

2023:PHHC:160067

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3445-2023(O&M)

Date of Decision: December 13, 2023

M/s Rekhi Brothers and another

...Petitioners

Versus

Dr.Bimal Kumar Singla

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.H.S.Saini, Advocate
for the petitioners.

Mr.Siddharth Gupta, Advocate
for the respondent.

ARCHANA PURI, J.

The present revision petition has been filed by the petitioners (who were tenant before the Rent Controller) to challenge the judgment dated 09.03.2023 passed by learned Appellate Authority, whereby, judgment dated 31.05.2017 passed by Rent Controller was set aside and reversed and thereby, ordering eviction of the petitioner-tenant from the demised premises.

The essential facts to be noticed are, as follows:-

That, initially, Dr.Bimal Kumar Singla-landlord had filed the petition for seeking ejectment of the tenants M/s Rekhi Ram Brothers through its prop. and Harmohinder Singh Rekhi, from the shop, as detailed in the

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headnote of the petition. It was asserted in the petition that M/s Rekhi Brothers was inducted as tenant by the father of the Dr.Bimal Kumar Singla and initially the rate of rent was Rs.35/- per month, excluding electricity charges and house tax etc. The initial landlord i.e. father of Dr.Bimal Kumar Singla had died on 21.06.2005 and after his death, the said Dr.Bimal Kumar Singla is the landlord. It is the version of the landlord that the rent was paid by the tenant to the father of the petitioner against receipts. However after his death, landlord has not received any rent from the respondents. They have not tendered the rent since 21.06.2005 at the rate of Rs.35/- P.M. Further, it is also asserted in the petition that the shop is lying locked for the last more than 8 years and no business is being carried out by the tenants in the shop in question, as they have shifted their business of book selling to another big shop, situated in Kohli Furniture Chowk, Kharar. Further, it is also submitted that opposite to the shop in question, the tenants are carrying out their business of selling cards etc., in a big shop and another shop which is situated opposite to the shop, in question, is in occupation of the tenants, which belongs to Waqf Board and also lying closed. Also further, it was asserted that the landlord is Bachelor of Veterinary Science and Animal Husbandry from Punjab Agricultural University Ludhiana and is also holding a certificate regarding training course in the care, breeding, housing, feeding, and health management of Angora Wool and Broiler, Meet, Rabbit, from North Temperate Regional Station (Central Sheep & Wool Research Institute) Garsa-175141, Via Bhuntar, Distt. Kullu (H.P.) and holding a certificate in Poultry from Department of Animal Husbandry (Punjab) and

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another certificate from Central Research Institute Kasauli H.P. in Diagnosis Prevention and Treatment of Rabies and has retired as Senior Veterinary Officer from PGI Chandigarh in 2001. Further, it is pleaded that the shop in question is required by the landlord for his personal necessity, as he wants to open a clinic for pets and animals in the said shop, as earlier, the landlord use to go to village and Kharar town, to examine the pets and animals, but now due to old age, he is unable to go various places and the landlord wants to run his business from the said shop.

Also, it is further version of the landlord, that his father filed an ejectment petition against the another tenant Ramji Dass, as the shop was in dilapidated condition and was old construction, the roof of the shop had fallen down and the said shop not fit for human habitation. Also, it is the case of the landlord that during the pendency of said ejectment petition filed by the father of the landlord, said Ramji Dass had died, the petition was allowed and the appeal, against the decision of ejectment petition, was also dismissed. The possession of the said shop has been taken in the execution proceedings. Further, there is another shop of the landlord adjoining the shop in question, in which the son of the landlord is running Homeopathic Clinic. Also, it is pleaded that there are other four shops of the landlord and out of which, two shops are adjoining to the shop in question i.e. shop No.877 & 875, in which the tenants are running their business. As such, on the count of arrears of rent, the shop lying closed for the last 8 years and the shop required by the landlord for his personal necessity, the ejectment was sought.

