

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.254

CR No.1227 of 2020

Date of Decision: 22.02.2023

Kanwaljit Singh

.... Petitioner

Versus

Sukhjinder Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Rakesh Chopra, Advocate
for the petitioner.

Mr. Ajaivir Singh, Advocate
for the respondent.

TRIBHUVAN DAHIYA, J.

This is tenant's revision petition under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act of 1949').

2. The facts of the case in brief are, the respondent/landlord (hereinafter referred to as 'landlord') filed ejectment application under Section 13 of the Act of 1949 against the petitioner/tenant (hereinafter referred to as 'tenant') from the demised premises/shop in question on the grounds of non-payment of arrears of rent and personal necessity. The tenant took the shop on rent on 03.01.1997 at the rate of ₹2,000 per month. He was stated to be in arrears thereof w.e.f. April, 1999 till filing of the ejectment application on 06.10.2014, and, therefore, was liable to be evicted from the shop. It was also pleaded that the shop was required by the landlord for his

urgent need as he wanted to use and occupy the same as office for the adjoining shop, and he had no other shop or office in the building concerned nor had he vacated any shop after commencement of the Act.

3. The tenant appeared before the Rent Controller and admitted the relationship of landlord and tenant between the parties. He, however, stated that the rent was being paid regularly to the landlord till he refused to accept it from him. He further stated that the landlord had two-three other shops in the urban area, adjoining the shop in question, and, therefore, his need with respect to the demised premises was not *bona fide*.

4. The Rent Controller assessed provisional rent of the premises at ₹2,000 per month, vide order dated 13.07.2015, from 06.10.2011 to 06.08.2015 (for 46 months amounting ₹1,02,030). The same was paid by the tenant under protest as per his statement recorded by the Controller in short order dated 05.08.2015. The Controller, however, ordered his eviction, vide order dated 25.04.2017, by holding that the landlord was entitled to possession of the demised premises on account of *bona fide* necessity, and also to arrears of rent from April, 1999 to 05.10.2011 at the rate of ₹1,000 per month, which comes to ₹1,50,000. The findings were affirmed by the appellate authority vide judgment dated 27.09.2019.

5. Learned counsel for the tenant has argued that the authorities below could not have ordered eviction from the demised premises, as the landlord has concealed material facts. Besides, the landlord did not require the premises for *bona fide* necessity, as he was in possession of other shops in the vicinity and had also rented out the nearby shop to one Mahender Singh @ Kala before filing of the ejectment application. All these facts were concealed by him from the Court. Therefore, there is a clear violation of the

provisions of Section 13(1)(a) of the Act, which require the landlord to plead that he was not occupying any other building and had not vacated any building without reasonable cause after commencement of the Act. In support of his submissions, learned counsel has placed reliance upon judgment of this Court in *Randhir Singh Rohilla v. Rajbir*, 2015(4) PLR 325. It was further contended that findings of the Authorities below holding the landlord entitled to recovery of rent, were not sustainable since the landlord became owner of the property only on 06.08.2013, when the rent deed in question was executed between the parties for monthly rent of ₹2,000.

6. *Per contra*, learned counsel for the landlord contends, both the Court/Authorities rightly ordered eviction from the demised premises. The landlord's need is *bona fide*, and the ejectment application has been filed after due compliance of all the requirements of Section 13 of the Act of 1949. He further contends that the landlord is not in possession or occupation of any other premises in the urban area concerned, nor has he rented out any other premises to anybody. There is no evidence to that effect on record either.

7. Learned counsel for the parties have been heard and record perused.

8. To consider the first submission of learned counsel for the tenant regarding absence of *bona fide* need, it is pertinent to note that the ejectment application has been filed on specific pleadings that the landlord required the demised premises for his personal use to open an office for his business in the adjoining shops. The averments make it apparent that the landlord was running a business in the shops adjoining the demised premises, and required the latter for opening his office. Therefore, it cannot

be said that he concealed the fact of being in occupation of the adjoining shops; rather, it provided him a valid ground to seek eviction. The demised premises was required by the landlord only on account of his being in occupation of the adjoining shops. The judgment in *Randhir Singh Rohilla* case (*supra*) relied upon by the learned counsel has no application to the facts of the case, since there is no concealment of relevant fact by the landlord in the ejectment application, as discussed herein above; and it is also not established on record that he has vacated any other building without reasonable cause.

