IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-8515-2017(O&M)
Date of decision:-11.7.2023

Sham Lal

...Petitioner

Versus

Harvinder Singh @ Happy

...Respondent

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

Present: Mr.Sharad Mehra, Advocate
for the petitioner.

Mr.Divanshu Jain, Advocate
for the respondent.

****

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 26.7.2017 passed by Rent Controller, Amritsar vide which the application for inspection of property filed by respondent – tenant was allowed. The petitioner has challenged that order by way of filing the instant revision petition.

2. Briefly stated, facts of the case are that petitioner/landlord had brought an ejectment petition against respondent/tenant Harvinder Singh alias Happy, seeking eviction of the latter from the demised property situated in the area of Chowk Hussainpura, G.T. Road, Amritsar on the ground floor of House No.75/13 situated in Kothi Shamji Mal, Chowk Hussainpura, Amritsar, on the ground of personal necessity. That rent petition was contested by the respondent. During the course of proceedings, the respondent/tenant moved an application for allowing

BRIJ MOHAN
2023.07.12 17:38
I attest to the accuracy and
authenticity of this order/judgment,
HIgh Court, Chandigarh

inspection of the entire property including the demised shop by Sh.M.R. Anand, Civil Engineer for preparing the site plan on the ground that the petitioner/landlord is in possession of property of which the demised shop forms a part but he has not filed the site plan rather he has not mentioned this fact in the petition.

3. Though that application was resisted on behalf of the petitioner/landlord but it was allowed by Rent Controller, Amritsar vide the impugned order dated 26.7.2017 with the observation that preparing the site plan of the entire property of which the demised shop formed a part is very much essential for the proper adjudication of the case and final decision. Therefore, the application was accepted. This order was passed when the case was at the stage of leading evidence by the respondent.

4. Learned counsel for the petitioner/landlord felt aggrieved by the order and has approached this Court by way of filing the revision petition, notice of which was issued to the respondent/tenant, who appeared through counsel.

5. I have heard learned counsel for the parties besides going through the record and I find that the impugned order cannot stand judicial scrutiny and is liable to be set aside.

6. It has to be taken in view that the petitioner/landlord has filed the ejectment petition on the ground of personal necessity. The requirement of inspection of the entire premises, of which the demised shop forms a part and preparing site plan thereof is certainly not required. If the respondent wants to establish that the petitioner/landlord has got any

BRIJ MOHAN
2023.07.12 17:38
I attest to the accuracy and
authenticity of this order/judgment,
HIgh Court, Chandigarh

other accommodation available with him, where he can start his business that can be done by leading evidence. A Civil Engineer engaged by the respondent cannot be sent to inspect the entire premises and to prepare its site plan just to create evidence for the respondent.

7. Learned counsel for the respondent has referred to judgment by a Co-ordinate Bench of this Court in case ***Ved Parkash Versus Sanjay Adlakha, 2021(1) RCR(Rent) 253***, which was a case when a landlord had filed petition for eviction of tenant from the shop on the ground of bonafide necessity and tenant had asserted that huge area behind shop in question was lying vacant and said area could be used by landlord for running his business; the tenant had sought appointment of Commissioner to ascertain vacant land after inspecting property. That application was dismissed by the Rent Controller. The tenant had challenged that order by way of filing revision petition. The revision petition was dismissed observing that appointment of Local Commissioner to go on fishing expedition to ascertain existing position of building was nothing but an attempt of tenant to try and create evidence in his favour, which was not permissible. He has further placed reliance upon order passed by another Co-ordinate Bench in Civil Revision No.8076-2019 titled as ***Parkash Kaur (Deceased) through Legal Heir Versus Bhupinder Singh and others***, decided on 11.7.2022 vide which order passed by Rent Controller in an ejectment petition allowing application filed by respondent/tenants for grant of permission to get the site-plan prepared by the whole property from the Draughtsman engaged by the respondents was set aside by way of acceptance of the revision petition observing that respondents/tenants

BRIJ MOHAN
2023.07.12 17:38
I attest to the accuracy and
authenticity of this order/judgment,
HIgh Court, Chandigarh

would be at liberty to file his site-plan in accordance with law at the time of his evidence.

8. On the other hand, learned counsel for the respondent while defending the impugned order has also placed reliance upon various judgments i.e. ***Baldev Raj Versus Deepak Bhandari and others*** passed by a Co-ordinate Bench of this Court in Civil Revision petition No.8450 of 2018 decided on 14.12.2018, ***Baljit Kumar Sharma Versus Ramesh Kumar Aggarwal and another, 2013(1) RCR(Rent)260, Babli & Others Versus Kumari Ruchi Bansal & Another, 2016(2) RCR(Rent) 487, Jaspreet Takhar Versus Ghai Enterprises, 2013(1) RCR(Rent) 469*** by Single Judges of this Court as well as order passed by the Apex Court in Civil Appeal Nos.918-919 of 2017 arising out of SLP(c) Nos.8071-8072/2014. However, I find that the in view of the discussion above, these judgments are not helpful to the respondent due to different facts and circumstances of the case as well as the context in which such observations had been made.

9. Therefore, the revision petition is accepted. The impugned order is set aside and the application so filed by the respondent seeking permission for inspection of entire property by Civil Engineer engaged by him for the purpose of preparing the site-plan stands dismissed. It is made clear that if the Civil Engineer has already visited the spot and prepared the site plan of the entire property submitting the same in the Court, that would not be taken into consideration by the Rent Controller, Amritsar. However, respondent would be at liberty to get prepare and prove the site plan of the demised shop during the course of his evidence in accordance

BRIJ MOHAN
2023.07.12 17:38
I attest to the accuracy and
authenticity of this order/judgment,
HIgh Court, Chandigarh

with law.

10. The interim order dated 5.12.2017 passed by this Court staying proceedings before the Rent Controller thus comes to an end.

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

11.7.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

BRIJ MOHAN
2023.07.12 17:38
I attest to the accuracy and
authenticity of this order/judgment,
HIgh Court, Chandigarh