

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7928-2014 (O&M)

Date of Decision: October 06, 2023

Abdul Hamid @ Hamid

...Petitioner

Versus

Suresh Kumar

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mohd. Yousaf, Advocate
for the petitioner.

Mr.Sunny K. Singla, Advocate
for the respondent.

ARCHANA PURI, J.

Challenge in the present revision petition is to the judgment dated 09.07.2014 passed by learned Appellate Authority, whereby, the appeal filed by the petitioner to assail the ejectment order dated 06.10.2010 passed by learned Rent Controller, was dismissed.

The essential background facts, to be noticed are, as follows:-

That, initially, landlord-Suresh Kumar (present respondent) had filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, thereby, seeking ejectment of tenant-Abdul Hamid @ Hamid (present petitioner) from the shop, as detailed in the head-note of the petition.

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As per the version of the landlord, vide rent note dated 21.01.1988, tenant-Abdul Hamid @ Hamid took the shop in dispute on rent @ Rs.300/- per month, for three months from 21.01.1988. The tenant had paid the rent of the shop in dispute to the landlord upto 31.10.2006 and thereafter, he had not paid the rent to the landlord and as such, the tenant is in the arrears of rent w.e.f. 31.10.2006 @ Rs.300/- per month. Besides the same, the landlord-Suresh Kumar also pleaded that he required the demised premises for his own use and occupation as he wants to start his own business, in the property in dispute.

In reply, tenant-Abdul Hamid @ Hamid had admitted himself to be in possession of the shop in question, as tenant. However, he challenged the plea of personal necessity, as raised by the landlord. In fact, it was pleaded that landlord is an old man and is residing with his son at Ludhiana, who is practising as Chartered Accountant. Moreover, the landlord owns considerable property at Malerkotla. Even, the adjoining portion of the shop is in possession of the landlord. As such, a prayer was made for dismissal of the ejectment petition.

So far as, arrears of rent is concerned, suffice to make mention that said ground was not pressed, on the basis of the statement got recorded by learned counsel for the landlord on 06.10.2010.

In an endeavour to establish his ground of '**personal necessity**', landlord-Suresh Kumar, himself stepped into witness box as PW-1 and reiterated his entire claim on solemn affirmation, with regard to his '**need**' of the shop in question. Besides himself, landlord-Suresh Kumar has also

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examined his brother Ashok Kumar, who had also deposed in consonance with the pleaded case of Suresh Kumar.

To rebut the claim of the landlord, tenant-Abdul Hamid @ Hamid had stepped into witness box as RW-1 and had deposed thereby, controverting the plea of personal necessity, as set up by the landlord. He also further examined RW-2 Mohd. Shafiq, who also deposed, thereby, denying about the plea of personal necessity, so raised by the landlord. He also deposed about the landlord to be 65 years old man and suffering from B.P. and kidney disease.

After hearing learned counsel for the parties and on appraisal of the evidence, brought on record, vide order dated 06.10.2010, the ejectment petition was allowed and three months' time was given to the tenant to vacate the premises and handover the vacant possession of the shop in question to the landlord.

To assail the aforesaid ejectment order, tenant-Abdul Hamid @ Hamid had filed an appeal, which was dismissed vide judgment dated 09.07.2014 by the Appellate Authority

Feeling aggrieved by the aforesaid judgment of dismissal of the appeal, the petitioner-tenant has filed the present revision petition.

During the pendency of the revision petition, landlord-Suresh Kumar had died. Widow of Suresh Kumar, his son and daughters were impleaded as his LRs, who made appearance through counsel.

Learned counsel for the parties heard.

At the very outset, it is pertinent to mention that throughout the

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arguments, learned counsel for the petitioner has submitted that the ground for personal necessity, as such, does not stand established, from the testimonies of Suresh Kumar and his brother Ashok Kumar, but however, the aforesaid submission is not tenable.

PW-1 Suresh Kumar, in his affidavit Ex.PW1/A, has categorically stated in consonance with his pleaded case, about the requirement of the shop for his personal necessity. He had been subjected to lengthy cross-examination, but nothing material elicited out to dislodge his version. In fact, the testimony of the landlord-Suresh Kumar also gained strength from the testimony of his brother Ashok Kumar, who had stepped into witness box as PW-2.

Also, it is submitted that landlord-Suresh Kumar was an aged person of 65 years, at the time of filing of the petition and he was earlier running a brick kiln, but he had stopped running the same. It is submitted that he was having health issues, on account of which, he was not capable of initiating business in the shop in dispute. However, this submission also does not hold any ground. Very true, as pointed by learned counsel for the petitioner that it has come in the cross-examination of PW-1 Suresh Kumar, about himself to be having problem of B.P., sugar and also heart problem, but however, simply on the score of these ailments, it cannot be concluded that the landlord was not in a position to initiate business, at the relevant time. No such medical evidence has come on record, which would establish about him to be in a precarious condition, at the relevant time, which debarred him to start business, as pleaded. Simply, on the score of said problems like

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Diabetes, Blood Pressure, Heart Disease, it cannot, *ipso facto*, be concluded about landlord-Suresh Kumar to be not in a position to initiate any business.

Even though, a faint attempt has also been made about the availability of the adjoining shop also, with the landlord, but however, it is pertinent to mention that adjoining shop is in the possession of brother of the landlord namely, Ashok Kumar. This has also been so admitted by RW-2 Shafiq, while facing cross-examination.

Thus, considering the evidence, brought on record, learned Appellate Authority has rightly dismissed the appeal.

