

CR-7827-2013 (O&M)

2023:PHHC:073761

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

**CM-9768-69-CII-2022 AND
CM-14530-CII-2022 IN/AND
CR-7827-2013 (O&M)
Date of Decision: 16.05.2023**

M/s Kalra Cloth House and others

....Revisionists

Versus

Ishar Dass (Deceased) Through LR's and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. D.S. Patwalia, Sr. Advocate with
Mr. Gaurav Rana, Advocate
for the revisionists.

Mr. S.K. Garg Narwana, Sr. Advocate
with Mr. Vishal Garg Narwana, Advocate,
Mr. Nitin Sachdeva, Advocate,
Mr. Japjit Singh Johal, Advocate
for the respondents.

ARUN MONGA, J. (ORAL)

CM-9768 & 14530-CII-2022

For the reasons stated in applications, same are allowed.

Documents are taken on record, subject to all just exceptions

Main case

Petition herein is for setting aside order dated 04.01.2013
whereby petition under Section 13 of East Punjab Urban Rent Restriction
Act, 1949 (hereinafter referred to as 'the Act') for ejection of revisionists

from the portion of shop of Building No.B-XX-554, Ghumar Mandi, Ludhiana, was allowed on the ground of personal necessity and revisionists were directed to vacate the said premises from the date of said order. Further, prayer is made to set aside order dated 30.10.2013, whereby appeal filed by revisionists against impugned order was also dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Revisionists herein took a portion of the demised premises i.e., property No. B-XX -554, Ghumar Mandi, Ludhiana initially on rent @ Rs.15/- per month as far back in the year 1961. However, neither any lease was entered into nor any rent note signed between the parties. Thereafter, rent for the demised premises was increased to Rs.29/- per month and subsequently to Rs.175/- per month. Initially revisionists herein had taken on rent one of the demised premises i.e., commercial shop but during the course of time i.e., in the year 1973, one additional adjoining shop was also taken on rent.

2.2. A rent note dated 30.08.1984 as well as a formal deed were executed between the parties and the rent was further enhanced to Rs. 600/- per month. The rent deed, which has duly been exhibited in the rent petition as Exhibit A-1 provided that upon payment of agreed rent between the parties, revisionists herein would be entitled to reconstruct the demised shops by making internal changes in the same though at their cost to which the respondent/ landlords would have no objection.

2.3. It was also agreed by way of the rent deed that revisionists would also be entitled to raise the height of the roof, carry out necessary

repairs, make temporary additions to the premises and also run any type of business as admissible in law.

2.4. In pursuance to the said rent deed, revisionists continued to pay the rent to respondents herein without any encumbrance or hindrance thereto. However, time and again landlord-respondents threatened revisionists to increase the rent, failing which, revisionists were warned of facing the consequences of legal action being initiated against them.

2.5. For not paying heed to the threat of increasing the rent ultimately, led the revisionists to face a petition filed against them under Section 13 of the Act for eviction of revisionists. It was contended therein that respondents herein are the owners of the demised property situated at Ludhiana being property no. B-XX-554, Ghumar Mandi, Ludhiana. A rent note dated 30.08.1984 was executed by respondents in favor of the revisionists and the rent agreed was Rs.600/- P.M. plus house tax @ 15%.

2.6. The eviction was sought primarily on four grounds; (i) allegedly revisionist/tenants had not paid rent since 01.11.1993 and thus should be evicted; (ii) allegedly tenants had materially impaired the value and utility of the property in question; (iii) the tenants had without the permission of the landlord, partitioned the shop; and (iv) landlords require the said property for their *bona fide* necessity.

2.7. Upon notice, revisionists appeared and contested the eviction and filed their written statement. Various preliminary objections were taken including that the landlords have concocted a story and concealed material facts.

2.8. It was also brought to the notice of Ld. Rent Controller that initially the demised shop was taken on rent in the year 1961 @ Rs.15/- per month and rent was thereafter enhanced to Rs.29/- per month.

