

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

CR-7961-2014(O&M)

Reserved on:- 20.4.2023

Date of Pronouncement:-29.4.2023

Bimla Devi

...Petitioner

Versus

Vijay Kumar and others

...Respondents

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

Present: Mr.Kanwal Goyal, Advocate and
Mr.Govind Tanwar, Advocate
for the petitioner.

Mr.I.P.S. Mangat, Advocate
for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that petitioner/landlord Vijay Kumar Jain son of Amar Chand c/o Parveen Jain, Clothes House/Merchant, Mukerian, Tehsil Mukerian, District Hoshiarpur had brought a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act) against respondents i.e. Bimla Devi widow of Sadhu Ram. Ashwani Kumar son of Mehar Chand, both residents of Old Sabji Mandi (Kandi Press), Mukerian, District Hoshiarpur and 11 others seeking ejectment of respondents No.1 and 2 from the shop marked with letters 'ABCD' and shown in red colour in the site plan attached with the petition situated at Mohalla Tikhawal, H.B. No.262 forming part of Khasra No.306/107 within Municipal Limits, Mukerian, District Hoshiarpur and recovery of

rent since 1.7.1998 till date.

2. As per the case of the petitioner, Sadhu Ram husband of the respondent No.1 Bimla Devi was a tenant under Amar Chand deceased father of petitioner @ Rs.30/- per month; after death of Amar Chand, the property was succeeded to by the petitioner as owner in a family partition between the legal representatives of deceased Amar Chand and his name got reflected as owner in the record of Municipal Committee, Mukerian; after death of original tenant Sadhu Ram, his wife Bimla Devi – respondent No.1 became tenant in the shop in dispute, therefore relationship of landlord and tenant is there between the petitioner and respondent No.1; the petitioner sought ejectment of respondent No.1 from the demised shop on the following grounds:

- (a) That the respondent No.1 has not paid the arrears of rent since first July 1998 at the rate of Rs.30/- per month.
- (b) That the respondent No.1 has sublet the disputed shop to the respondent No.2 without permission and consent of the landlord/petitioner, who is at present running the business.
- (c) The petitioner was serving in Punjab Civil Secretariat, Chandigarh as a Supdt. who retired on 30.11.1990 and wants to settle at Mukerian and also wants to start business in the disputed shop and the shop is needed for self use and personal necessity.

According to the petitioner, he has one daughter and one son; both of them are married and he wants to use the demised shop for self necessity. The petitioner had requested respondent No.1 several times to pay arrears of rent of the demised shop but to no effect, as such the

petition was filed.

3. On notice, respondents No.1 and 2 appeared and filed reply raising various legal objections, on merits contending that petitioner had entered into an agreement to sell the demised shop with respondent No.2 on 12.8.2004 for a total consideration of Rs.4,75,000/-, receiving Rs.50,000/- as earnest money; thereafter the petitioner started pressurizing respondent No.2 for getting the sale deed executed immediately after execution of agreement to sell, then respondent No.2 grew suspicious and inquired about the title of petitioner in respect of the demised shop and he came to know that the petitioner was owner only to the extent of one sarsahi in the khasra number 306/107; respondent No.2 asked the petitioner to get the title of the shop cleared expressing his apprehension to get the sale deed executed in absence of a clear and valid title of the petitioner; respondent No.2 had received the legal notice sent by Sh.M.L. Sharma, Advocate dated 7.1.2006 and he had furnished reply to the same; the petitioner had sent a reminder on 28.1.2006; the petitioner had concealed material facts from the Court, therefore, he is not entitled to any relief. According to the answering respondents, respondent No.1 is tenant in the demised shop after death of her husband Sadhu Ram; respondent No.1 had tendered the arrears of rent as claimed in the petition along with interest and cost as assessed by the Rent Controller on the first date of hearing i.e. on 19.4.2006, which were received by the petitioner in the Court itself; respondent No.1 has never sublet the shop to respondent No.2 as alleged; respondent No.1 being widow is assisted at times by respondent No.2, who is none-else but the real son in law of respondent

No.1, therefore, no ground is made out to eject respondent No.1 from the demised shop. Refuting the other assertions, such respondents prayed for dismissal of the rent petition.

