

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**248****CR No.6608 of 2018****Reserved on : 02.02.2024****Date of Decision: 08.02.2024**

Ramesh Kumar

....Petitioner

VERSUS

Makhan Lal

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Karan Gupta, Advocate for the petitioner

ALKA SARIN, J.

1. The present revision petition has been filed by the landlord challenging the orders dated 08.09.2016 and 16.05.2018 passed by the Rent Controller and the Appellate Authority, respectively, dismissing the ejectment application filed by him.

2. The landlord-petitioner sought eviction of the tenant-respondent inter-alia on the ground of bonafide necessity. It was pleaded that the shop in question (the demised premises) was taken on rent by the tenant-respondent from the landlord-petitioner on 10.04.1990 to 09.04.1991 @ Rs.18,300/- per annum in which electric fitting and meter was installed by the tenant-respondent at his own expenses and it was agreed that the tenant-respondent shall have no concern with the roof of the demised premises and shall run an electric shop and shall not involve any member or any partner in the said shop and shall not change the nature of the shop nor shall sublet the same. It was further agreed that the tenant-respondent shall hand over the possession

of the demised premises to the landlord-petitioner after one year. It was pleaded that the landlord-petitioner was unemployed and that he has no other shop within the municipal limits of Barnala and intended to run his hardware business in the demised premises and due to this reason the tenant-respondent was liable to be evicted. The tenant-respondent contested the ejectment application and submitted that the landlord-petitioner had concealed material facts from the Court and had concealed the fact of his own business. It was submitted that the landlord-petitioner had two shops near the Railway Station near main market in which he was running the business in the name and style of M/s Krishna Machinery Mart and Luminous Battery and was having agencies of Kirloskar and Luminous Battery and was the sole proprietor of the same and was having sufficient income. It was pleaded that the ejectment application had been filed just to put pressure on the tenant-respondent to enhance the rent. Rejoinder was filed by the landlord-petitioner wherein the averments made in the written reply were denied and those of the ejectment application were reiterated.

3. On the basis of the pleadings of the parties the following issues were framed:

1. Whether the petitioner requires the shop in dispute for his own use and occupation? OPA
2. Relief.

4. Vide order dated 08.09.2016 the Rent Controller dismissed the ejectment application. The Rent Controller inter-alia found that the landlord-petitioner was running the business under the name and style of M/s Krishna Machinery Mart and that he was having a good income. Aggrieved by the said order the landlord-petitioner filed an appeal. However, vide order dated

16.05.2018 the said appeal was dismissed by the Appellate Authority. The Appellate Authority held that the landlord-petitioner had not come to Court with clean hands and was not entitled to the relief of possession of the demised premises. Hence, the present revision petition.

5. Learned counsel for the landlord-petitioner has contended that the Authorities below have erred in dismissing the ejectment application filed by him. According to counsel there was no concealment by the landlord-petitioner and that he had proved his bonafide necessity of the demised premises and therefore eviction of the tenant-respondent should have been ordered.

6. Heard counsel for the landlord-petitioner and perused the record.

7. In the present case both the Authorities below have not accepted the plea of bonafide personal necessity taken by the landlord-petitioner. The Rent Controller found that the landlord-petitioner was not unemployed and was rather running a business by the name of M/s Krishna Machinery Mart and having dealership of two renowned companies. Though before this Court it was argued by counsel that the business was earlier being carried on in the name and style M/s Krishna Machinery Mart but the same was transferred in the name of the son of the landlord-petitioner and that he was not carrying on any business or in possession of any shop, there is nothing on the record to substantiate and accept this plea. Moreover, the landlord-petitioner made no such mention in the ejectment application filed by him. The Appellate Authority held that *“He wilfully concealed the fact that earlier he was carrying on the business in the name and style M/s Krishna Machinery Mart in the shops near Railway station Barnala, as*

shown in the photographs Exs.R1 to R3. Before filing this ejectment petition, the petitioner transferred the said business in the name of his only son Deepak Singla and he filed this petition claiming that he does not have any shop in his name and he is unemployed and he therefore, requires the demised shop for himself for starting new hardware business. The petitioner ought to have come to the Court with clean hands from the very beginning with the story which was sought to be introduced during the appeal by moving application for additional evidence. It is settled law that in appeal the petitioner cannot take an altogether a new plea. It was never the case of the appellant before the learned Rent Controller that he was earlier running a business in the name and style of M/s Krishna Machinery Mart and he has transferred the said business in the name of his son and therefore, he required the demised shop for starting a new hardware business in his own name”.

8. Though an ejectment application may not be dismissed on the ground of concealment of facts alone, however, in the present case the landlord-petitioner has been unable to prove his bonafide personal necessity. The evidence of the record shows the landlord-petitioner in possession of another shop wherein he is running his business. The landlord-petitioner had to prove the allegations levelled by him that he is unemployed and wanted to run a business of hardware in the demised premises and that he has no other shop or place for running this business. In the absence of these foundational points being proved, the eviction of the tenant-respondent cannot be ordered.

9. In view of the discussion above, I do not find any illegality or infirmity in the impugned orders. The present revision petition being devoid

of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.02.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO