

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

115

CR-986-2023 (O&M)

Date of decision: 14.02.2023

Pawan Kumar

...Petitioner(s)

Vs.

Navneet Munjal

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Argued by:- Mr. Anil Kumar Sharma, Advocate for the petitioner.

Mr. Mohit Garg, Advocate for the
caveator/respondent.

NIDHI GUPTA, J.

CM-2789-CII-2023

This is an application under Section 151 CPC for seeking exemption from filing certified copy of order dated 21.02.2018 passed by learned Rent Controller, Chandigarh and certified copy of Grounds of Appeal filed before learned Rent Appellate Court, Chandigarh and permission to place on record true photocopies of the same.

After going through the contents of the application, the same is allowed subject to all just exceptions and learned counsel for the petitioner is permitted to place on record true photocopies of the aforesaid documents.

MAIN CASE

Present Revision Petition has been filed by the petitioner/tenant against order dated 21.02.2018 passed by learned Rent Controller, Chandigarh whereby Rent Petition filed by the landlord/respondent herein, under Section 13 of the East Punjab Urban

Rent Restriction Act, 1949 (hereinafter referred to as “the Act”), has been allowed. Against the said order of the learned Rent Controller, Chandigarh, the petitioner filed appeal under Section 15(b) of the Act before the learned Appellate Authority, Chandigarh, which too has been dismissed vide impugned order dated 26.07.2022.

Brief facts of the case are that the grandfather of the respondent rented out the premises describable as Booth No.3, Sector 16-C, Chandigarh (hereinafter referred to as “the demised premises”) to Piare Lal and Badri Dass, way back in the year 1970 at the rate of Rs.100/- per month. Badri Dass is the father of the petitioner herein. It is the pleaded case of the petitioner, that after the death of Badri Dass, the petitioner inherited the tenancy on the same oral terms and conditions and continuously paid rent to the father of the respondent, and rent was paid up to the month of October, 2007 at the rate of Rs.100/- per month to the father of respondent herein.

On the other hand, it is the case of the respondent/landlord that he had inherited the demised premises from his father, and transfer of the demised premises was duly allowed in his name by the Estate Officer, Chandigarh on dated 07.08.2008.

As the petitioner was in arrears of rent from February 2007 to December 2013, and as the respondent needed the demised premises for his own personal use and occupation, the respondent filed present eviction petition dated 28.04.2014 under Section 13 of the Act against the petitioner/tenant on grounds of arrears of rent and bona fide personal necessity. As per the pleaded case of the respondent, it had been agreed between the parties that rent would be increased @ 10% per annum and resultantly rate of rent was Rs.5,314/- w.e.f. March 2013 to December 2013. However, Petitioner was in arrears of rent from February 2007 to December 2013. It was further pleaded by the respondent/landlord that the demised premises were required by the landlord for his own personal use and occupation as he wanted to shift from Gurugram to Chandigarh and start his work here. It was stated by

the respondent that he tried to start practice as CA in Gurugram but it did not go well as he didn't have links at Gurugram as he originally belongs to Chandigarh. The respondent pleaded before the learned Courts below that he had requested the petitioner time and again to clear the dues of rent, and had repeatedly asked the petitioner to vacate the booth, however, the petitioner kept prevaricating and neither vacated the booth nor paid the due rent. The respondent duly stated in the rent petition that he did not own any property in Chandigarh except for the booth in question.

The petitioner appeared before the learned Rent Controller and filed written statement inter alia stating therein that the premises in question are not required by the respondent for personal use and occupation, and that the respondent and his family members own various other commercial properties situated within the urban area of UT Chandigarh.

On the basis of pleadings the learned Rent Controller vide order dated 30.05.2017 framed following issues:-

- "1. Whether the respondent is liable to be evicted from the demised premises on the ground of non payment of rent? OPP*
- 2. Whether the respondent is liable to be evicted from the demised premises on the ground of personal necessity? OPP*
- 3. Whether the petitioner has concealed the material facts and not approached the court with clean hands? OPR*
- 4. Whether the present petition is not maintainable? OPR*
- 5. Relief."*

During pendency of the Rent Petition, the petitioner cleared arrears of rent and therefore, issue No.1 was disposed of as such.