9. Much stress has been laid by learned counsel for the tenant on the admission in cross-examination by the landlord, PW1, that he gave the nearby shop on rent to Mahender Singh @ Kala in the year 2013-14. However, it has also come in cross-examination by the landlord that the shop in question had been given on rent before filing of the ejectment application. Firstly, there is no averment in the written statement that any shop was rented out by the landlord prior to filing of the ejectment application, nor has the said tenant been examined before the Rent Controller to establish the fact that any other shop was so rented out. In the absence of pleadings, the plea cannot be entertained, and the solitary admission in cross-examination becomes inconsequential. Secondly, it has also come on record that the so called nearby shop was rented out before filing of the ejectment application. Assuming it to have been rented out, it will not have any effect on the landlord's *bona fide* need of the demised premises, as the need/requirement is to be seen on the date of filing of the ejectment application.

10. Further, as per the settled proposition of law, landlord is the best judge of his needs and requirements. In case the premises in question is

required by the landlord for opening his office for the business in adjoining shops, and the need has been there at the time of filing of the ejectment application, as held concurrently by both the authorities below, he has a right to seek eviction of the tenant on that basis. No exception can be taken to the findings of the Authorities below holding his need to be *bona fide*, nor do the same suffer from any error of law.

11. To consider the second argument raised by learned counsel for the tenant regarding arrears of rent, it needs to be noted that the rent deed in question was executed on 06.08.2013 to let out the demised premises on monthly rent of ₹2,000. Prior thereto, the landlord was not owner or landlord of the premises. It was on account of a family partition the landlord became owner of the demised premises, and, thereupon, executed the rent deed in question. Learned counsel for the landlord is not in a position to deny the fact.

12. The findings of the Rent Controller are that the tenant did not dispute the rate of rent at ₹1,000 per month from April, 1999 to 06.08.2013; nor was this his pleaded case. Therefore, he was held to be in arrears of rent from April, 1999 to 05.10.2011 at the rate of ₹1,000 per month. However, it has not been disputed before this Court that the demised premises was rented out to the tenant only on 06.08.2013, and there was no evidence on record that prior thereto the respondent/landlord ever became owner or landlord of the premises. Admittedly, the rent agreement was also entered into between the parties on 06.08.2013, when the shop/demised premises fell to the share of landlord, and ₹2,000 per month was agreed as the monthly rent. In case any amount was due to the landlord prior to his becoming of the owner/landlord, the same could not be considered as rent due to him under

the Act of 1949. Therefore, findings of the authorities below to the extent the tenant has been held liable to pay rent w.e.f. April, 1999 to 05.10.2011, are not sustainable. Instead, he is held liable to pay the rent/arrears only with effect from the date of execution of the rent deed, i.e., 06.08.2013, at the rate of ₹2,000 per month, in case the same remain unpaid. The landlord shall be liable to return/adjust the excess amount of rent, if any, received by him.

13. In view of the aforesaid discussion, the petition is partly allowed. Findings of the Authorities below with respect to payment of arrears of rent by the tenant stand modified, and he is held liable to pay rent of the demised premises at the rate of ₹2,000 per month from 06.08.2013 only. Accordingly, his ejectment on the ground of arrears of rent from April, 1999 to 05.10.2011 at the rate of ₹1,000, is held not maintainable, and hereby set aside. However, the findings ordering ejectment on the ground of *bona fide* personal necessity of the landlord are upheld. Accordingly, the ejectment application against the tenant stands allowed on that ground.

14. Pending miscellaneous application(s), if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

22.02.2023
Maninder

Whether speaking/reasoned : Yes
Whether reportable : Yes