

[103] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7930-2014

Date of Decision :20.01.2023

Randhir Singh s/o Shri Jagat Singh

...Petitioner

versus

Rajinder Kumar Makan s/o Shri Krishan Lal

....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr.Jaivir Yadav, Senior Advocate *assisted by*
Mr. Nitish Sharma, Advocate
for the petitioner.

Mr. YagsimantAttri, Advocate for
Mr. Rajinder Goyal, Advocate
for the respondent.

B.S. Walia, J. (Oral)

[1] Challenge in the petition is to judgment dated 22.08.2014 passed by the learned Appellate Authority, Chandigarh, affirming order dated 13.05.2013 passed by the learned Rent Controller, Chandigarh, dismissing the rent petition filed by the petitioner.

[2] Claim before the learned Rent Controller was for ejectment of the respondent tenant from shop No.129, Circular Road Opposite Sector 45-C, Village Burail, UT, Chandigarh, *inter alia* on the ground that the petitioner required the shop in dispute for his personal use and occupation for running business of dairy products on account of sufficient experience as earlier the petitioner had been helping his brother in running dairy business in a rented shop. In para No.6 of the petition, it had been mentioned that the petitioner had neither occupied nor vacated any shop in the urban area of Chandigarh.

[3] Learned Rent Controller, Chandigarh, while discussing the

pleadings and evidence adduced by the parties held that the petitioner had suppressed material facts with regard to his having other properties in the vicinity of the demised premises and by relying upon the decision of this Court in 'Jaspreet TakharversusGhaiEnterprises and others', 2013(1) HLR 169 held that the mandate contained under Section 13(3)(ii) that in case of non residential building a landlord was required to affirm under sub clause (b) that he was not occupying in the urban area concerned for the purpose of his business any other building and under clause (c) that he had not vacated such a building without sufficient cause and that in the instant case, the petitioner had not pleaded that he was owner of shop No.129A (stated to be on the first floor of shop No.129), besides other shops near the demised premises and only on cross-examination of PW-1, the said fact had been extracted by the opposite side. Accordingly, the petition was dismissed.

[4] The order passed by the learned Rent Controller, Chandigarh, was upheld by the learned Appellate Authority vide judgment dated 22.08.2014. Relevant extract of the decision of Hon'ble the High Court in 'Jaspreet Takharversus Ghai Enterprises and others' 2013(1) PLR 765, is reproduced as under:- --

“1. The landlord is in revision challenging the orders of dismissal of the petition for eviction filed under the Punjab Rent Restrict Act on the ground of personal requirement of the demised property for establishing her own business in Pottery. The petition was filed on an express averment that the petitioner owned no other premises within the same town and she had not also vacated any property to disentitle her for claiming the demised property for personal necessity. The

respondent denied that there was any bona fide need and contended that the petitioner was an Architect and she had not established her own prowess or skills in the Pottery business. At the time of trial, it was elicited in the cross examination of the landlord that she had yet another building in her occupation in the very same town and she sought to explain it in her evidence that it was a rented place where she was having an Architect's office and she had no other property in her possession. The Rent Controller observed that the petitioner had been guilty of suppression of material fact and found the bona fides as not established. The Appellate Court had additional reasons to support namely that the place where the demised property was situate was essentially a property reserved for automative parts and the place would not be suitable for carrying on the Pottery business. The Appellate Court also observed that the plaintiff had not established that she had indeed established business or obtained order for their execution.

2 & 3 xx xx xx xx

4. I agree with the contention of the tenant that the landlord was guilty of serious suppression of material fact. As a measure of essential pleading mandated through the express provision, which I have referred to above as regards the existence or otherwise of any other building, cannot be allowed to be merely a matter elicited in the crossexamination. If the land-lady was admitting the existence of yet another building in the cross-examination, it is another way of stating that she was forced to admit the same although there was no pleading regarding the same. The argument made by the learned Senior Counsel that the other property in her possession was for her professional requirement as an Architect, which cannot be used for running shop, is more the explanation of a counsel than the explanation for the party. I have gone through the evidence and there is no statement anywhere uttered by her that the

property in her possession under a demise cannot be put to use for her Pottery business as well. If the petitioner had specifically made reference to the existence of a shop and was pleading that the property in her occupation held under demise was not suitable for Pottery business then it would not become possible for the tenant to join issues on such aspect and brought specific evidence. The absence of pleading by the petitioner cannot be a matter of advantage for the landlord and she cannot hope the Court to make a conjecture that a premise that is available with her for carrying on a profession cannot be used by her for carrying on the newly intended commercial proposition. I have no difficulty in agreeing with the contentions of the learned Senior Counsel for the petitioner that the Appellate Court was straining its reasoning a little too hard by insisting that the landlord had not proved that this particular place was suitable. Such kind of proof was not necessary. The Appellate Court was again perhaps wrong that there was no proof that the petitioner was carrying on the trade in Pottery. There was sufficient proof documentary as well as oral through the witnesses that the land-lady had during her stint in the foreign country equipped herself in Pottery as well and she was doing it as a hobby. There was nothing improper or irregular for a person, who was carrying on a particular activity as hobby to later find a commercial exploitation for her passion in Pottery.

The case cannot be decided on whether the petitioner could be disentitled to start a new business or whether the particular place could be more suitable. On the other hand, the case has to be only tested on whether the petitioner had been bona fide in her needs. There was surely evidence that she had a studio in her own house for manufacturing Pottery items but there is no clear evidence as to how the property in her possession for carrying on her profession was unsuitable for vending her wares.

[5]

The decision of Hon'ble the High Court as referred to above

was challenged before Hon'ble the Supreme Court and vide order dated 24.01.2017 in Civil Appeal Nos.918-919 of 2017, Hon'ble the Supreme Court was pleased to set aside the aforementioned judgment of Hon'ble the High Court and remand the matter to the learned Rent Controller, Chandigarh, while granting liberty to the landlord to amend the pleadings and the respondent to file reply to the same as also by permitting the parties to lead additional evidence by observing as under:-

“6. We find that there were no adequate pleadings regarding bona fide need which established the case of the appellant. Undoubtedly, if the aforesaid shop-cum-flat on the second floor where the appellant was running her office as an architect had been taken on rent or in any case was not suitable for being used for pottery business, the appellant might have a case which requires to be considered.”

[6] Since the rent petition was rejected by the learned Rent Controller, Chandigarh and the said rejection was upheld by the learned Appellate Authority in the instant case, primarily on the basis of the decision of the High Court in 'Jaspreet Takhar's case(supra) as also taking into account that there were no adequate pleadings regarding *bona fide* need for establishing the need of the petitioner, especially in view of shop No.129A being on the first floor, therefore, not being suitable for running a dairy business, as also in view of the fact that the decision in Jaspreet Takhar's case (supra) was set aside by Hon'ble the Supreme Court, I deem it appropriate to set aside the impugned judgment passed by the learned Appellate Authority upholding the order of the learned Rent Controller and remand the matter to the learned Rent Controller, Chandigarh, while granting liberty to the petitioner to amend the

pleadings and the respondents to file reply to the same, as also the right to the parties to lead additional evidence.

[7] Since the rent petition pertains to the year 2007, it is deemed appropriate to request the learned Rent Controller, Chandigarh, to decide the matter on the question of *bona fide* need of the petitioner afresh as expeditiously as possible and in any case not later than one year from today.

[8] Petition *disposed of* with the aforementioned directions.

(B.S. Walia)
Judge

20.01.2023
'Rajneesh'

<i>Whether speaking/ reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>