

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

CR-6388-2023 (O&M)
Reserved on 02.11.2023
Date of decision: 30.01.2024

Bugha Mal Tirath Ram

...Petitioner

Versus

Narinder Mohindru and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Amit Jain, Sr. Advocate with
Mr. Varun Parkash, Advocate
for the petitioner.

Mr. Namit Gautam, Advocate
for the caveator/respondents No.1 and 2.

KARAMJIT SINGH, J. (ORAL)

1. Instant Civil Revision petition is filed by petitioner/tenant for setting aside the eviction order dated 11.02.2020 passed by the Rent Controller, Jalandhar and the judgment dated 17.08.2023 passed by Appellate Authority, Jalandhar whereby the appeal filed by the petitioner against eviction order dated 11.02.2020 has been dismissed.

2. The brief facts of the case are that respondents No.1 & 2 who are real brothers filed eviction petition against petitioner, respondent No.3 M/s Ram Saran Dass & sons through its partner and respondent No.4 M/s Kishori Lal Ram Saran Dass through its partner, on the ground that they are landlord of the demised premises being successors in interest of their grand father Walaiti Ram who gave the demised premises on rent to petitioner about more than 15 years back. After death of Walaiti Ram, father of the

respondents No.1 & 2 namely Om Parkash succeeded him and on his death, the demised premises was succeeded by respondents No.1 & 2. The rate of rent was Rs.1,600/- per month. Respondents No.1 & 2 sought eviction of petitioner and respondents No.3 & 4 on the following grounds:-

“i) demised premises being required by respondents No.1 & 2 for their personal use and occupation and also required by their family members, as they intend to settle independent business of pulses and other goods in the demised premises.

ii) that demised premises was sublet by petitioner to respondents No.3 & 4 and said sub tenants are occupying the demised premises.

It was also pleaded that respondents No.1 & 2 are residing in the first and second floor of the building/property No.EF-85 situated in Mandi Fantonganj, Jalandhar and demised premises is situated on the ground floor of said building which is located in commercial area”.

3. Notice of the rent petition was issued to petitioner and respondents No.3 & 4. Petitioner failed to appear in the Court concerned despite its due service and resultantly, was proceeded against ex parte.

4. However, the rent petition was contested by respondents No.3 & 4 who filed joint reply taking preliminary objections with regard to maintainability and petition being bad for non-joinder of necessary party i.e. partner of petitioner and that the eviction petition is malafide. On merits it was pleaded that answering respondents are tenants under respondents No.1 & 2. It was further pleaded that rent was increased from Rs.1,100/- to Rs.1,600/- per month w.e.f. April 2015 and rent up to 30.09.2015 was already paid. It was further pleaded that the demised premises is not required by the landlords for their personal use and occupation. That the landlords are also having one another shop which was earlier rented out to M/s Aggarwal Traders and they could use the said shop for purpose of

starting new business. It was denied that demised premises was sublet to the answering respondents by petitioner. That actually petitioner firm was reconstituted and vide dissolution deed 27.10.1999 Joginder Pal left the partnership and the firm was reconstituted on 27.06.2012 and Rakesh Kumar became partner in petitioner firm. It was further pleaded that there was no firm by name of respondent No.3 M/s Ram Saran Dass & sons. It was further pleaded that the demised premises is not required by the landlords or their family members for running of a new business. It was further pleaded that the eviction petition is filed in order to put pressure on the petitioner to increase rent from 1,600/- to Rs.3,000/- per month. Denying rest of the averments, it was prayed that the eviction petition be dismissed.

5. Respondents No.1 & 2 filed rejoinder to the aforesaid written reply. The facts pleaded in the written reply were categorically denied and averments of the rent petition were reiterated.