2.9. In the year 1973, adjacent shop was also taken on rent by revisionists and a consolidated rent of Rs.175/- per month was settled between the parties. Landlords had been using tactics to coerce revisionists to enhance the rent and in fact had caused damage to the rented premises of revisionists i.e. to the roof of the shop. In this regard a DDR being No.21 dated 31.07.1980 was also got registered by revisionists. However, the rent was further enhanced to Rs.600/- per month and rent note dated 30.08.1984 was executed in this regard.

2.10. The rent note/deed so executed also sets out various rights and liabilities of the parties. In fact, petitioner no.2 was the special power of attorney of the landlords vide deed dated 30.08.1984 for demolition, construction of shop and obtaining various permissions from the Municipal Corporation, Ludhiana etc.

2.11. It was further stated therein that the present eviction petition was bad for non-joinder of parties as the co-owner and/or his legal heirs were not impleaded as party to the case. On merits, all the allegations were denied.

2.12. It was specifically stated that the apart from the demised shop, there are 3 more shops in the same premises and out of them one is lying vacant and is in the possession of landlords for more than 20 years. The present eviction petition was filed only to coerce revisionists to pay

enhanced rent @ Rs.1500 per month. For the arrears, as alleged, revisionists had sent a draft of Rs.21,000/- dated 17.09.1996 for the period 01.11.1993 till 30.09.1996 through registered post..

3. On the basis of the pleading, six issues were framed which are as under:-

(i) Whether the respondents are in arrears of rent w.e.f. 01.11.1993 @ Rs.600/- P.M. along with house tax @ 15% P.A.? OPA

(ii) Whether the respondents have materially impaired the value and utility of the demised premises? OPA

(iii) Whether front portion of the shop has been let out to two different tailors masters Rs.800/- P.M. for the last 5 years? OPA

(iv) Whether the property in dispute is required by the revisionists for their own use and occupation and their necessity is *bona fide*? OPA

(v) Whether the present petition is bad for non-joinder of necessary parties? OPR

(vi) Relief.

4. The parties adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

4.1. On appraisal of evidence vis-à-vis pleadings, it was found that issue No. 1 had become redundant, issue Nos.2 & 3 were decided against respondents and in favour of revisionists herein & issue Nos.4 & 5 were decided against revisionists and in favour of respondents herein and consequently, the eviction petition was allowed with costs vide impugned judgment dated 04.01.2013 passed by Ld. Rent Controller.

5. Aggrieved, revisionists/tenants preferred an appeal, which was dismissed by Ld. Appellate Authority vide impugned judgment dated 30.10.2013, resulting in instant revision.

6. Learned Senior Counsel for petitioner/tenants would *inter alia* argue that *bona fide* need was not at all present in the instant case inasmuch as not only did landlord Sita Ram have a 5th shop, which was lying vacant right adjoining the shop of revisionists, but also had a shed which was also lying vacant across the road towards the shop of revisionists. He further submits that landlords did not approach learned Rent Controller with clean hands and concealed material facts. Eviction petition is liable to be dismissed on this short ground alone.

7. Learned Senior Counsel for respondent/landlords, on the other hand, contends that as noted by Ld. Rent Controller, it is well settled that landlord is the best judge of his needs and it is the prerogative of the landlord to choose the venue himself to start his business and the tenant cannot dictate the landlord as to which premises is better for him to run the business.

8. In its judgment, Ld. Appellate Authority, *inter alia*, observed, as under:

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11. From the evidence led by petitioner/respondent has been proved on the file that the respondent/ revisionists want to vacate the shop in dispute for the use and occupation of Pardeep Kumar son of petitioner No.2 for running a business of plywood and board. The contention raised by the learned counsel for appellant that the revisionists/ respondents has concealed that they have a vacant shop in their possession in

which they can start the business of Pardeep Kumar is not tenable because during cross-examination of PW1 Sita Ram, it has been brought on file that out of five shops one shop is in possession of Himalyan arts and crafts, his nephew Sanjeev Kumar has rented out said shop to Himalyan Arts and Crafts for one month. There are total five shops. RW3 during his cross-examination admitted that one shop is occupied by King Footwear, other is Kalra Dyers and two are with them. Meaning thereby the fifth shop is in possession of Himalyan Arts and Crafts. As such the respondents/ revisionists have not concealed anything regarding the vacant shop as alleged by the appellant.

