreement was executed between the parties, but the petitioner has successfully proved that such agreement dated 22.10.1992 had in fact taken place between them. The petitioner/landlady has brought the ejectment petition on two grounds, first being respondent-tenant being in arrears of rent w.e.f. March, 2010 onwards and secondly with regard to the personal necessity stating that she wants to return to India from USA where she is putting up presently so as to settle down in India permanently.

10. The main thrust of the petitioner was on the second ground. From the statement of PW2 Romi, HRC Branch, DC Office, Jalandhar, who brought the original record of sale deed No.7951 dated 20.2.1980 proving its certified copy as Ex.PW2/1, it comes out that the petitioner had purchased the property, of which the demised shop forms a part vide

that document about 33 years before filing of the ejectment petition. To prove her status as an NRI, PW1 attorney of the petitioner has placed on record copies of passports Ex.P6 and Ex.P7 showing that petitioner is an NRI covered by the definition of Section 2(dd) of the Act. The respondent appearing as RW2 feigned ignorance whether petitioner is an NRI or not. No evidence in rebuttal in that regard has been led. Although an objection had been raised on behalf of the respondent that the demised shop had not been properly described but the Rent Controller, Jalandhar after considering the pleadings of the parties and evidence brought on record has rightly concluded that the site plan proved on record by the petitioner as Ex.P4 depicts the correct boundaries and the factual position.

11. With regard to the ground of personal necessity pleaded by the petitioner, her attorney Avinash Kumar appearing as PW1 has repeated on oath the case of the petitioner as contend in the petition. Although the respondent/tenant himself appearing as RW2 and her son Javed Ali appearing as RW1 have denied such ground being available to the petitioner but their denial does not result in making any dent in the case of the petitioner with regard to such ground being available to the petitioner/landlady. The Rent Controller, Jalandhar vide detailed discussion in para No.20 of the order relying upon the judgments passed by this Court as well as by the Apex Court has rightly observed that such ground is proved to be available to the petitioner and respondent has been unable to show that such requirement is not bona fide and genuine and that the petition had been filed with a mala fide intention to harass the tenant only.

12. Learned counsel for the revision petitioner/tenant has contended that the Rent Controller has not appreciated the fact that the petitioner/landlady is an old woman and her alleged desire to return to India is totally misconceived; furthermore she has got a huge vacant plots in the name of her husband adjoining to the shop, which is sufficient to construct house over there. Furthermore, she has got a big house in the village near Banga.

13. However, I find these contentions to be devoid of merit. The Rent Controller, Jalandhar after trial has come to the conclusion that the requirement of petitioner/landlady is bona fide. It has been noticed that several persons belonging to India, who had migrated to foreign countries in their young or middle age have an ardent desire to return to their motherland and spend there remaining life there. Therefore, no fault can be found with such desire of petitioner/landlady to return to India at this ripe age and spend her remaining time there by constructing a house in the property belonging to her. Furthermore, it is for the petitioner/landlady to see her requirement and to decide where she wants to construct a house for her residence and respondent/tenant is nobody to advise her in that regard. The contention that the husband of the petitioner owes adjoining plots where a house can be constructed and petitioner has got a big house in village near Banga lack merit. The husband of the petitioner may not be willing to construct a house in the plot belonging to him and petitioner cannot be asked to request her husband to raise construction in the plot belonging to him instead of doing so in her own property. It is for the petitioner to decide whether she is to reside in her house at Maqsuda

instead of living in any house in a village near Banga as alleged by the revision petitioner.

14. Another contention has been put forward by learned counsel for the revision petitioner that the Rent Controller has not considered that shop in question is a commercial property and a residential house cannot be constructed in a commercial property without getting change of land user allowed from concerned authorities. This objection is also without merit. No such objection is shown to have been raised before the Rent Controller and no evidence led in that regard. Therefore, the argument cannot be accepted.

15. Learned counsel for the revision petitioner has referred to *Anima Biswas Versus Gurbachan Singh, 2010(4) RCR(Civil) 688* by Single Judge of this Court wherein it was observed that where a portion of residential building is converted into a shop and let out to tenant, then it will fall within definition of non-residential building and eviction petition for said premises under Section 13-A is not maintainable. However, for the reasons mentioned above, this judgment also does not help the revision petitioner in any manner.

16. With regard to the next judgment *Harbhajan Singh Versus Sukhjinder Singh Aulak @ Billa and another, 2011(4) RCR(Civil) 89* by a Single Judge of this Court, that judgment does not help the revision petitioner in any manner due to the different facts and circumstances of the case and the context in which such observations had been made. As per the facts of the authority the landlord was co-owner in two different properties also, whereas neither such allegations are there nor the

evidence has been led by respondent to prove those. Furthermore, as per judgment in question, such ground was found to be sufficient for granting leave to defend with regard to maintainability of the revision petitioner. Whereas in the instant case, the Rent Controller after contest has accepted the petition.

17. One more submission made by the counsel for the revisionist was that the petitioner-landlady has got an ejectment order against another tenant, which has not been taken into consideration by learned Rent Controller. May it be so. It has to be taken into consideration that the landlady desires to construct a home after demolition of shops. Therefore, her getting vacating another shop from some other tenant does not affect her necessity qua the demised shop.

18. The order passed by the Rent Controller, Jalandhar is detailed and well reasoned without there being any element of arbitrariness. The same does come out to be suffering from any illegality or infirmity much less apparent on the face of it. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

19. The revision petition stands dismissed accordingly.

Since the main revision petition stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

27.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No