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CR-4460-2023

DECIDED ON: 29.08.2023

RAJINDER PAL SINGH

.....PETITIONER

VERSUS

SURINDER KAUR

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Ankur Bansal, Advocate
for the petitioner.

VIKRAM AGGARWAL, J

1. The present revision petition has been preferred, by the petitioner-tenant against the judgment dated 02.05.2023 passed by the Appellate Authority, Jalandhar vide which the judgment dated 29.07.2019 passed by the Rent Controller, Jalandhar was set aside and the eviction petition filed by the respondent-landlord was allowed.

2. The respondent-landlord filed an eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Rent Act') for eviction of the appellant-tenant from shops No.1 and 2 situated in Dhan Mohalla, Jalandhar (hereinafter referred to as the 'shops in dispute').

3. The facts, as emanating from the paper book, are that the respondent-landlord was the co-owner of the shops in dispute along with her sister. The respondent-landlord, with the consent of the co-owner, filed an eviction petition seeking eviction of the appellant-tenant from the shops in dispute. The appellant-tenant was stated to be in occupation of the shops in dispute at a rent of ₹1,900/- per month. He was stated to be in arrears of

rent since 01.03.2013. It was also the case of the respondent-landlord that the entire property was measuring 4.5 Marlas and was in occupation of different tenants on the ground and first floors and the building was having integral construction. It was averred that the son of the respondent-landlord was in Merchant Navy and he wanted to start his business at Jalandhar. The shops in dispute were, therefore, required by the respondent-landlord for use of the same by her son Harpreet Singh. It was also averred that the respondent-landlord had filed an eviction petition against the other tenants and sub-tenants also on the grounds available to her with a view to get her property vacated. It was the case of the respondent-landlord that she wanted to re-construct the property after demolishing the existing building as per her suitability. It was the further case of the respondent-landlord that her son was a highly experienced Merchant Navy Officer and he intended to start business of consultancy-cum-academy for training and assisting the persons eligible to join Merchant Navy.

4. The eviction petition was resisted by the appellant-tenant. Certain preliminary objections were raised. It was averred that the site plan was erroneous and did not give the correct description of the property. It was averred that the eviction petition had been filed with a view to exert pressure upon the appellant-tenant so that the rent would be increased. It was averred that the eviction petition was without jurisdiction as the shops in dispute formed an integral part of the whole building. On merits, the relationship of landlord and tenant was admitted and the rate of rent of ₹1,900/- for both shops was also admitted. Otherwise all averments made in the eviction petition were denied.

5. In the replication, the averments made in the written statement were denied and those made in the eviction petition were reiterated.

6. The Rent Controller framed the following issues for adjudication:-

- “1. Whether the respondent is in arrears of rent and is liable to be evicted from the demised premises? OPP*
- 2. Whether the shop is required for the bonafide need of the petitioner? OPP*
- 3. Whether the site plan attached by the petitioner is wrong? OPR*
- 4. Whether the petition has been filed without any jurisdiction? OPR*
- 5. Whether the petition is not maintainable? OPR*
- 6. Relief.”*

7. Parties led their respective evidence.

8. The Rent Controller dismissed the eviction petition holding that the property in question was residential in nature and the same could not be got vacated for a non-residential purpose. The ground of non-payment of rent, however, did not survive as the arrears of rent were duly paid. On the issue of site plan, the Rent Controller held that the site plan filed by the respondent-landlord appeared to be wrong and, therefore, held that the eviction petition was not maintainable.

9. Aggrieved by the decision of the Rent Controller, an appeal was preferred by the respondent-landlord. The Appellate Authority allowed the appeal and consequentially also allowed the eviction petition. In so far as the site plan is concerned, it was held that the respondent-landlord would not gain anything by pleading wrong dimensions of the shops in dispute and that no prejudice had been caused to the appellant-tenant who had been in possession of the shops in dispute as a tenant even if wrong dimensions had been given in the petition. Accordingly, the

appellant-tenant was directed to hand over the vacant possession of the shops in dispute as per the site plan (Ex. R1) which had been produced by the appellant-tenant.

10. Aggrieved by the decision of the Appellate Authority, the present appeal has been preferred.

11. I have heard learned counsel for the petitioner.

12. Learned counsel for the petitioner strenuously urged that the decision of the Appellate Authority is not sustainable. The thrust of the arguments was upon the point that the shops in dispute were of a residential nature and the same could not be got vacated for a non-residential purpose. With regard to the site plan, learned counsel submitted that the Appellate Court erred in holding that possession of the shops in dispute be handed over as per the site plan (Ex. R1). In support of his contentions, learned counsel has placed reliance upon the judgments passed by the Co-ordinate Benches of this Court in ***C.R. Nos. 1108 of 1983, 3063 of 1984 and 2202 of 1982*** titled as '***Hari Mittal, Advocate and Ors. Vs. B.M. Sikka***', ***1985(2) Rent LR 700, CR-3070-1993*** titled as '***United Commercial Bank and Another Vs. Lalit Bahri and Another***', ***2011(2) RCR (Civil) 78, CR-2982-1985*** titled as '***Rajinder Singh Vs. Joginder Singh***', ***2003(1) Rent LR 700, CR-1921-1989*** titled as '***Ram Pal Vs. Joginder Singh***', ***2000(2) Rent LR 692 and CR-1721-1989*** titled as '***Dr. Hukam Chand Dhawan Vs. State of Punjab***', ***1997(1) RCR (Rent) 652***.

13. I have considered the submissions made by learned counsel for the petitioner but find the same to be devoid of merit.

14. Learned counsel for the petitioner raised two arguments. In so far as the first argument is concerned, it is no longer res-integra that even if

a residential premises has been let out by the landlord or is being used by the tenant for a non-residential purpose, the same would continue to be a residential building and the landlord would be entitled to seek eviction of the tenant on the ground of his *bona fide* personal requirement. Reliance in this regard can be placed upon the judgment of a Full Bench of this Court in the case of ***Hari Mittal, Advocate and Ors.***(supra). This view has been followed consistently by this Court in a number of cases i.e. ***United Commercial Bank and Another*** (supra), ***Rajinder Singh*** (supra), ***Ram Pal*** (supra) and ***Dr. Hukam Chand Dhawan*** (supra). However, the argument raised by learned counsel for the petitioner that the shops in dispute could not have been got vacated for a non-residential purpose since they were residential in nature is devoid of merit. None of the judgments relied upon by learned counsel for the petitioner and which have been referred to above lay down any such thing. In none of the cases, the issue raised before the Courts was the one which is being raised by learned counsel for the petitioner. The reliance upon the said judgments is, therefore, not of any aid to the petitioner.

15. The second argument that the First Appellate Court erred in holding that vacant possession of the shops in dispute be handed over as per the site plan (Ex.R1) is also devoid of merit. I do not find any illegality or infirmity in the said finding recorded by the First Appellate Court. The First Appellate Court duly noticed that the dimensions were not correctly mentioned by the respondent-landlord. A different site plan (Ex.R1) was produced by the petitioner-tenant. Under the circumstances, the First Appellate Court held that possession be handed over as per site plan (Ex. R1). This observation did not, in any manner, cause any prejudice to

the petitioner-tenant and, therefore, the petitioner-tenant cannot have any

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objection to the said finding.

16. No other argument was raised.

In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.

29.08.2023
Prince Chawla

(VIKRAM AGGARWAL)
JUDGE

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