Further, it is submitted by learned counsel for the petitioner that landlord-Suresh Kumar had died, during the pendency of the present revision petition and therefore, ground of personal necessity, set up by the landlord, comes to an end. However, the aforesaid submission is not tenable. Now, it is settled that even though, landlord dies during the pendency of the appeal or revision, the necessity, so set up by him, can still survive, more particularly, when ejectment order had already been passed in his favour, which stood affirmed by Appellate Authority.

In this regard, it shall be appropriate to make reference to the judgment passed by this Court in ***Brinderjit Singh vs. Harjit Singh, 2017(2) RCR (Rent) 314***, wherein, the question of impact of death of landlord, came under consideration. Therein, while making reference to the various case law, it was observed, as herein given:-

“14. The argument which has now been raised that on account of the subsequent events and in view of the death of the

landlord, need has evaporated would be of no help. The Apex Court, in a string of judgments, has held that the controversy has to be decided with reference to the pleadings of the parties on the date of institution and on account of the litigation lingering on, subsequent developments are not necessary and relevant for the adjudication of the case. Reliance can be placed upon judgment of the Apex Court in **Vallampati Kalavathi vs. Haji Ismail**, 2001 (1) RCR (Rent) 375 : 2001 (2) SCR 691. In **Carona Ltd. vs. M/s. Parvathy Swaminathan and Sons**, 2007(2) RCR (Rent) 490 : 2007 (10) SCR 656, it was held that the right which had accrued to the landlord could not be set at naught and the date of filing of the suit is ordinarily to be taken into consideration. In **Shakunatala Bai** (supra) which is under the Madhya Pradesh Accommodation Control Act, 1961, it has been held that the legal representatives are entitled to defend the further proceedings and the benefit has to accrue to them and the bona fide need cannot be held to have elapsed on account of the act of the Court. It was further held that it would erode the faith of the people in judicial system and prompt them to resort to extra judicial methods to recover possession of their property. The relevant observations read thus:-

“11. In **Shantilal Thakordas v. Chimanlal Maganlal Telwala**, 1976 () RCR (Rent) 828 : 1976 (4) SCC 417, a larger Bench overruled the decision rendered in **Phool Rani v. Naubat Rai Ahluwalia** (supra) in so far it held that the requirement of the occupation of the members of the family of the original landlord was his personal requirement and ceased to be the requirement of the members of his family on his death. The court took the view that after the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and occupation of the other members of the family. Thus, this

*decision held that the substituted heirs of the deceased landlord were entitled to maintain the suit for eviction of the tenant. The ratio of this decision by larger Bench does not in any manner affect the view expressed in Phool Rani (supra) that where the death of the landlord occurs after a decree for possession has been passed in his favour, his legal representatives are entitled to defend further proceedings like an appeal and the benefit accrued to them under the decree. In fact, the ratio of Shantilal Thakordas (supra) would reinforce the aforesaid view. There are several decisions of this Court on the same line. In **Kamleshwar Prasad v. Pradumanju Agarwal 1997(4) SCC 413** it was held that the need of the landlord for premises in question must exist on the date of application for eviction, which is the crucial date and it is on the said date the tenant incurred the liability of being evicted therefrom. Even if the landlord died during the pendency of the writ petition in the High Court, the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son. In **Gaya Prasad v. Pradeep Srivastava 2001(1) CR (Rent) 221 : 2001 (2) SCC 604** it was held that the crucial date for deciding as to the bonafides of requirement of landlord is the date of his application for eviction. Here the landlord had instituted eviction proceedings for the bona fide requirement of his son who wanted to start a clinic. The litigation continued for a long period and during this period the son joined Provincial Medical Service and was posted at different places. The subsequent event i.e. the joining of the service by the son was not taken into consideration on the ground that the crucial date was the date of filing of the eviction petition. Similar view has been taken in **G.C. Kapoor v. Nand Kumar Bhasin 2002(1) RCR (Rent) 407 : 2002 (1) SCC 610**. Therefore, the legal position is well settled that the bona fide need of the landlord has to be*

examined as on the date of institution of proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as his heirs are fully entitled to defend the estate.”

Also, reference is to made to ***Krishna Ornaments vs. Phera Singh, 2020 (2) RCR (Rent) 485***, wherein, the question for adjudication was formulated as “Whether orders of eviction passed in favour of the landlord on the ground of personal bonafide requirement in a rent eviction petition would come to an end, if the landlord dies during the pendency of appeal or revision?”

In the same, while tracing various case law, it was observed that it is well settled that the bonafide need of the landlord has to be examined, as on the date of institution of the proceedings and if a decree of eviction is passed, the death of the landlord, during the pendency of the appeal preferred by the tenant, will make no difference, as his heirs are entitled to defend the estate.

In the light of the aforesaid, now reverting to the case in hand. It is pertinent to mention that on the basis of scrutiny of the testimony of landlord, coupled with testimony of his brother Ashok Kumar PW-2, learned Courts below had reached the conclusion about the need for personal necessity to be made out, vis-a-vis, the demised premises. In the light of the same, when during the pendency of the revision petition, the landlord, as such, had died, will not make any difference, as bonafide need, so set up, cannot be held to be elapsed, on account of act of the Court. It was only, on

account of stay granted by the Court, the landlord could not resort to seek possession of the shop in question, in pursuance of the decree having passed in his favour by the Court below, which further stood affirmed by learned Appellate Authority. In the given circumstances, on account of death of respondent-landlord, now the petitioner cannot assert erosion of ground of personal necessity and seek setting aside of the ejectment order.

As already observed, no case is made out for interference with the findings, recorded by learned Appellate Authority as well as Rent Controller. Hence, the present revision petition stands dismissed.

October 06, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No