

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

127

CR-4960-2023 (O&M)
Date of Decision : 31.08.2023

Vijay Kumar

.....Petitioner

Versus

Gulzar Kaur (deceased) through her LR and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Anil Kumar Garg, Advocate for the petitioner.

None for the respondent/caveator.

NAMIT KUMAR, J. (ORAL)

1. The instant revision petition has been preferred by the petitioner impugning the order dated 22.08.2022 passed in Rent Petition No.645 of 2016 titled as 'Gulzar Kaur Vs. Gopal Dass' whereby learned Rent Controller, Ludhiana has passed the ejectment order and directed respondent No.2-Gopal Dass to hand over the vacant possession of demised premises to respondent No.1-Gulzar Kaur and order dated 08.08.2023 passed by learned Appellate Authority, Ludhiana in Rent Appeal No.104 of 2022 whereby an appeal filed by the petitioner against order dated 22.08.2022 has been dismissed.

2. The brief facts leading to the filing of the present petition as has been narrated in the petition are that out of the two shops, one shop was taken on rent by the petitioner and another shop was taken on rent by his brother Gopal Dass (respondent No.2) from its original owner Harnam Singh about 30 years back. The petitioner is running his

work in the tenancy premises under the name and style of M/s Bittu Auto Centre whereas respondent No.2-Gopal Dass running his work in tenancy premises under the name and style of M/s Kanwal Motors. Earlier, the rent was being received by its original owner Harnam Singh and after his death, the same was being collected by Kulwant Kaur widow of Harnam Singh and thereafter Manjit Kaur (respondent No.3) daughter-in-law of Harnam Singh. After passage of time, monthly rent of the shop in question was increased with mutual consent and the last rent paid to Manjit Kaur was Rs.1,000/- per month w.e.f. April, 2022. There was a dispute between respondent No.1-Gulzar Kaur (since deceased) and Manjit Kaur regarding the property in question as well as other properties of Harnam Singh and it was orally settled between them that the shop in question which was in possession of the petitioner, Manjit Kaur will be entitled for collecting the rent being its landlady and similarly, respondent No.1-Gulzar Kaur will be entitled for collecting the rent for the other shop. Respondent No.1-Gulzar Kaur (since deceased) has filed an ejectment petition alleging that respondent No.2-Gopal Dass, who was a tenant of both the shops on a monthly rent of Rs.2660/- per month, had not tendered arrears of rent since July, 2014 @ Rs.2660/- per month and shop in dispute is also urgently and bonafidely required by her for her own use and occupation as she wants to reconstruct/renovate the shops into a big showroom of wholesale and retail cloth business. Upon notice respondent No.2-Gopal Dass has filed preliminary objections regarding maintainability, suppression of

material facts and bad for non-joinder of necessary parties. It was also denied that the shops in dispute are urgently and bonafidely required by respondent No.1 for her personal use and occupation. The son of respondent No.1 had sent an email to the police against respondent No.2 in which he had admitted that after getting the property vacated from the respondent and other tenants, respondent No.1 intends to sell the property. After hearing both the parties, learned Rent Controller, Ludhiana vide impugned order dated 22.08.2022 allowed the ejectment petition filed by respondent No.1 on the ground of bonafide necessity and directed respondent No.2/tenant to vacate the demised premises and handover the vacant possession of the same to respondent No.1 within a period of 02 months. The said order was challenged vide two separate appeals, one filed by respondent No.2-Gopal Dass and second filed by the petitioner-Vijay Kumar before the Appellate Authority, Ludhiana which were dismissed vide judgment dated 08.08.2023.

3. Aggrieved against the order dated 08.08.2023 passed by learned Appellate Authority, Ludhiana and order dated 22.08.2022 passed by learned Rent Controller, Ludhiana, the petitioner has preferred the instant revision petition.

