

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

CR 357/2023 (O&M) &

Caveat Application NO.3518/2022

Date of decision: 20.01.2023

Naresh Arora

.....Petitioner

Vs.

Surinder Kumar(deceased) through his LRs.

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rishabh Gupta, Advocate for the petitioner.
Mr. Namit Gautam, Advocate for the respondents/
Caveators.

Nidhi Gupta, J.

This revision petition has been filed by the petitioner/tenant for setting aside the order dated 12.10.2022 passed by the Ld. Rent Controller, Jalandhar (Annexure P-12) whereby the application of the petitioner for rejecting/striking off the second and third affidavits filed by the LR of the respondent-landlord, has been dismissed.

Brief facts of the case are that respondent Surinder Kumar/ original landlord (now deceased), filed an ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act,1949 for ejectment of the petitioner from the demised shop/ describable as shop No. 4 in property no. 494, Guru Nanakpura (East), Jalandhar. Ejectment of the petitioner was sought on various grounds including ground of personal necessity as respondent-landlord wanted to settle his daughter Ritu Bala/ (present respondent no.(iv)), who was a widow with two young children.

The only submission made on behalf of the counsel for the petitioner is that great injustice has been caused to the petitioner as the learned Rent Controller has time and again allowed the said respondent(s) to file various affidavits as a result of which the respondent has been able to improve his case with each successive affidavit. It is submitted that each affidavit contains different pleadings as a result of which, over the time, material improvements have been permitted to be wrought in the case originally put forth by the respondent. Learned counsel submits that there are as many as four affidavits at Annexure P-3, Annexure P-5, Annexure P-7 and Annexure P-9 on record. Learned counsel also submits that requirement of the present respondent (iv) whose husband has expired, cannot be considered to be requirement of respondent Surinder Kumar/ original landlord of the demised premises.

Heard Ld. Counsel for the parties.

Perusal of the record shows that the first affidavit at Annexure P-3 dated nil, was filed by Sh. Surinder Kumar- original landlord and father of the present respondent(s), wherein it has been mentioned that he requires the demised premises for his daughter/present respondent (iv), who has lost her husband on 22.2.2011. Surinder Kumar/ original landlord has stated in the said affidavit that the said daughter of the landlord has two sons aged 16 and 12 years and accordingly, he requires the demised premises for his daughter who has come along with her sons to live with Surinder Kumar. It has further been stated therein that Property no. 494 contains five shops of which shop nos. 2, 3 and 4 (shop no. 4 being the demised shop), were required by respondent (iv) to start her business.

Thereafter, respondent(iv) filed affidavit dated 15.5.2018 (Annexure P-5) to bring abovesaid facts on record in her own behalf.

Perusal of third affidavit dated 5.2.2019 (Annexure P-7) shows that by virtue of said affidavit, respondent no. (iv) herein put on record the fact that Surinder Kumar had issued General Power of Attorney in favour of respondent(iv) Ritu Bala vide POA dated 4.1.2019 Ex. A-3; and that as respondent/landlord/Surinder Kumar was suffering from Cancer, he was no longer able to pursue the present litigation.

The present affidavit dated 2.9.2022 which is subject matter of the impugned order has been filed by the respondent No. (iv) to bring on record the fact of the death of her father-respondent/landlord Surinder Kumar. Rest of the averments in the affidavit are merely reiterating the facts and requirement of personal necessity already mentioned in previous affidavits, including the fact that Property no. 494 contains five shops of which shop nos. 2, 3 and 4 (shop no. 4 being the demised shop), were required by respondent (iv) to start her business.

In my view, upon the expiry of respondent/original-landlord Surinder Kumar, respondent no.iv is entitled to seek eviction of the petitioner in her own behalf, especially in view of the fact that the original landlord had already issued General Power of Attorney in her favour, and had asserted the requirement of respondent No. iv in respect of the demised premises in the first instance itself. It has also come on record that all the other legal heirs of the original landlord/ respondents herein, admit the need of the said respondent no. (iv) and admit that she requires the demised premises to open her boutique in view of the fact that she is widow and has two young children to bring up. Moreover, original landlord had already given GPA in favour of respondent no. (iv) in his lifetime to pursue the ejectment petition. In this regard, support may be drawn from judgments rendered by various High Courts in **Banganga Cooperative Housing Society Ltd.,Mumbai v Vasanti Gajanan Nerukar,**

Law Finder Doc Id # 700908; Rajesh Varma v Aminex Holdings and Investments, Law Finder Doc Id # 226204; and Raghbir Singh v Parvesh Kumar, Law Finder Doc Id # 492159, wherein it has been inter-alia, held that once, an ‘Evidence Affidavit’ is filed, and the examination-in-chief of the deponent has begun, there is no impediment and it may be permissible for the deponent to file a further affidavit since Order 18, Rule 4 CPC does not limit itself to a single affidavit; and that there was nothing in the amended CPC, which precludes the Court from recording further examination-in-chief of the plaintiff. In case of **Raghbir Singh (supra)**, this Court has held as follows:

“10. No doubt that the landlord himself had not appeared in the witness box in support of his case that the demised premises is required for the bona fide requirement of his son but the son of the landlord, namely, Gurmeet Singh, had appeared as PW1 for himself and as Special Power of Attorney of his father and has stated that his father is an old man and he is well conversant with the facts of the petition. The said shop was required by him for his personal use. He is matriculate, handicapped, having defect in his left eye and left leg and it is difficult for him to do other business except for running a shop. He has categorically averred that he required the shop for his own occupation and is neither occupying nor vacated any such shop in the urban area of Municipal Council, Kharar without any sufficient cause after the commencement of the Act.

13. In the present case also, PW1 has categorically stated that his father is an old person and is doing nothing. He is well conversant with the facts of the case which means that he is managing the affairs of the family, therefore, the argument raised by counsel for the tenant that the landlord should have entered into the witness box as his own witness instead appearing through his Special Power of Attorney to prove his bona fide necessity would not be of any consequence because the bona fide necessity is also not only of the landlord but also of his son, as pleaded in the petition and also in the affidavit Ex.PW1/A, tendered in examination-in-chief of the son of the landlord, who has categorically

alleged that there is no other shop in his occupation nor has vacated any such shop in the urban area concerned without any sufficient cause after the commencement of the Act”.

Accordingly, in view of the above discussion, I find that no ground is made out to interfere with the impugned order.

Dismissed.

Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

20.01.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No