In reply, the tenancy and the rate of rent, as such, is admitted. However, it is asserted that after the death of father of Dr.Bimal Kumar Singla, nobody demanded the rent. Rather, the tenants were ready to pay the rent. Also, it was asserted that the tenants are doing book binding work in the said shop and the same is being used by them. Further, it is the version of the tenants that the shop got vacated from Ramji Dass and the adjoining shop at Nimwala Chowk, are lying vacant and no business is being carried out in the said shops. Even, qua the two adjoining shops to the shop in question, it is asserted that one shop is on rent, whereas the other one is lying vacant. As such, a prayer was made for dismissal of the petition.

The Rent Controller on having taken note of the rival contentions, had framed two points for its consideration. The entire consideration revolved on the claim made by the landlord for his own use and occupation and also about the availability of the other shops with the landlord.

On appraisal of the evidence adduced and the documents, coming forth, it was concluded by the Rent Controller that none of the ground for ejectment was spelt out and consequently, the ejectment petition was dismissed, vide judgment dated 31.05.2017. Feeling aggrieved by the aforesaid order, the landlord filed an appeal before learned Appellate Authority. Learned Appellate Authority having adverted to the contentions, had re-appreciated the oral as well as documentary evidence. In that background, making detailed reference to the evidence, brought on record,

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learned Appellate Authority had accepted the appeal and set aside the judgment of dismissal of the ejectment petition and therefore, ordered the tenants to handover the vacant possession of the shop, within two months, failing which, the landlord shall be entitled to get the possession of the shop, though the process of Court.

Feeling aggrieved by the aforesaid judgment passed by learned Appellate Authority, the petitioners-tenants filed the present revision petition.

Learned counsel for the parties heard.

Throughout the arguments, much emphasis has been laid upon the misreading of the evidence produced before Rent Controller and precisely, on this account, it is stated that the judgment of dismissal of the ejectment petition, has been erroneously set aside.

At the very outset, it is to be taken note that civil revision petition before the High Court is not to be considered as in the nature of an appeal. While exercising the revisional powers, the High Court is only to examine the factor that whether the authorities under the Act have acted within the ambit of jurisdiction and whether, they have erred grossly and the order suffers from any infirmity or error of law. In that context, learned Appellate Authority, under the statute, has to consider this aspect, in the background of the evidence to arrive at a conclusion to its satisfaction. The appreciation of the evidence, in the civil revision petition to indicate that another view is possible, would not arise. What is necessary to be taken note of is, as to whether the authorities below had considered the matter in

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its correct perspective, while taking into consideration the grounds of seeking ejectment, as pleaded by the landlord.

However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decisions or the order, the High Court shall not exercise its power, as an appellate power, to reappreciate or re-assess the evidence, for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact, as a court of first appeal.

In this backdrop, it is pertinent to mention that initially, ejectment was sought on three grounds i.e. arrears of rent, furthermore, substantiating on the said ground, that the rent tendered by the tenant was short and invalid. Secondly, that the landlord required the shop on the ground of personal necessity and thirdly, that the tenants had ceased to occupy the shop and the same is lying locked for more than 8 years.

During the course of arguments, it has been very fairly conceded by learned counsel that the ground, with respect to the arrears of rent, was not pressed before learned Appellate Authority and the same, as such, cease to be one of the grounds, so asserted. However, qua two other grounds asserted for seeking ejectment, it is pertinent to mention that Dr.Bimal Kumar Singla himself stepped into witness box as PW-1 and while in the witness box, he has deposed in verbatim with his pleaded case, with regard to two subsisting grounds of ejectment. He had pleaded therein, about himself to be holding degree of Bachelor of Veterinary Sciences and Animal Husbandry and also proved various other certificates, relating to his