4. Learned counsel for the petitioner has contended that the petitioner-Vijay Kumar is a real brother of respondent No.2-Gopal Dass, who took the shop in dispute on rent from its original owner namely Harnam Singh about 30 years back. One shop was taken on rent by the petitioner and other shop was taken on rent by respondent No.2 @

2660/- per month. The petitioner is running his work in the tenancy premises under the name and style of M/s Bittu Auto Centre whereas respondent No.2 running his work in tenancy premises under the name and style of M/s Kanwal Motors. The order passed by learned Rent Controller is against the law and facts as the tenant is in occupation of only one shop and the ejectment application has been illegally filed for two shops against only one tenant i.e. respondent No.2-Gopal Dass. He further submits that respondent No.1 (since deceased) has failed to prove that she requires the shops in question for bonafide personal use and occupation. The Appellate Authority, Ludhiana has dismissed the appeal filed by the petitioner being non-maintainable and without appreciating the evidence on record and also without considering the facts and circumstances of the present case. Therefore, the present revision petition may be allowed and impugned orders may be set aside.

5. I have heard learned counsel for the petitioner and perused the relevant documents.

6. In the present case, respondent No.1 (since deceased) had filed the ejectment petition on the ground that she required the demised premises urgently and bonafidely for her own use and occupation as she wants to reconstruct/renovate the shops into a big showroom of wholesale and retail cloth business. In order to prove her case, respondent No.1 herself appeared as AW-1 and specifically deposed that she wants to reconstruct/renovate the shops into a big showroom of wholesale and retail cloth business. The shops in question are the most

suitable place to open showroom. The Coordinate Bench of this Court, while discussing the issue of bona fide personal necessity, in its judgment passed in ***Surinder Chopra Vs. Harbans Kaur : 2008(4) Civil Court Cases 38*** has observed as under :-

“16. A plea for ejectment on the ground of a bona fide personal necessity is available to a landlord/landlady under Section 13(3)(a)(i)(a) of the Act, provided the landlord/landlady establishes that he/she "requires" the tenanted premises for his/her own occupation. The word "requires" appearing in Section 13 has been interpreted by judicial precedents to connote a sincerity of desire, a genuineness of purpose and a need as distinguished from a mere whim or a desire. The requirement should be natural, real, honest and should be asserted in good faith, devoid of an element of deceit, fraud or mala fide. A landlord's/landlady's perception of the his/her personal necessity, namely the nature and the extent thereof, the premises to be occupied, are generally, in the absence of any evidence to the contrary, accepted as bonafide. The onus to establish otherwise lies on the tenant. In the absence of any cogent evidence or material to doubt the bona fides of the landlord/landlady, a Court would accept the plea of the landlord/landlady. A Court cannot impose its perception of the state-of-affairs and the parameters of the necessity so pleaded.”

7. The Coordinate Bench of this Court in its judgment passed in ***Ram Paul Vs. Vijay Kumar and others : 2013(4) Civil Court Cases 581*** has held as under :-

“It is well settled that a landlord is the best judge of his requirements. The mere fact that an adjoining shop of a

small size is lying vacant, cannot be considered to disentitle the respondent-landlord for the relief sought by him; and in case the landlord considers the existing accommodation insufficient and he requires a better and more spacious accommodation, such a need has to be seen from the angle of the landlord and not from the view point of tenant.”

8. While discussing the argument raised by learned counsel for the petitioner that respondent No.1 has failed to prove that she requires the shops in question for bonafide personal use and occupation, learned Appellate Authority, Ludhiana has recorded as under:-

“16. The contention of the appellant that need of the petitioner is not at all bonafide and petitioners have sufficient accommodation to start business in the other shop adjoining to the shop in question is not tenable. It is well settled law that the tenant cannot dictate to the landlord and the landlord is the best judge of his need. It is for the landlord to see as to how he is to utilize his property and which par of his properties is best suited for his need. Moreover, the appellant in his cross-examination admitted that the relationship of landlady and tenant between the parties. It is admitted fact the shops in question are situated in Kochar Market, Road Midha Chowk. Ludhiana. It is admitted fact the kochar Market is consisting of shops of various of special item. Kochar Market road area is a commercial hub. The respondent/petitioner has fully proved that need of the petitioner is bona fide and the premises in dispute is required for petitioner for her personal use and occupation.