Upon appraisal of the evidence, the learned Rent Controller concluded that the respondent/landlord had inherited the

demised premises from his father and was therefore, now owner of the same. The learned Rent Controller further returned the finding that the petitioner/tenant was unable to prove on record that the respondent was owning any other premises except the demised premises in Chandigarh. It was further held that it was not proven on record that the respondent is also having any other commercial property in the Union Territory of Chandigarh.

Learned Rent Controller also found that the respondent/landlord was working in Gurugram but now wants to practice as a CA in Chandigarh. Further, it was established on record that the respondent who was earlier working in a company at Gurugram wanted to relocate to Chandigarh and start his practice as CA in Chandigarh because he originally belonged to Chandigarh, and therefore, had better prospects here.

It was also held that though the Booth in question was originally allotted by the Chandigarh Administration for 'General Trade' yet as per the relevant by laws, any business could be done in the Booth in question. Learned Rent Controller placed reliance upon judgments of this Court in ***Gagan Traders Vs. Jaspreet Singh 2010(2) Rent LR 294 : 2010 (4) RCR (Civil) 660 : 2010 (2) RCR (Rent) 385 : 2011 (1) RCJ 440*** and ***M/s Satpal Bijay Kumar Vs. Sushil Kumar 2011(1) Rent LR 365 : 2011(2) RCR (Civil) 82*** to hold that the landlord is the best judge of his requirements and tenant cannot dictate terms to the landlord.

Learned Rent Controller relied upon judgment of this Court in ***Haryana Financial Corporation & Another Vs. Ajit Singh Sagoo 2016(3) Law Herald 2030 : 2016(4) RCR (Civil) 84 : 2016(2) RCR (Rent)*** to hold that bona fide necessity is also proved from the fact that if the tenant is paying very meager amount of rent then it may be more beneficial for the landlord to start using the tenanted premises for himself, and such a decision on part of the landlord cannot be held to be not bona fide personal necessity and cannot be termed as merely a desire on the part of the landlord to increase the rent. Learned Rent

Controller relied upon judgment of this Court in ***Raj Kumar Vs. Budha Mal 2010(4) PLR 773 : 2011(2) RCR (Rent) 60 : 2011 (sup) CivCC 443*** to hold that even non-mentioning nature of business intended to be established in the tenanted premises is not fatal especially when nature of the business is disclosed in the evidence.

On the basis of the above, the learned Rent Controller concluded that the respondent needed the Booth for his own personal use, and bona fide personal necessity of the respondent/landlord was established on record.

Against order dated 21.02.2018, the petitioner herein preferred an appeal before the learned Appellate Authority, Chandigarh. In his appeal, petitioner raised the same grounds before the Appellate Authority as he had before the Rent Controller. It was also denied by the petitioner that rate of rent was increased to Rs.3,000/- per month, and it was reiterated by the petitioner before the learned Appellate Authority that bona fide necessity of the respondent is not made out; that the respondent owned a house in Gurugram where he was residing along with his wife and children; and that the demised premises were allotted for "General Trade" and General Trade does not include business of CA.

Learned Appellate Authority perused the entire documentary as well as oral evidence on file and returned the finding that *"From the evidence of PW1, it is clear that he wants to start his own business of CA from Chandigarh as his said business is not going well at Gurugram due to lack of his links."*

As regards contention of the petitioner to the effect that business of CA is not covered by definition of "General Trade", learned Appellate Authority made reference to Notification dated 07.11.2007 issued by the Finance Department of Chandigarh Administration whereby Chandigarh Estate Rules, 2007 were made with the direction of Administrator, Union Territory of Chandigarh. Rule 9(iii)

of the Chandigarh Estate Rules, 2007, which is related to the “Use of Site or Building”, is reproduced hereinbelow:-

“The expression General Trade and Special Trade, shall mean one or more of the trades respectively mentioned in Parts A and B of the Schedule appended to these Rules.”

The Schedule appended with the above Rules speaks about New General Trade and under the heading of “Professionals”, its item No.38 speaks as under:-

“38. Accountants, Auditors, Lawyers, Management consultants, Consulting service.”

It was accordingly clear that as per the relevant by-laws, business of accountants and auditors was included in the New General Trade.

The learned Appellate Authority further referred to various case laws to hold that the landlord is the best judge of his own needs and tenant cannot dictate terms to him. In respect of the petitioner’s argument that the respondent did not actually want to practice as a CA at Chandigarh in the demised premises, and it was just a mere wish and desire on part of the respondent to get the demised premises vacated and therefore, there was no bona fide requirement of the respondent qua the demised premises, the learned Appellate Authority on the basis of evidence, pleadings and case law before it concluded that requirement of the respondent qua the demised premises is bona fide and need of the respondent was not just a mere wish and desire, rather it was his genuine requirement.