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expertise. He also deposed about having retired from PGI Chandigarh in the year 2001. Furthermore, the reason has also been assigned about not having opened the clinic at earlier instance, as he stated that he used to go to different places for treatment of pets and animals, but on account of old age, he wants to open a clinic for pets and animals in the shop. Also, he deposed about the tenant to be having four shops, out of which two are triple storeyed shops, which are near to the shop in question. They had constructed a showroom and shifted their business there, about 20 years back. Furthermore, landlord also categorically stated that his father had earlier filed ejectment petition against tenant-Ram Ji Dass, as the tenanted shop was in a dilapidated condition. He also deposed about the said shop to have already been vacated, but he is not in a position to reconstruct the same. He also admitted that another shop to be occupied by his son, where he is running a homeopathic clinic and his clinic is to be extended. Besides the same, there are four other shops, with the landlord. Two are adjoining to the shop in question i.e. shop No.875 and 877, where tenants are running their business. The other two shops are also with tenants. Furthermore, PW-3 Sanjay Kumar, Junior Assistant from the office of M.C. Kharar has also been examined, who had brought the record of shop owned by Waqf Board, which is in possession of the tenant and other shops owned by the tenant and also of other shops owned by the landlord.

On the contrary, tenant-Harmohinder Singh Rekhi has stepped into witness box as RW-1 and has deposed, in consonance with his pleaded case, thereby, denying about the subsisting grounds of ejectment, as alleged

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by the landlord. Furthermore, in cross examination, he deposed about having personal shop, which is 25'x 45' feet in size and also having purchased in the name of his wife. Also, another shop opposite to the shop in question is owned by himself as well as his brother and mother. He also deposed that earlier he used to run book shop in the shop in dispute. Now, book binding business is done in the said shop and he is selling books, opposite to the shop in dispute owned by Waqf Board. Besides the same, he also deposed that he could not trace the bills from the year 2010 to 2015. He admitted about the existence of various shops owned and possessed by him.

So far as, the plea of personal necessity, as projected by landlord is concerned, he has given the details of the properties and further, he has given the manner of other properties, not being utilized by him, for start of the clinic. The purpose of starting the clinic has also been stated by him. The one shop, which was got vacated by his father from Ramji Dass-tenant, has also been stated to be in a dilapidated condition and another shop was occupied by his son, whereas, other shops are occupied by the tenants. Furthermore, he had stated about the inability of opening of the clinic in the shop got vacated from Ramji Dass, as it is in the dilapidated condition and he cannot reconstruct the same.

Such being the evidence, spelt out, it is important to make reference to decision rendered by the Hon'ble Apex Court in ***Sarla Ahuja vs. United India Insurance Company Ltd., 1998(2) RCR (Rent) 533***, wherein, it has been specifically held 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. The relevant observations read as herein given:-:-

"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 is 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."

In *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta, 1999(2)*

RCR (Rent) 141, it was held that once the satisfaction is there of the bona fide need of the landlord, the Court would not in such a case thrust its own wisdom, upon the choice of the landlord. In the said case, the requirement of the landlord was challenged by the tenant on account of the fact that he had sufficient accommodation for his residence. The plea was rejected and the relevant observations read thus:-

"12. Chambers 20th Century Dictionary defines bonafide to mean 'in good faith: genuine'. The word 'genuine' means 'natural; not spurious; real: pure: sincere'. In Law Dictionary, Mozley and Whitley define bonafide to mean 'good faith, without fraud or deceit'. Thus the term bonafide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need

which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bonafides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then ask the question to himself whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one. but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against."

In this backdrop, advertent to the case in hand. It should be noted that Rent Controller had though made observations about the landlord to be in possession of various other shops, but however, taking into the consideration the ownership aspect, has overlooked the availability and suitability of the shop owned by the landlord and precisely, on this account, the appraisal of the evidence, qua the aspect of personal necessity, is

erroneous. Rather, the need and suitability of the shop available has been appropriately considered by learned Appellate Authority, to reach the conclusion about the requirement of the shop by the landlord for his bonafide personal necessity.