*17. The question with regard to bonafide requirement of the landlord has to be decided on the appreciation of evidence as so held by **M/s Sait Nagjee Purushotam & Co Ltd. Vs. Vimalabai Prabhula & Ors. 2005 (2) Apex Court Judgments 639(SC)**. It is true that the petitioner in his evidence as PW1 has stated that he requires the premises*

in dispute for Vardan Singh. It is settled proposition of law that the landlord is the best judge of his requirement for residential or business purpose and has got complete freedom in the matter. The contention raised by the Ld. Counsel for the appellant that the respondent did not plead the necessary ingredients of Section 13(3)(a)(I) of the Act. On the other hand, counsel for respondent relied upon law laid down by the Hon'ble Punjab and Haryana High Court in case Ram Paul Vs. Vijay Kumar nad others 2013(3) L.A.R page 328, wherein it has been held that Section-13 Bonafide need -Pleadings- Both the parties knew the case of each other and led the evidence accordingly – If the necessary ingredients of Section 13(3)(a)(I) of the Act, 1949 have not been pleaded strictly, the same is not fatal to the decision. He further relied upon Similar law laid down by Hon'ble Punjab and Haryana High Court in case Raj Kumar Vs. Budha Mal 2011(2) RCR(Rent) 60 wherein it has been held that – If parties were fully aware about the ingredients of Sub-Section (b) and (c) at the time of leading evidence and both the parties have led evidence on these issues, then petition cannot be thrown out merely because the landlord has failed to plead ingredients of sub sections (b) and (c) in the eviction petition. The order passed by the Ld. Rent Controller is sustainable in the eyes of law because the petitioner/respondent has fully proved on file that his need is bonafide and the premises is required for his personal use and occupation. Moreover, the case law cited by the learned counsel for the respondent/petitioner before the learned trial court as well as this court is fully applicable in the present case.”

9. So far as the argument raised by learned counsel for the petitioner that out of the two shops in question, one was taken on rent by the petitioner and respondent No.1 has not filed ejectment petition against him is concerned, respondent No.2-Gopal Dass himself admitted in his cross-examination conducted before the Rent Controller, Ludhiana that he took both the shops on rent in the year 1976 and when he has taken both the shops on rent then he was having cordial relation

with respondent No.1-Gulzar Kaur. He has been paying the rent of both the shops in cash. The electricity charges and water supply charges were extra from the rent. He further admitted that respondent No.1-Gulzar Kaur filed the petition in the year 2016 in respect of two shops. He used to pay/handover the rent to every 4th day of the month to respondent No.1-Gulzar Kaur and amount of rent was 500/- per month. He further admitted that it is correct that both the shops having rent 1000/- rupees in total. He was not have any passage in between both the shops. Thereafter, he had tendered the rent in the Court as per the assessment order of the Court. The cross-examination of respondent No.2-Gopal Dass clearly shows that petitioner-Vijay Kumar has nothing to do with the shops in question and with respondent No.1-Gulzar Kaur.

10. Furthermore, petitioner-Vijay Kumar, who is a real brother of respondent No.2-Gopal Dass, never appeared even for once in nearly seven years in the eviction petition which was decided by learned Rent Controller, Ludhiana on 22.08.2022 and suddenly, he filed an appeal against the order dated 22.08.2022 in connivance with his brother with the sole intent to abuse the process of law and just to delay the process of warrants of possession against the judgment debtor/respondent No.2-Gopal Dass. Therefore, the appeal filed by the petitioner has rightly been rejected by the Appellate Authority, Ludhiana on the ground of none maintainability.

11. In view of above, there is no illegality or infirmity in the impugned order dated 08.08.2023 passed by learned Appellate

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Authority, Ludhiana and order dated 22.08.2022 passed by learned Rent
Controller, Ludhiana and needs no interference by this Court.

12. Finding no merit in the instant revision petition, the same is
consequently, dismissed.

31.08.2023
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(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No