Learned Appellate Authority also reaffirmed finding of the learned Rent Controller to the effect that intention of the respondent to shift his business to Chandigarh was honest and genuine and not just a ploy to increase the rent of the demised premises. It was further established on record that the petitioner had not disclosed addresses of any other such buildings owned and possessed by the respondent in urban area of UT Chandigarh.

Further, during pendency of the appeal, vide order dated 08.01.2019, the learned Appellate Authority had directed the petitioner/tenant to pay mesne profits as assessed by the Authority. Vide said order dated 08.01.2019, it was also directed that in case the petitioner did not comply with the direction contained in the said order, then a specific right was granted to the respondent to prefer and apply for execution of the ejectment order passed by learned Rent Controller.

Accordingly, on the basis of above facts and findings, the learned Appellate Authority vide impugned order dated 26.07.2022 dismissed the petitioner's appeal. Hence, present Revision Petition.

During arguments, the learned counsel for the petitioner has merely reiterated the grounds taken by him before the learned Rent Controller as well as the learned Appellate Authority. However, when confronted with the above-noticed findings of the Courts below, learned counsel for the petitioner is unable to controvert the said concurrent findings; or disprove the bona fide necessity or even default on part of the petitioner in payment of provisional rent and mesne profit.

It is informed by learned counsel for the respondent, who is here on caveat, that pursuant to the order dated 21.02.2018 passed by learned Rent Controller, as also order dated 08.01.2019 whereby the petitioner was directed to pay provisional rent and mesne profit, the respondent had filed Execution Petition on 16.03.2022. The petitioner/tenant had appeared before the learned Executing Court on 25.08.2022 and case was adjourned to 14.10.2022 for filing objections. However, the petitioner failed to file objections either on 14.10.2022 or even on next date of hearing i.e. 02.12.2022.

In any event, learned counsel for the petitioner is unable to controvert assertion on behalf of learned counsel for the respondent that he is in arrears of rent.

At this stage, reference may be made to judgment of the Hon'ble Supreme Court in case of ***Civil Appeal No.2135 of 1999 titled***

as Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation,
 wherein, in Para 30 of the said judgment, it has been held as under:-

“30. To sum up, our conclusions are:

1. In Section 13(2)(i) proviso, the words 'assessed by the Controller' qualify not merely the words 'the cost of application' but the entire preceding part of the sentence i.e. 'the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application'.

2. The proviso to Section 13(2)(i) of East Punjab Urban Restriction Act, 1949 casts an obligation on the Controller to make an assessment of (i) arrears of rent, (ii) the interest on such arrears, and (iii) the cost of application and then quantify by way of an interim or provisional order the amount which the tenant must pay or tender on the 'first date of hearing' after the passing of such order of 'assessment' by the Controller so as to satisfy the requirement of the proviso.

3. Of necessity, 'the date of first hearing of the application' would mean the date falling after the date of such order by Controller.

4. On the failure of the tenant to comply, nothing remains to be done and an order for eviction shall follow. If the tenant makes compliance, the inquiry shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the landlord and the tenant before the Controller.

5. If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or

tendering the deficit amount, failing which alone he shall be liable to be evicted. Compliance shall save him from eviction.

6. While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings.”

In the present case, admittedly the petitioner has failed to pay provisional rent as assessed by the learned Appellate Authority, and therefore, in conformity with the above-referred judgment of the Hon’ble Supreme Court, the petitioner deserves to be forthwith evicted from the demised premises. It is depreciable that the Eviction Petition had been filed on 28.04.2014 and despite the fact that eviction order was passed in favour of respondent on 21.02.2018, which was further confirmed by the Appellate Authority on 20.7.2022, the petitioner has still not been able to get possession of the demised premises. Even provisional rent as assessed by the Appellate Authority has admittedly not been paid by the petitioner to the respondent /landlord.

Accordingly, in view of the fact that the petitioner has been unable to controvert the concurrent findings returned by the Courts below, as also in view of the categoric pronouncement of the Hon’ble Supreme Court in case of ***Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation (supra)*** this Court finds no merit in the present Revision Petition and the same is hereby, dismissed.

Pending application(s) if any also stand(s) disposed of.

14.02.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No