However, during the course of arguments, learned counsel for the petitioners-tenants has also laid much emphasis on the fact of death of Dr.Bimal Kumar Singla-landlord, during the pendency of the proceedings and in this context, it is submitted that need, as pleaded at the time of filing of the petition, no longer subsists and therefore, no ejectment can be sought on the ground of personal necessity. However, the aforesaid submission is bereft of merits. It is settled proposition that cause of action is to be seen on the date of application and merely because the landlord has died during the pendency of litigation, would not be a ground to set aside the relief, which the landlord had earned after leading evidence. It has been held in catena of decisions that the requirement is to be seen, at the time of filing of the petition. The landlord had himself stepped into the witness box and deposed regarding his 'need'. Learned Appellate Authority had found his requirement to be bonafide, just and honest.

Even otherwise, such conclusion cannot be reached about the ground of personal necessity, having come to an end, when it cannot be lost sight that the very judicial process consumes a long period and because of the delay in the process, if the benefit is declined, it would only encourage the tenants to protract the litigation, so as to defeat the right.

Considering the same, the plea raised by the landlord, did not come to an end as the validity or otherwise of the averred premises, is to be tested, on the basis of scenario, prevalent at the time of filing of the petition.

Besides the aforesaid, another ground sought for eviction is that the tenant had not used the premises, for the last about 8 years. In this regard, besides considering the testimony of the landlord, it should be noted that ejectment petition was filed on 18.09.2013. The tenant was specifically asked about the electricity bills but he produced the electricity bills for the month of August 2016 and December 2016 and earlier bills for the year 2009-2010. However, the landlord has placed on record the information from PSPCL Ex.P12, which shows that for the year 2009-2010, the old reading of the units was 483 and new reading was 499. As such, the units consumed were '16' only. In the succeeding year 2010-2011, the old and the new reading remained to be 499, meaning thereby, that units consumed was '0'. Such was the position also for year 2011-2012 and also for 2012-2013. It was only thereafter, the old reading came to be 499 and the new reading was 586 i.e. for year 2013-2014 and the consumption depicted is of '87' units. However, it is necessary to take into consideration that this consumption of units came forth, only after the filing of the ejectment petition. Not only this, even for the succeeding year 2014-2015, the units consumed were shown to be '0'. Meaning thereby that there was no consumption of electricity in the shop in question.

Even though, learned counsel for the tenant had submitted that it was only the manual book binding business being done, there was no

consumption of electricity, but even, if it be so, at the relevant time, then the question arises, why there was consumption of electricity, prior to the period, where there was no electricity consumption and similarly, why there was consumption, after the ejectment petition, was so filed.

Considering the testimony of the landlord, coupled with Ex.P12, it is evident that there was no consumption of electricity. Once the landlord proves about the tenant to have ceased to occupy the building for a period of four months, then onus shifts upon the tenant to prove that the premises was closed for sufficient cause. However, no evidence, on this aspect has been led by the tenant. But anyhow, as already observed aforesaid, it is evident that tenant is in the possession of the shop, opposite the shop in question and also other shop of the Waqf Board, where, he is already running the business. Even, RW-1 Harmohinder Singh Rekhi has admitted in cross-examination about existence of various shops, owned and possessed by him. He has deposed about running the business of sale of books from the shop, opposite to the shop in dispute.

In the given circumstances, the shop being closed for sufficient cause, as such, does stand established. The tenant had occupied the shop in question, for the sake of keeping the possession.

In the light of the same, learned Appellate Authority has appraised the evidence in correct perspective and has ordered the ejectment of the tenant, on these two counts of bonafide requirement of the shop by the landlord and about the tenant to have cease to occupy the shop in question, for more than four months, before the filing of the petition.

Resultantly, keeping in view the aforesaid discussion, this Court is of the opinion that the impugned order do not warrant interference and hence, the present revision is accordingly dismissed.

December 13, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No