



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-7504-2023
Reserved on: 16.07.2024
Date of Decision: 19.07.2024

BRIJ MOHAN

.... PETITIONER

Vs.

NIRMAL RANI

.... RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by: - Mr. Amit Dhawan, Advocate, for the petitioner.

DEEPAK GUPTA, J.

Tenant is before this Court against concurrent findings of the Courts below. In rent petition titled '*Nirmal Rani Vs. Brij Mohan*' [CNR N:PBJLA0-000347-2017], tenant-Brij Mohan (*petitioner herein*) has been ordered to be ejected from the demised shop by ld. Rent Controller, Nakodar in a petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 [for short 'the Act'] filed by the landlady Nirmal Rani (*respondent herein*). Said order has been upheld by the Appellate Authority vide order dated 27.10.2023 in *Rent Appeal No.82 of 2019* titled *Brij Mohan Vs. Nirmal Rani*.

2. Ld. counsel for the petitioner-tenant contends that both the Courts wrongly held the necessity projected by the landlady to be *bona fide* ignoring the fact that landlady is residing abroad along with her son out of the country. It is also ignored that adjoining shop was got vacated from another tenant, which is lying vacant and therefore, the landlady, can start her business in that adjoining shop. Besides this, earlier a petition had been filed by the husband of the landlady, which was dismissed.

3. After considering submissions of ld. counsel for the petitioner, this Court does not find any merit in this revision petition.

4. Demised shop situated on ground floor is a part of triple storey building No.2916A situated in Mohalla Katra Missran, Nakodar, which is a commercial place. As per the contentions raised by the landlady, she along with her son wanted to make maximum use of their property and so, she requires the demised shop for her personal use and occupation, as she wants to open a showroom in order to carry on the business of grocery items, crockery items, archies gallery, readymade garments and toys for kids, after converting the ground floor of the entire unit into one big hall by giving a new look to the complex. In order to prove the said ground, the landlady Nirmal Rani herself stepped into the witness box as AW1 and deposed in this regard. During her lengthy cross-examination, her plea regarding the *bona fide* personal necessary could not be shattered, as nothing could be elicited so as to disbelieve her.

5. The contention of ld. counsel for the petitioner to the effect that another shop situated in the same building on the ground floor got vacated from another tenant Dr. Paramjit Kaur is lying vacant, has no merit. It is the specific case of the landlady that she wants to convert the entire ground floor into a big hall so as to open a showroom. The tenant cannot dictate the landlord as to what should be his/her necessity or in how much accommodation, she should adjust herself. In case the landlady wants to open a big showroom by converting the entire ground floor into a showroom, neither the tenant can object in this regard nor the Court can direct the landlady to go as per the suggestions of the tenant.

6. The contention that landlady is presently residing abroad with her son, has also no merit. Merely because during the pendency of these proceedings, the landlady is residing outside, cannot be a ground to reject the

petition. The landlady is not required to wait so as to live in India till the property is vacated. As soon as the property is vacated, she intends to do her business by converting the ground floor into a big hall and to open a showroom and the said contention of landlady cannot be disbelieved.

7. The contention that earlier petition filed for *bona fide* requirement by the husband of the petitioner was dismissed vide judgment Ex.R2 and so fresh petition cannot be filed, has absolutely no merit because the earlier petition was for the *bona fide* requirement of the husband of the landlady Nirmal Rani, which was not considered to be *bona fide* requirement by the Court. However, present petition has been filed by the landlady Nirmal Rani after the death of her husband and therefore, in case she wants the demised shop for starting her business by opening a showroom by converting the entire ground-floor into a hall, for her livelihood, a fresh cause of action has arisen in favour of the landlady. As has been held in catena of authorities by this Court, a landlord, who establishes his *prima facie* case regarding his necessity, the Court is entitled to raise a presumption in his favour to the effect that the necessity is *bona fide*. Onus then shifts upon the tenant to show that the plea of landlord is not *bona fide*.

8. In the present case, the landlady has produced oral as well as documentary evidence to show that she is a widowed lady and that after the death of her husband, she wants to start business in rented premises. There is nothing to show on record that she is incapable of running the business.

9. On account of aforesaid discussion as above, it is held that there is no merit in the present petition.

10. Counsel for the petitioner has prayed for granting reasonable time so as to vacate the premises.

11. The appeal of the petitioner by the appellate authority has been dismissed on 27.10.2023. The petitioner-tenant is in possession of the property since December, 1991. The landlady has been deprived of the property despite the ejectment order passed by the Rent Controller in May 2019. At the same time, it is necessary to notice that the petitioner-tenant is running a business in the demised shop.

12. Considered all the aforesaid facts and circumstances, the petitioner-tenant is granted a period till 30.09.2024 so as to vacate the premises. It is however, subject to the condition that tenant-petitioner herein shall clear all the arrears, if any within 15 days. Further, in case the petitioner-tenant fails to vacate the premises upto 30.09.2024 and the landlady is compelled to file the execution petition so as to seek the actual possession of the demised property, then the petitioner-tenant will be liable to pay the mesne profits/user and occupation charges @ ₹50,000/- per month w.e.f. 01.10.2024 onwards till the demised shop is actually vacated by him.

13. This petition is disposed of accordingly.

19.07.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>