6. On the basis of the pleadings of the parties, the Rent Controller framed following issues:-

- i) whether the respondents are liable to be evicted on the ground that applicants bonafide required the demised premises for personal use and occupation? OPA*
- ii) Whether the respondent is liable to be evicted from the demised premises on the ground of subletting? OPA*
- iii) Whether the application is bad for mis-joinder and non-joinder of necessary parties.*
- iv) Relief.*

7. In order to prove their claim, landlord/respondent No.1 Narender Mohindru appeared in the witness box as PW-3 and produced site plans Ex.A-1 and Ex.A-2, receipt dated 18.09.2015 Ex.A-3, reply to letter Ex.A-4 income tax return of respondent No.4 M/s Kishori Lal Ram Saran Dass

Ex.PW-1/A, statement of bank account Ex.PW-2/A, statement of bank account of aforesaid firm Ex.PW-2/B, copy of letter Ex.PW-4/1, death certificate of Kishori Lal Ex.PW-4/2, copy of notice issued by Assessing Authority Ex.PW-4/3, copy of letter written to Excise and Taxation Officer, Jalandhar Ex.PW-4/4, copies of letters from Assessing Authority Ex.PW-4/5. Landlords/respondents No.1 & 2 also examined PW-1 Vicky Babbar, Senior Tax Assistant, PW-2 Suresh Kumar, Clerk and PW-4 Rajnish Kumar, Clerk.

8. On the other hand, counsel appearing on behalf of the tenants examined RW-1 Rakesh Kumar (Partner) and placed on record rent receipts Ex.R-1 and Ex.R-2, partnership deeds Ex.R-4 to Ex.R-7, notice Ex.R-8 application Ex.R-10, copy of judgment and decree dated 22.08.2013 Ex.RW-1/A and Ex.RW-1/B, receipt dated 18.08.2008 Ex.RW-1/C, licence in favour of M/s Ram Saran Dass & sons Ex.RW-1/D, certificate of registration under VAT Act Ex.RW-1/E, licence dated 02.02.2000 Ex.RW-1/F, receipt dated 09.03.2010 Ex.RW-1/G, copy of partnership deed dated 27.06.2012 Ex.RW-1/H, copy of partnership deed dated 03.03.2016 Ex.RW-1/I, copy of ejectment application titled Narinder Mohindru Vs. M/s Aggarwal Traders Ex.RW-1/J, copy of written statement filed in said ejectment petition Ex.RW-1/K, copy of order dated 13.11.2017 Ex.RW-1/L, copy of dissolution deed dated 19.07.2012 Ex.RW-1/M and copy of partnership deed dated 07.08.1995 Ex.RW-1/N. The tenants also examined RW-2 Amodh Kumar Accountant and RW-3 Sunny, Sales Officer, Axis Bank.

9. In rebuttal, learned counsel for the landlords tendered into evidence documents i.e. copy of judgment dated 07.03.2019 passed by Appellate Authority Ex.P-O, judgment dated 16.05.2019 passed by this Court

Ex.P-O1 and judgment dated 06.08.2019 passed by Hon'ble Supreme Court Mark P and certified copy of assessment of house rent Ex.P-O2 and order dated 27.11.1986 Ex.P-O3.

10. The Rent Controller after giving thoughtful consideration to rival submissions made by both the parties, while deciding issue no.2 held that the landlords have failed to prove the ground of subletting. However, the Rent Controller decided issues No.1 & 3 in favour of the landlords while holding that the demised premises is required by the landlords for their personal use and occupation and further held that the rent petition is not bad for mis joinder or non joinder of necessary parties. Consequently, the eviction petition was allowed by the Rent Controller vide order dated 11.02.2020.

11. The tenants being aggrieved filed an appeal against the aforesaid eviction order passed by the Rent Controller on the ground of personal necessity of the landlords. The Appellate Authority also considered the rival contentions of both the parties and dismissed the appeal vide order dated 17.08.2023.

12. The petitioner being dissatisfied has filed the present revision petition which is being resisted by landlords/respondents No.1 & 2 who filed a caveat.

