

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.330

Case No. : CR-7447-2014 (O&M)

Date of Decision : February 01, 2024

Sant Lal Petitioner
vs.
Surender Singh and another Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. S. K. Garg Narwana, Senior Advocate
with Mr. Vishal Garg Narwana, Advocate
and Mr. R. P. S. Jammu, Advocate
for the petitioner.

Mr. Krishan Sharma Bhardwaj, Advocate
for the respondents.

* * *

GURBIR SINGH, J. :

1. **CM-24594-C-II-2014** : For the reasons mentioned in the application, the same is allowed and delay of 60 days in re-filing the present revision petition is condoned. The application stands disposed of.
2. **CM-24595-C-II-2014** : For the reasons mentioned in the application, the same is allowed and Annexures P-1 to P-6 are taken on record, subject to all just exceptions. The application stands disposed of.
3. **Main Case** : Challenge in the present revision petition is to the order dated 28.04.2014, passed by learned Appellate Authority, Sonipat, whereby judgment dated 29.11.2012, passed by learned Rent Controller, Sonipat, regarding ejectment of tenant, has been reversed on the ground of concealment of facts by the landlord and failure to prove bonafide necessity

of the disputed shop.

4. The brief facts of the case, as culled out from the paper book, are that petitioner Sant Lal (landlord) filed petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as – the Act), for ejectment of respondents namely Surender Singh and Azad Singh (tenants) from the shop in question on the grounds of non-payment of rent, change of user, the premises being unfit for human habitation and personal necessity. So far as three grounds of non-payment of rent, change of user and the demised premises having become unfit for human habitation were concerned, the landlord could not satisfy the learned Rent Controller and no relief was given qua these issues. However, since it was proved by the petitioner/landlord that he required the premises in question for personal necessity i.e. for starting business by his unemployed son, the petition succeeded only on the ground of personal necessity and vide judgment dated 29.11.2012, respondents/tenants were directed to vacate the shop in question and hand over the possession to the petitioner/landlord within a period of two months.

5. Aggrieved by the aforesaid order of eviction dated 29.11.2012, passed by learned Rent Controller, respondent no.1-Surender Singh (tenant) filed appeal before the Appellate Authority.

6. Along with the appeal, tenant also moved application under Order 41 Rule 27 CPC alleging therein that the landlord had six shops in the same building and to prove this fact, the tenant intended to place on record certified copy of a petition under Section 6-A of the Act, filed by another

tenant namely Saleem Ahmad, occupying some other premises of the landlord, which was pending before the learned Rent Controller. The tenant also intended to place on record rent receipts issued by the landlord to that tenant. Upon notice of the application, landlord contested the same on the ground that the said petition and documents were well within the knowledge of the tenant earlier but he failed to prove the fact that despite due diligence, he could not place the same on record earlier. So, the application was liable to be dismissed.

7. Vide impugned judgment dated 28.04.2014, learned Appellate Authority allowed the aforesaid application under Order 41 Rule 27 CPC filed by the tenant. Simultaneously, appeal filed by the tenant was also allowed thereby setting aside the judgment and decree dated 29.11.2012, passed by the learned Rent Controller in ejectment petition filed by the landlord. Feeling aggrieved, petitioner/landlord has approached this Court by way of instant revision petition.

8. Learned counsel for the petitioner has argued that he needed the shop to start business for his unemployed son Mohit Pruthi. It was explained that petitioner inherited the shop in question and other building after the death of his father and was residing with his son Mohit Pruthi. Previously, his two sons i.e. Mohit Pruthi and Vikas Pruthi were jointly doing business of clothes in another shop in the name of Kanik Garments but when both of his sons separated on 01.01.2009 and the said shop went to the share of Vikas Pruthi, at that time, Mohit Pruthi became unemployed and there arose bona fide need of personal necessity for starting business for

Mohit Pruthi. It is further submitted that the petitioner has not got vacated any of his shops without any sufficient reason after 1949 but he requires the shop in question for establishing his son. Learned counsel has further argued that the Court below has erred in law in allowing application under Order 41 Rule 27 CPC. Moreover, the petitioner was not provided an opportunity to explain and to lead evidence in rebuttal to the additional evidence of the tenant. Without affording the opportunity to rebut the same, the appeal could not have been allowed. Moreover, the tenant failed to prove on record that any shop was lying vacant in possession of the petitioner on the date of filing the eviction petition or thereafter. In support of his contentions, learned counsel for the petitioner has placed reliance on the law laid down by Hon'ble Apex Court in judgments namely **Akhilesh Singh @ Akhileshwar Singh vs. Lal Babu Singh and others** reported as **2018(2) RCR (Civil) 157, The Corporation of Madras and another vs. M. Parthasarathy and others** reported as **2018(4) RCR (Civil) 39** and **Shalimar Chemical Works Ltd. vs. Surendra Oil & Dal Mills (Refineries) and others** reported as **Law Finder Doc Id # 227538**.

9. On the other hand, learned counsel for the respondents has vehemently argued that the learned Appellate Authority has passed a well reasoned speaking judgment and there is no ground to interfere in the same as the learned Court has passed the impugned judgment after carefully considering the aspects of personal necessity as well as landlord having other properties. It was specifically held by learned Appellate Authority that the landlord had suppressed the material facts regarding number of shops

owned by him and also that he had failed to establish and prove the bona fide necessity to occupy the disputed shop for business activities by his another son Mohit Pruthi.

10. I have heard the submissions made by learned counsel for the parties and perused the case file.

11. After giving careful consideration to the arguments advanced by both sides, it seems that at this stage, the main issue revolves around the application moved by the respondents/tenants under Order 41 Rule 27 CPC for leading additional evidence. The learned Appellate Authority, after allowing the said application and taking additional evidence, should have given an opportunity to the petitioner/landlord to rebut the same. However, it was not done. When any additional evidence is allowed, then other party must be given opportunity to rebut the same. Otherwise, there is no logic of principles of natural justice. In the case in hand, no opportunity was given to the petitioner to rebut the additional evidence. The matter is required to be remanded to the Court of learned Appellate Authority to give opportunity to the petitioner to produce evidence in rebuttal to additional evidence and then to decide the appeal afresh.

12. In view of what has been discussed above, the present revision petition is allowed. The judgment dated 28.04.2014, passed by learned Appellate Authority, Sonipat is set aside. The matter is remanded to learned Appellate Authority to give opportunity to landlord to produce evidence in rebuttal to additional evidence and then to proceed further to dispose of appeal in accordance with law.

13. Nothing stated herein above shall have an expression of opinion on the merits of the case.
14. Pending applications, if any, shall stand disposed of along with this judgment.

February 01, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.