4. The petitioner filed rejoinder controverting the assertions in the written reply whereas reiterating the averments in the petition.

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

1. Whether respondent No.1 is in arrears of rent at the rate of Rs.30/- per month w.e.f. July, 1999? OPP.
2. Whether the respondent no.1 has sublet the disputed shop to respondent no.2 without permission and consent of the petitioner? OPP.
3. Whether the demised shop is required by the petitioner for his bona fide need and occupation? OPP.
4. Whether the petition is maintainable in the present form? OPP.
5. Whether a cause of action has arisen to the petitioner for filing the present petition? OPP.
6. Whether petitioner has concealed the material facts from the Court and has not come to the Court with clean hands? OPR.
7. Whether the petitioner has entered into an agreement to sell in respect of the property in dispute with respondent no.2 on 12.8.2004 for consideration? OPR.
8. Relief.

6. Both the parties were afforded adequate opportunities to lead evidence in support of their respective claims.

In order to prove his case the petitioner got his statement recorded as AW3 besides examining Ankit Jain as AW1 and Padam Kumar as AW2.

In rebuttal, the respondents have examined Ashwani Kuamr as RW1, Kali Ram as RW2 and Nanak Chand as RW3.

7. After hearing arguments, the Rent Controller, Mukerian vide judgment dated 15.9.2011 dismissed the rent petition by giving issue-wise findings inasmuch issue No.1 was decided against the petitioner in favour of the respondents, issue No.2 was also decided against the petitioner in favour of the respondents holding that petitioner has failed to establish that respondent No.1 Bimla Devi had parted with the exclusive possession of the shop in question for valuable consideration; issue No.3 was decided against the petitioner in favour of the contesting respondents holding that the shop in question is not required by the petitioner for personal necessity, rather he wants to sell the shop, issues No.4, 5 and 6 were decided against the petitioner in favour of the respondents.

8. Feeling aggrieved, the petitioner/landlord had filed an appeal before Additional District Judge-cum- Appellate Authority, Hoshiarpur. After contest that appeal was accepted by the Appellate Authority, Hoshiarpur vide judgment dated 22.8.2014. Resultantly, the respondent/tenant was ordered to be evicted from the demised shop within a period of three months from the date of passing of judgment and to hand over the vacant possession of the shop to the petitioner, failing which the petitioner may obtain the possession of the shop through Court.

9. Such judgment left respondent No.1 Bimla Devi aggrieved

and she has knocked at the door of this Court by way of filing the present revision petition, notice of which was given to petitioner/landlord who put in appearance through counsel.

10. I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the present revision petition.

11. The Appellate Authority, Hoshiarpur by proper appraisal and appreciation of evidence and correct interpretation of law has come to the conclusion that there exists relationship of landlord and tenant between the petitioner and respondent No.1 and that respondent No.1 has been in arrears of rent, however, on account of tender made which is not short and invalid before Rent Controller, the respondent No.1 is saved from ejectment on the grounds of arrears of rent. Similarly the ground of subletting taken by the petitioner has not been found to be established either by the Rent Controller or by Appellate Authority. In any case with regard to the third ground taken that the demised shop is required by the petitioner for bona fide need and occupation, has been found to be established keeping in view the fact that he has retired from Civil Secretariat, Chandigarh and now wants to start his business in the demised shop, which he requires for personal use and personal necessity. The Appellate Authority has relied upon judgment **Jagdish Kaur Versus Sat Pal Madan 2012(1) L.A.R. 240** wherein it was observed that landlord is the best judge of his needs and the tenant cannot dictate him regarding his suitability of the premises. It was further held in that judgment that simply because at one point of time, the respondent was planning to let out his

residential portion to some bank will not disentitle him to seek ejectment on the ground of personal necessity.