13. I have heard the counsel for the parties.

14. The counsel for the petitioner while assailing the impugned orders passed by both the Courts below, has *inter alia* contended that there is nothing on the record to prove that the demised premises is required by the landlords or their family members for the purpose of personal use and

occupation to start a new business. It is further contended that respondent No.2 is having permanent job in JCT Mill, Phagwara while respondent No.1 is working as Accountant with various private firms. That it has also come into evidence that son of respondent No.1 is employed in Axis Bank, Jalandhar as is evident from his appointment letter Ex.RW-3/1 which was proved by the official of the said bank who stepped into witness box as RW-3. The counsel for the petitioner further submits that in view of the aforesaid evidence, one could easily make out that the demised premises is not required by respondents No.1 & 2 or any of their family member for the purpose of running a business. It is further contended that one another shop in the same building, owned by respondents No.1 & 2 was got vacated vide order dated 07.03.2019 Ex.P-O passed by the Appellate Authority further affirmed by this Court vide order 16.05.2019 Ex.P-O1. The counsel for the petitioner has further submitted that in case there is any such personal requirement of respondents No.1 & 2, they could easily start their new business in the aforesaid shop which was got vacated with the intervention of the Court as is clear from aforesaid orders and is situated in the same building and is having same commercial potential as that of the demised premises.

15. The counsel for the petitioner has further submitted that in the instant case, there were no specific pleadings on the part of the respondents No.1 & 2 that the demised premises is required for use of their sons. That as per the ratio laid down by Hon'ble Supreme Court in ***Ajit Singh and another Vs. Jit Ram and another 2008 (4) RCR (Civil) 390*** if demised premises is required by a son for his use, then the requirements as laid down in Section 13 (3) (a) (ii) (b) and (c) of the Rent Act have to be interpreted in the same

manner to hold that (a) the son of the landlord has to plead in the eviction petition that, (b) he is not occupying in the urban area concerned for the purpose of his business any other such building or rented land as the case may be; and (c) he has not vacated such a building or rented land without sufficient cause after the commencement of the Rent Act in the urban area concerned. The counsel for the petitioner has further argued that in the present case, there are no such pleadings in the eviction petition and on this sole ground, the eviction petition deserves to be dismissed.

16. The counsel for the petitioner has further contended that respondents No.1 & 2 have failed to prove that the necessity projected by them is genuine and bonafide. That the evidence available on the record suggest that the desire of respondents No.1 & 2 is mere fanciful and whimsical. That in such circumstances, the impugned orders being illegal deserve to be set aside.

17. On the other hand, counsel for respondents No.1 & 2 while supporting the impugned orders has submitted that there is no illegality or perversity in the orders passed by both the Courts below. It is further contended that there is ample evidence available on the record to prove that respondents No.1 & 2 who are doing private job, intend to start their private business in the demised premises which is having a commercial potential and situated in a commercial area and is suitable for running of any type of business. It is further submitted that it also stands proved that even son of respondent No.1 who is also doing job in a private bank is also interested to start his new business. It is further contended that the landlord is best judge of his own requirement and the tenant is no one to dictate him terms or to

guide him as to how and in what manner, he should use his premises. The counsel for respondents No.1 & 2 has further contended that proper pleadings were made in the rent petition as per the requirement of law. The counsel for respondents No.1 & 2 while referring to the judgment passed by the Hon'ble Supreme Court in **Ajit Singh's case** (supra) which has been relied upon by the counsel for the petitioner, has submitted that even the said judgment is not of any help to the petitioner and further this Court is having limited jurisdiction in the exercise of its revisional power under the Rent Act to interfere with the concurrent findings of facts recorded by both the Courts below.

18. I have considered the submission made by counsel for the parties.

19. Before advertng to the submissions made by counsel for the parties, it is appropriate to notice the averments made by respondent No.1 & 2 qua personal necessity as are reproduced by the Rent Controller in para no.2 of its judgment, which reads as follows:-

“(1) Demised premises being required by the applicants (landlords) for personal use and occupation of applicants and their family members. Applicant No.1 is working privately as Accountant and applicant No.2 is working as Manager at J.C.T. Mill, Phagwara. Demised premises is located in commercial viable place of Mandi Fantonganj, Jalandhar, wherein many wholesale dealer and families of general merchant and other cereals shops are lying situated. So, applicants intend to settle independent business of pulses and other items therein. Son of applicant

No.1 is studying in B.Com, whereas son of applicant No.1 is studying in 11th standard class and thereby, applicants also intend to setup independent business for their sons. There has been another shop occupied by another tenant M/s Aggarwal Traders (adjoining to demised premises) and that, entire area is required by applicants for their personal use and necessity and thereby separate eviction application qua that shop is also filed.”

