

270.

2024:PHHC:010978

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

CR-185-2022

Date of decision: 23.01.2024

Chander Kanta

... Petitioner

Versus

Madan Lal

... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Akshay Jain, Advocate, for the petitioner.

GURBIR SINGH, J.

1. Challenge in this revision petition is to the order dated 06.01.2020 passed by learned Appellate Authority, Ferozepur, vide which, the application filed by the petitioner under Order 41 Rule 27 read with Section 151 CPC and the appeal against the order dated 17.11.2018 passed by learned Rent Controller, Ferozepur, have been dismissed.

2. Briefly stated, the petitioner, who is the owner of demised premises i.e. two rooms situated in Bharat Nagar, Ferozepur City, which is part and parcel of property No.ES-45/129, as purchased by her vide sale deed dated 03.12.2012, filed an application under Section 13 of East Punjab Urban Rent Restriction Act, for ejectment of the respondent-tenant on the grounds of 'bona fide requirement', 'non-payment of rent' and 'nuisance' being created by him while consuming liquor with his friends.

2.1 Upon notice, the respondent appeared and refuted the contentions so raised by the petitioner-landlady with regard to bona fide requirement, non-payment of rent and nuisance. However, the relationship of landlord and tenant was admitted by him.

2.2 From the pleadings of parties, the following issues were framed:-

“1. Whether the petitioner is entitled to ejectment of the respondent on the ground that bonafide personal necessity? OPA

1-A What is the actual rate of rent of the demised premises and whether the respondent is in arrears of said rent? OPA

2. Whether petitioner is entitled to ejectment of the respondent on the ground of nuisance? OPA

3. Whether petitioner’s petition is not maintainable? OPR

4. Relief.”

2.3 Before the Rent Controller, it has been pleaded by the petitioner that her husband is suffering from heart disease and the doctor has advised him to stay at a noise free place. But she failed to bring on record any document which would suggest that her husband is suffering from heart disease and he has been advised to stay at a noise free place and also could not prove that their present house was not fit for residence of her husband.

2.4 As regards non-payment of rent, it was submitted that earlier the rent was Rs.900/- per month and after the purchase of said demised premises, the rent was increased to Rs.1,500/- per month. But from the pleadings, it was not clear that from when the respondent was in

arrears of rent. On one hand, she stated that the tenant is in arrears of rent since 03.12.2012, the date when she purchased the premises in question and on the other hand, she stated that the rent was not paid w.e.f. December, 2013. Moreover, in the application, it was not mentioned that when the rate of rent was enhanced to Rs.1,500/- per month. The rent receipts so relied upon by the landlady as Exs.A3 to A14 to contend that the rate of rent was Rs.1,500/- per month, do not bear the signatures of respondent and moreover, these receipts were confusing as these were of different amounts.

2.5 As regard the other issue with regard to nuisance, it was submitted that the tenant remains out of city as he works as Security Guard at Jaipur, so, the contention of the landlady that the tenant is a habitual of taking liquor with his friends and creates nuisance, was rejected by the Rent Controller.

2.6 Accordingly, vide order dated 17.11.2018, the application of the landlady was dismissed.

2.7 Aggrieved against the said order, the petitioner-landlady approached the learned Appellate Authority, Ferozepur, by way of appeal. During the pendency of appeal, the petitioner-landlady also filed an application under Order 41 Rule 27 read with Section 151 CPC for leading additional evidence with the averments that her husband had undergone a heart surgery in the year 2009 and also a pacemaker has been implanted in his body on 19.08.2017 from Fortis Hospital, Mohali

and the doctor advised her husband to live in a stress free, dust and noise pollution free atmosphere to avoid any health complication and except the demised premises, she has no other suitable accommodation. By way of said application, she wanted to prove the original copy of advice by the doctor and the document of Department of Cardiac Sciences Alchemist Hospital, Panchkula, with regard to operation of her husband on 18.11.2019. It was submitted that she could not prove said documents before the learned Rent Controller because she could not trace said documents and placed photocopy of heart ailment documents as Mark-A. But the learned Appellate Authority dismissed the said application vide order dated 06.01.2020 by observing that she was given sufficient opportunity to produce and prove said documents before the Rent Controller, but she failed to do so and also dismissed the appeal.

