

CR-5225-2023 (O&M)

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2023:PHHC:140652

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-5225-2023 (O&M)

Date of decision: 06.11.2023

Reserved on: 03.11.2023

Bimla Paitka (Deceased) through LR and another

....Petitioners

Versus

Jasneet Inder Kaur

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vijay Kumar Jindal, Sr. Advocate with
Mr. Arman Goyal, Advocate and
Mr. Pankaj Gautam, Advocate for the petitioners

ANIL KSHETARPAL, J

1. The petitioners herein are the tenants, who have been ordered to be evicted concurrently by the court of Rent Controller, which in appeal, has been affirmed by the Appellate Authority. The tenanted premises is a shop-cum-flat no.34 Sector 18-D, Chandigarh. The respondent-landlady is one of the co-owners of the property. Previously, her father and brother filed a petition seeking ejectment of late Sh.Madan Gopal, predecessor of the petitioners herein. The aforesaid petition was allowed on 08.08.2023 by the Rent Controller. Late Sh. Madan Gopal filed an

appeal. During the pendency of the appeal, a settlement was arrived at between the parties in December, 2005. It is the case of the petitioners that due to the prolonged litigation, the necessity of her father and brother came to an end and a fresh registered lease deed was executed in favour of late Sh.Madan Gopal for a period of 10 years w.e.f 01.01.2006, which has expired on 31.12.2015. It is her case that she has a bona fide requirement of the premises for her personal use and occupation as she can use the ground floor for opening the business in general trade whereas the first and second floors can be utilized for the residential purposes. The tenants, while contesting the petition, have pleaded that from the very beginning, the landlady's father is pressing hard to increase the rent and in the previous petition also on increase of rent, the matter was compromised. It is stated that this petition has been filed only with the intention of enhancing the rent.

2. The Rent Controller as well as the First Appellate Authority, on appreciation of evidence, have concurrently found that the requirement of the landlady is genuine.

3. Heard the learned senior counsel representing the petitioners at length and with his able assistance perused the paperbook. He has heavily relied upon the pendency of CR-345-2016, which has been referred to the Division Bench for opinion on the following question of law:-

“Whether in the urban area of U.T, Chandigarh, the entire Shop-cum-Flat is to be treated as commercial or in a given case, First & Second Floor thereof could be termed as residential building for the purpose of eviction under the Act of 1949?”

4. It has been stated that in this case, the rented premises is a shop-cum-flat and therefore, the matter should be kept pending.

5. Learned senior counsel further submits that the respondent-landlady has failed to enter the witness box and she appeared through her attorney and therefore, an adverse inference should be drawn for non-appearance of the landlady.

6. This Court has considered the submissions made by the learned counsel representing the petitioners. It may be noted here that the eviction petition in the present case has been filed with respect to the complete Shop-cum-flat including ground floor, first floor and the second floor. There exists a composite tenancy with respect to the complete SCF no.34. In CR-345-2016, the eviction of the tenant was sought from the store/room on the backside of the first floor of SCF no.35. The eviction was sought on the ground of non-payment of rent, change of user and apprehension that the property may be resumed. In that case, the eviction was never sought on the ground of the personal necessity of the landlady. In fact, the identical issue came up for consideration before the

Hon'ble Supreme Court in **Shabir Ahmad vs. Sham Lal and others (2002) 3 SCC 118**. The judgment passed by the High Court was reversed. After examining the provisions of the East Punjab Urban Rent Restriction Act, 1949, which is applicable to the area of Chandigarh and the terms and conditions of the allotment letter, the Court held that the first floor of the shop-cum-flat is a non-residential building.

7. Still further, it is evident that the eviction which was being sought on the ground of the personal necessity of the landlord/landlady is available with respect to residential as well as non-residential building. As per the law laid down by the Hon'ble Supreme Court in the case of **Harbilas Rai Bansal vs. State of Punjab and others 1996)1 SCC 1**, the eviction of the tenant can be sought on the ground of the personal necessity of the landlord/landlady with respect to the residential as well as non-residential buildings. It is not the case of the tenant that he is not using the premises for the same purpose for which it was leased out. In these circumstances, the pendency of CR-345-2016 cannot be used to keep the petition pending, particularly when the legal issue, which has been referred, depends upon the facts of that case.

8. As regards the second argument of the learned senior counsel representing the petitioners, it may be submitted that the landlady had appeared in the Court through her father, general power of attorney. She has filed the petition through her father. It

has come on record that her father is managing the landlady's property in Chandigarh. It is not necessary that in every case, the Court must draw an adverse inference for failure to appear in evidence. It depends upon the facts and circumstances of each case. The courts can draw an adverse inference only if it is found that the best evidence has been withheld. In **Pandurang Jivaji Apte vs. Ram Chandra Gangadhar Ashtekar (dead) by LRs and others (1981) 4 SCC 569**, a three Judge Bench of the Supreme Court held that an adverse inference for non-appearance of a party can be drawn only when a material evidence available is insufficient or absent. In this case, the learned senior counsel representing the petitioners has not drawn the attention of the Court to the statement of the landlady's father to establish that he has failed to answer the questions put forth by the tenant's counsel in the cross-examination. Moreover, in **Maan Kaur vs. Hartar Singh Sanga 2011 (1) RCR (Civil) 189** the Supreme Court has held that the court is required to closely examine the facts of the case and come to a conclusion that certain facts were in the personal knowledge of the Principal and the power of attorney holder has failed to disclose those facts.

9. Keeping in view the aforesaid facts and discussion, this Court does not find it appropriate to interfere, particularly when the scope of interference in revision petition is extremely limited in view of the Five Judges in '**Hindustan Petroleum Corporation Limited vs. Dilbahar Singh' (2014) 9 SCC 78**.

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10. Hence, dismissed.

11. All the pending miscellaneous applications, if any, are
also disposed of.

06.11.2023

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No