In the Rent petition, landlords also pleaded that they are not owners and in occupation of any other property in Jalandhar and have not got vacated any property without any sufficient reasons since the enactment of the Rent Act.

20 A plain reading of the aforesaid pleadings, makes it evident that shop in question and the adjoining shop which at the time of filing of rent petition was occupied by M/s Aggarwal Traders, are required by respondents No.1 and 2 and their sons for starting a new business. From the perusal of Ex.P-O and Ex.P-O1, it is evident that the adjoining shop owned by respondents No.1 and 2 and occupied by M/s Aggarwal Traders, was later on got vacated with the intervention of the Court and is now possessed by respondents No.1 and 2. However, it has come on the record by way of evidence that the said shop which was earlier in possession of M/s Aggarwal Traders and the demised shop are required by respondents No.1 and 2 and their family members for starting their independent business. Both these shops are situated on the ground floor and are having commercial potential. In the given circumstances, it cannot be said that respondents No.1 and 2 willfully suppressed certain material facts from the Court at the time of filing of the rent

petition. Thus, the petitioner has failed to prove that there was concealment of certain vital facts on the part of respondents No.1 and 2, while filing the eviction petition against petitioner and respondents No.3 and 4 with regard to aspect of personal necessity.

21 It is well settled legal position that the landlord is the best judge of his business requirements and neither the tenant nor the Court can substitute its opinion of wisdom on the landlord and dictate terms in this regard to the landlord. No doubt, one another shop adjoining to demised shop is also available with respondents No.1 and 2. However, the case of respondents No.1 and 2 from the very beginning is that both demised shop and the adjoining shop which was earlier occupied by M/s Aggarwal Traders are required by respondents No.1 and 2 for the purpose of running an independent business of their family. So the plea taken by the petitioner that alternative accommodation i.e. shop which was earlier occupied by M/s Aggarwal Traders is available with respondents No.1 and 2 to start their business is not tenable. Further, the plea taken by counsel for the petitioner that respondents No.1 and 2 are already pre-occupied and son of respondent No.1 is working in a bank while another child is studying, is not sufficient to negate the plea of the bonafide requirement raised by respondents No.1 and 2. Even, the plea taken by counsel for the petitioner that the pleadings made by the landlord with regard to their personal necessity in the eviction petition are not in conformity with the requirement of Section 13 (3) (a) (i) (b) and (c) of the Rent Act is also misplaced. The counsel for the petitioner during arguments failed to show any such flaw in the pleadings, in this context as could be fatal to the case of respondents No.1 and 2.

22. It is settled law that when an ejectment petition is filed on the ground of bonafide personal necessity, the Court is required to proceed on the premise that demised premises is required by landlord for his bonafide personal use and occupation and not otherwise. It is also settled position of law that bonafide requirement means that requirement must be genuine and honest and not tainted with any ulterior motive and is not mere desire or wish. However, in the present case, the counsel for the petitioner has failed to brought to the notice of this Court any fact which would throw doubt on the bonafide requirement of the landlord. Further, personal necessity of landlord is a question of fact and should not be normally interfered in a revision petition.

23. Furthermore, the appellate Court in order to safeguard, the rights of tenants, rightly observed that in case demised shop is not used by respondents No.1 and 2 after vacation of the same by the tenant, they can get back their possession over the demised shop as per provision of Section 13 (4) of the Rent Act.

24. In light of the above, this Court is of the view that the findings recorded by the learned Courts below are based on correct appreciation of pleadings and evidence and are pure findings of facts, which are immune from challenge in the present revision petition, unless there is any illegality or perversity in the impugned judgments rendered by both the Courts below. In the instant case, the counsel for the petitioner has failed to bring to the notice of this Court in any manner that the impugned judgments suffer from any illegality or infirmity.

25. For the foregoing reasons, I do not find any merit in the petition. Accordingly, the same is dismissed.

30.01.2024

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No