3. Dissatisfied with the aforesaid orders of the courts below, the petitioner has approached this Court by way of present revision petition.

4. Learned counsel for the petitioner submits that the petitioner requires the demised premises for her husband who is suffering from heart disease. It is submitted that she, being unaware of intricacies of law, could not prove the medical record which was the foundation of entire case. By way of additional evidence, she wants to prove the medical record, but the court below discarded her request. It is further submitted that the landlord is the best judge of his requirements and tenant cannot dictate his terms. It is further submitted that the petitioner

does not want to challenge the findings of courts below on other grounds i.e. non-payment of arrears of rent and ground of nuisance. She only challenges the order with regard to dismissal of petition on the ground of bona fide personal necessity.

5. I have heard the submissions of learned counsel for the petitioner and have gone through the file.

6. The case of the petitioner is based on medical evidence which remained unproved on the file. Said medical evidence is necessary for the just decision of the case, although she had produced the said documents on record which were marked 'A', but failed to prove the original thereof. She requires the demised premises for her husband who is suffering from heart disease as is evident from the certificate so issued by Dr. Karun Behal, MD, DM (Cardiology), Senior Consultant, Cardiology, from the Fortis Hospital with regard to his health condition. The said certificate (Annexure P-2) reads as under:-

“This is to certify that patient Vijay Singh, 70 yrs/M UHID 717884 was admitted on 18/08/2017 under my treatment at Fortis Hospital, Mohali. Patient came with complaints of 02 episodes of syncope. He underwent Pacemaker Implantation on 19/08/2017. Patient was advised rest till 14/09/2017. Now patient is fit to join the duties w.e.f. 15/09/2017 and advised to avoid physical and mental stress. He is further advised to live in a stress free, dust pollution and noise pollution free atmosphere to avoid any health complication.”

7. The learned Appellate Authority dismissed the application vide order dated 06.01.2020 on the ground that sufficient opportunity was granted to the petitioner but she failed to prove the evidence and the application was filed at the appellate stage in order to delay the decision of the appeal. This order is no order in the eyes of law. Without discussing the merit, the Court cannot say that there is no merit in the application. The Court has passed the order only keeping in view that sufficient opportunity was given to the petitioner before the Rent Controller to lead the evidence. In a rent petition, a landlord/landlady is never interested in delaying the decision. Thus, the learned Appellate Authority has wrongly dismissed the application. The evidence, which is necessary for the just decision of the case, must be allowed to be proved in order to do complete justice to the parties. This Court finds that the court below was required to give an opportunity to the petitioner to prove medical record.

8. Accordingly, the application under Order 41 Rule 27 read with Section 151 CPC is allowed and the order dated 06.01.2020 passed by the learned Appellate Authority dismissing it is hereby set aside and consequently, the orders passed by the Rent Controller and the Appellate Authority with regard to ejectment on the ground of personal necessity are hereby set aside.

9. In view of above, the case is remanded back to the learned Rent Controller, Ferozepur to decide issue No.1 afresh regarding

ejectment on the ground of bona fide personal necessity and pass order accordingly in the ejectment petition after giving opportunity to the petitioner to lead additional evidence on said issue and thereafter to give opportunity to the respondent if he appears to rebut the said evidence.

10. The learned Rent Controller shall give notice to the respondent before proceedings further.

11. The parties are directed to appear before the learned Rent Controller, Ferozepur, on 13.02.2024.

12. Present revision petition stands disposed of accordingly.

(GURBIR SINGH)
JUDGE

January 23, 2024
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No