12. With regard to the agreement to sell entered into between the petitioner and respondent No.2, the Appellate Authority has observed that both the parties were aware of the agreement to sell and it was not necessary for the petitioner to plead the agreement to sell in the rent petition. It was further observed that one of the co-owners can certainly file an ejectment petition against a tenant without taking objections from the co-owners and such agreement to sell executed cannot obviate his necessity for the business. A judgment **Ganesh Misra Versus Mrs. Savita Devi Sahajpal 2009(2) HLR 359** has been referred to wherein it was observed that when a litigant is before the Court for number of years, different thoughts come to the mind of the litigant, but the same is not sufficient to return a finding that the respondent does not have any bona fide personal requirement of her valuable property. The plea of bona fide necessity stood proved.

13. Although learned counsel for the revision petitioner has vehemently argued that petitioner having entered into an agreement to sell the demised shop with respondent No.2 and with himself and his family settled at Mohali, the necessity for the shop in question does not come out to be bona fide, rather an attempt to get the shop ejected so as to either sell it at high price or rent it out to some other tenant at higher rate of rent. Under such circumstances, ejectment of tenant from the shop could not be ordered. In support of his that contention, he has referred to judgment **Ram Dass Versus Ishwar Chander, 1988(2) RCJ 133** by the Apex Court,

wherein it was observed that need of landlord should be genuine and honest and it must have objective element of need. It was further observed that the question question the requirement of landlord is bona fide is a question of fact. He has further relied upon judgment *Gulabbai Versus Nalin Narsi Vohra, 1991(2) RCR(Rent)453* by the Supreme Court wherein it was observed that there must be an element of need as opposed to a mere desire or wish and distinction between desire and need should be kept in mind but not so as to make even the genuine need as nothing but a desire.

14. Whereas, learned counsel appearing for the respondent/landlord has refuted such assertions stating that it is for the landlord to decide as to where he is to settle down and what type of business he is to start. The petitioner/landlord had retired from Government service and is based at Mohali. Earlier he wanted to sell the shop so as to arrange funds to start a business at Mohali but subsequently since respondent No.2 dragged his feet in the matter not coming forward to get the sale deed registered on payment of the balance consideration amount, the landlord had a change of heart and he thought to start his own business in the demised shop and for that he had filed the ejectment petition, which was wrongly dismissed by the Rent Controller but rightly accepted by the Appellate Authority.

15. After hearing the rival contentions, I find that order passed by the Rent Controller, Mukerian dismissing the rent petition was wrong and erroneous being result of misappraisal of evidence and wrong interpretation of law. With regard to ground of personal necessity pleaded

by the landlord, the Appellate Authority, Hoshiarpur was fully justified in upsetting the order passed by the Rent Controller and allowing the ejectment petition. That order by the Appellate Authority, Hoshiarpur is quite detailed and well reasoned based upon deep and thorough analysis of the factual position and the evidence brought on record by the parties in light of the settled law on the subject. Merely because at one stage landlord had entered into an agreement to sell the demised shop with respondent No.2 does not affect his bona fide to get the shop vacated for his personal necessity. The judgments referred to by learned counsel for the petitioner do not come to her help due to different facts and circumstances and the context in which such observations had been made. It may be mentioned here that in terms of Section 13 Sub-Section 4-A Clause (b) of the Act, if the petitioner gives the demised shop on rent to some other person after getting it vacated from respondent No.1 within a period of three years, then respondent No.1 can approach the Rent Controller for restoration of the possession.

16. The impugned judgment passed by the Appellate Authority, Hoshiarpur is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. 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 judgment by way of exercising the revisional jurisdiction.

17. Finding no merit in the revision petition, the same stands dismissed.

The interim order dated 25.11.2014 passed by this Court staying dispossession thus comes to an end.

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

29.4.2023

Brij

(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**