12. So far the need of the respondents/ revisionists bona fide to vacate the shop in dispute is concerned, RW3 Makhan Singh during cross-examination further admitted that Pardeep Kumar is son of Sita Ram who is doing the work of wood and working as a contractor but he does not know where he was working. He further stated that he does not know whether Pardeep Kumar wants to do business of sale and purchase of plywood. Meaning thereby, Pardeep Kumar is not having any shop to run his business.

13. The next contention raised by the learned counsel for appellant that the respondents have not filed complete site plan of their property is also not tenable, because the respondents/ revisionists have produced the site plan of the demised shop which they required for the personal use and occupation of their son Pardeep Kumar. So, there is no need to produce or prove the entire site plan of their property.

14. The next contention raised by learned counsel for appellant that the petitioner Sita Ram during his cross-examination has also admitted that a property measuring 80 sq yard which abuts the property in dispute is also in his possession and same is lying locked from the last 5/6 years but these facts have not been considered by the learned Rent Controller while passing the impugned order, is also not helpful to the appellant because the landlord is the best judge of his need and the tenant cannot dictate his terms and if the revisionists asserts that the premises is required for his own use and occupation then the court is bound to presume the necessity of the landlord as bona fide unless and until the same is rebutted by the tenant.

15. The next contention raised by learned counsel for appellant that the learned Rent Controller has failed to take into consideration that the area which the premises in dispute are

situated is neither a private market nor a timber market. Even no documentary evidence was led by the revisionists to show that Pardeep Kumar is doing wood work as alleged, is also not tenable because during cross-examination RW3 admitted that Pardeep Kumar is doing the work of plywood and board. So, there is no need to produce any documentary evidence in this respect. So far as the market is concerned, it is not necessary that the business must be run in the same market.

16. The judgments relied upon by the learned counsel for the appellant are not applicable in the present case because the facts of the present case are entirely different from the facts stated in the above said judgments.

17. So, In view of above discussion, I find nothing wrong in the observations made by the Learned Rent Controller while passing the impugned order under appeal. So, the order under appeal stands upheld and the present appeal stands dismissed. The appellant/respondent is directed to vacate the demised premises and handover its possession within two months from today. However, it is made clear that if the revisionists are getting the possession of the shop in dispute lets out further within stipulated period enshrined under the Act, then the respondents would be at liberty to repossess the same.

xxxx xxxx xxxx xxxx”

9. Having perused the impugned judgments, in my considered opinion, the submissions made before me were also raised before learned Courts below, were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

10. Even otherwise, no fault can be found with the findings rendered by Ld. Rent Controller, as affirmed by Ld. Appellate Authority, since the same were based on cogent evidence adduced by

respondent/landlords. I am thus inclined to agree with the view in this behalf taken by Ld. Courts below.

11. No new arguments have been raised by learned Senior Counsel for revisionist/tenants other than reiteration of the stand taken before learned Rent Controller and learned Appellate Authority.

12. In the premise, there seems to be no mis-appreciation of evidence or perversity or illegality in the concurrent findings of facts returned by Ld. Courts below. No interference is thus called for to disturb the said concurrent findings.

13. As an upshot of my preceding discussion, this revision is dismissed, being bereft of any merit. Resultantly, both the impugned judgments passed by learned Rent Controller and learned Appellate Authority are upheld. Revisionists are directed to hand over the vacant physical possession of the property in question to respondent/landlords forthwith and in any case not later than two months of their approaching the revisionists herein along with web print of instant order.

14. Pending application/s, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 16, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No