

CR No.2900 of 2019 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2900 of 2019 (O&M)
Date of Decision: 25.07.2023

Umesh Kumar and others
Versus
Kesar Hind Club, and others

.... Petitioners
... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.Puneet Jindal, Sr. Advocate with
Ms.Malvi Aggarwal, Advocate for the petitioners.

Mr.Raj Kaushik, Advocate for the respondents.

HARKESH MANUJA, J (ORAL)

1. By way of present revision petition, challenge has been made to order dated 29.11.2018, passed by learned Appellate Authority, whereby an ejectment order dated 27.02.2018 passed by the Learned Rent Controller has been set aside, thereby dismissing the ejectment petition filed at the instance of the petitioners/landlords.

2. Briefly stated, an ejectment petition came to be filed against the respondents/tenants at the instance of the petitioners/ landlords regarding the tenanted premises, *inter alia*, on the grounds of non-payment of arrears of rent, personal necessity, change of nature of property, besides subletting. The prayer in the ejectment petition was opposed at the instance of the respondents/ tenants by way of filing their written statement.

3. The learned Rent Controller vide its judgment dated 27.02.2018 allowed the ejectment petition filed at the instance of the petitioners/landlords while recording that the premises in question was needed by them, besides holding that there was sub-letting and change of user on the part of the respondents/ tenants.

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4. Aggrieved of the aforesaid findings, the respondents/ tenants filed first appeal which came to be allowed vide judgment dated 29.11.2018 by the Appellate Authority while holding that the petitioners/ landlords were not able to prove their bonafide necessity as no specific need was established. Besides it, the findings on the grounds of sub-letting as well as change of user were also reversed against the petitioners/landlords.

5. While assailing the findings recorded by the Appellate Authority, learned Senior counsel appearing for the petitioners/ landlords refers to the statement made by one of the landlords who appeared as PW3 and submits that the petitioners have been running their business in the shops situated at the ground floor of the premises in question for over 10 years prior to the filing of the ejectment petition and thus, the property in question was required for the expansion of their business. Learned Senior counsel further submits that no express details were required to be pleaded in the ejectment petition about the extent and manner in which the property was to be used post its vacation.

6. On the other hand, counsel representing respondents/ tenants vehemently opposes the prayer for ejectment while supporting the findings recorded by the First Appellate Authority and submits that in the absence of any specific mention about the purpose or need of the premises by the petitioners/ landlords, their bonafide requirement being vague, was rightly declined. Learned counsel also submits that even the findings recorded on the ground of material alteration, sub-letting/ change of user, warrant no interference as there was no evidence led by the petitioners/ landlords that the construction of the alleged washroom was post initiation of tenancy. He

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further points out that the findings on the plea of sub-letting were against record as the servant qua whom the sub-letting was attributed happened to be an employee of the respondents/ tenants. In support, learned counsel for the respondents/ tenants relies upon the judgment passed by this Court in case of ***Jagat Ram Vs. Mathra Dass and another 1978(2) R.C.R. (Rent) 351.***

7. I have heard learned counsel for the parties and gone through the paper-book. I find merit in the submissions raised on behalf of the petitioners/ landlords. It has come on record in the cross-examination of PW-3 i.e. one of the co-owner/landlord, namely, Ashok Sehgal that the demised premises was purchased by the petitioners/ landlords somewhere in the year 2012 and even 10 years prior thereto they were running their business in the said shops and also that even the first floor of the same building was divided amongst the petitioners/ landlords and was being used by them for their respective business. The aforesaid portion from the statement leads to an irresistible conclusion that the demised premises i.e. 2nd floor was also required by the petitioners/ landlords for the expansion of their existing business activities.

8. In the given facts and circumstances, the findings recorded by the First Appellant Court; whereby the petitioners/ landlords have been non-suited for want of specific mention of purpose/ need of the tenanted premises, are unsustainable. Once the purpose and bonafide need is sufficiently made out from the cumulative analysis of the pleadings and the deposition of one of the landlords i.e. PW3-Ashok Sehgal, who specifically states that the business was being run in the shops situated on the ground floor besides the premises at first floor also being used by them, the

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petitioners/ landlords could not have been non-suited for the reasons recorded by the First Appellate Court. In the aforesaid facts, once the petitioners/ landlords, in accordance with established law, procedure and evidence based on anvil of preponderance of probabilities proved their case, burden was discharged and the onus shifted upon respondents/ tenants, who failed to rebut the same.

9. Moreover, on the basis of statement made by PW3, more than prima facie case in favour of petitioners/ landlords was made out which thus, carried presumption in their favour qua requirements, they being in occupation of ground and first floor of the demised premises and using the same for running of their business, as such the tenanted premises which was situated on the second floor of the property in question, was undoubtedly required by the petitioners/ landlords towards expansion of their running business and thus, formed part of their bonafide need based on the principle that every individual has indefeasible right to excess in life and amplify his resources. Support may also be drawn from the judgment of Hon'ble Supreme Court in **Sarla Ahuja Vs. United India Insurance Company Limited**, AIR 1999 SC 100 and para 14 thereof being relevant, is reproduced hereunder:-

“14. The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the

requirement of the landlord in bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

10. As regards the grounds of eviction of sub-letting and change of user/ change of nature of property, I am unable to find merit in the submissions made on behalf of the counsel for the petitioners/ landlords as no evidence has been brought on record to establish the status of the demised premises, prior to the same having been rented out to the respondents/ tenants so as to establish any alteration having been carried out by them. Besides it, even the fact that the alleged sub-lettee, namely, Om Parkash happens to be the caretaker/employee of the respondents/ tenants has been sufficiently established on record.

11. Accordingly, in view of the discussion made hereinabove, the present revision petition is allowed. The judgment dated 29.11.2018 passed by the Appellate Authority is hereby set aside. The eviction petition filed at the instance of the petitioners/ landlords is allowed as this Court is satisfied that they require the demised premises for their bonafide need.

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

25.07.2023
raman/sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No