

CR-6251-2016 (O&M)

1

2024:PHHC:029865

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

CR-6251-2016 (O&M)

Date of decision: 29.02.2024

Bhagwan Dass

...Petitioner

Versus

Krishan Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. P.K.Ganga, Advocate for the petitioner

Mr. A.K.Khunger, Advocate and
Mr. Piyush Setia, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1 This revision petition has been filed by the petitioner-tenant assailing the correctness of the order passed by the Appellate Authority directing the petitioner to handover the vacant possession of the tenanted premises to the respondent-landlord. During the pendency of the revision petition, the petitioner has also filed an application to place on record the order passed by the Rent Controller on 26.05.2014, which has been affirmed in appeal by the appellate authority on 01.08.2016. The petitioner claims that the landlord has taken over the possession of the adjoining shop to the disputed shop pursuant to the aforesaid orders.

2. Brief facts of the case:-

2.1. The landlord (Krishan Kumar) filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for issuing direction to the petitioner to hand over the vacant possession of the shop measuring 7 feet x 3'-5' feet, which is being used for running a Paan

shop. The landlord claimed that he has two sons namely Sh.Kunal and Sh.Sanjeev. At present, Sh.Kunal is working in D.D.Pharma Pvt. Ltd. whereas Sh. Sanjeev is running his business. The landlord asserted that he bonafidely requires the premises in order to open the Pharma business in the tenanted premises. The Rent Controller dismissed the petition, however, the appellate authority, on re-appreciation of evidence, has ordered the petitioner's eviction from the tenanted shop.

3. Submissions of the learned counsel representing the parties:-

3.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3.2 Learned counsel representing the petitioner has made the following submissions:-

i) In 2009 the petitioner sold another shop

ii) The landlord has obtained possession of the adjoining shop on 29.08.2014, pursuant to the order passed by the Rent Controller, which has been affirmed in appeal by the appellate authority and the landlord did not disclose this fact before the Court.

iii) This is the respondent's third attempt to get an order of eviction against him. The rent petition before the Rent Controller was filed within 25 days of dismissal of the previous petition.

3.3. On the other hand, the learned counsel representing the respondent, while referring to the layout plan, has submitted that the petitioner is in possession of major part of the front of the shop already in possession of Sh.Krishan Kumar. In fact, Sh. Krishan Kumar and his son Kunal requires atleast two adjoining shops to open the Pharma

business. Sh.Kunal has already gained sufficient experience while working in D.D.Pharma Pvt. Ltd. The learned counsel also submits that the bonafide requirement is never static and it changes with the passage of time. It is submitted that the petitioner is in occupation of nearly 80% of the front of the shop while leaving a small passage of 2' feet width to go to the portion which is in possession of Sh.Krishan Kumar and it is not commercially feasible to use the shop unless possession of the front portion is handed over to him.

4. Discussion of this Court:-

4.1. This Court has considered the submissions made by the learned counsel representing the parties.

4.2 The rent petition was filed in the year 2014 whereas another shop was sold by the respondent in the year 2009. It has been explained that the aforesaid property was joint between the landlord and his brothers and after selling the same, the amount was invested by the landlord in his business. In the considered view of this Court, sale of another shop in 2009 which was the first property, would not debar the petitioner from filing a petition in 2014 i.e after a period of 5 years from the date of sale.

4.3 With respect to the second argument of the learned counsel representing the petitioner, it shall be noticed that this Court has perused the layout plan, which shows that the shop in possession of Sh.Om Parkash measures 20 feet x 8'-6'. The adjoining shop is 16 feet x 6'x9'. The petitioner is in possession of a small portion having 7 feet width while leaving a passage of 2 feet to go to the back portion which is in

possession of the landlord. It is the case of the landlord that he alongwith his son requires atleast two adjoining shops to open his pharma business. Considering the aforesaid position, the delivery of possession with respect to the adjoining shop to the landlord, would not be sufficient to dismiss the eviction petition while allowing the revision petition.

4.4 The next argument of the learned counsel representing the petitioner also lacks substance because the landlord filed the petition when his own two sons had just completed their studies. It has taken almost 10 years and in the meantime, the requirements have also grown.

4.5 It may be noted here that the landlord is entitled to expand his business and grow in life. The tenant cannot dictate terms to the landlord. If the landlord wishes to expand, particularly when his family has grown, it would not be appropriate to doubt his bonafides.

5. Decision:-

5.1 Keeping in view the aforesaid facts, no ground to interfere is made out.

5.2. Hence, dismissed.

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

29.02.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE