



115

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

CR-1127-2025 (O&M)
Date of decision: 21.02.2025

Ashwani Kumar

...Petitioner

Versus

Pawan Kumar (since deceased) through his LRs

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amit Dhawan, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. Challenge in the present revision petition is to the judgment dated 14.07.2022 passed by the Rent Controller, Jalandhar vide which the eviction petition filed by the respondent under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as “the 1949 Act”) as amended up to date, for the eviction of the present petitioner from the shop in question situated at Mohalla No.29, Jalandhar Cantt had been allowed. Challenge is also to the judgment and decree dated 22.10.2024 vide which the appeal filed by the present petitioner had been dismissed.

2. Learned counsel for the petitioner has raised two grounds of challenge to the judgments passed by the Rent Controller as well as the Appellate Authority. First ground raised on behalf of the petitioner is to the effect that there is no relationship of landlord and tenant between the



petitioner and respondent and once there was no relationship of landlord and tenant then the question of respondent seeking eviction of the petitioner from the premises in question does not arise. It is further submitted that the respondent-Pawan Kumar, who had appeared as PW1 had in his cross-examination, stated that he had not taken any consent in writing from all the legal heirs before filing the petition and had also not disclosed to them about filing of the present eviction petition. It is submitted that from the said piece of evidence, it was apparent that other co-sharers were objecting to the said eviction petition and thus, on the said ground alone, the eviction petition deserves to be dismissed. It is further submitted that since the respondent-landlord was claiming landlordship on the basis of being the son of Parmeshwari Devi, who was the admitted landlord, thus, it was incumbent upon the respondent-landlord to provide details of all the legal heirs of the said Parmeshwari Devi and to have consent of all the said legal heirs and since the same was missing, thus, the impugned judgments deserve to be set aside and the present revision petition deserves to be allowed.

3. Second ground of challenge raised on behalf of the petitioner in the present revision petition is that the eviction petition had been filed by the respondent-landlord for his and his sons' necessity. It is submitted that in the cross-examination of the said PW1, the respondent-landlord had admitted that his son was doing job in MES in the year 2017 and the said fact had not been disclosed in the eviction petition and thus, the same proves that the requirement of the respondent is not bona fide.

4. This Court has heard learned counsel for the petitioner and has perused the paper book and finds that impugned judgments passed by the



Rent Controller as well as the Appellate Authority are in accordance with law and deserve to be upheld and the revision petition being meritless, deserves to be dismissed for the reasons stated hereinafter.

5. It is not in dispute that the respondent-Pawan Kumar had filed a petition under Section 13 of the 1949 Act for eviction of the premises in question which was shop No.1, which was part of property No.9, shown as red in the site plan attached with the eviction petition and was situated at Mohalla No.29, Jalandhar Cantt. The boundaries of the said property had also been mentioned in the eviction petition. The eviction was sought on three grounds. First being, that the present petitioner was in arrears of rent w.e.f. July, 2000 at the rate of Rs.250/- per month. Second being bona fide requirement and third being that the petitioner-tenant had ceased to occupy the shop in question from about last one year. The pleadings with respect to bona fide requirement as detailed in para 4(b) of the eviction petition are reproduced hereinbelow:-

“b) That the shop in question is bonafide required by the petitioner and his son namely Vishal to open a new business of electronic goods after removing the intervening walls in between the shops in question and with that of adjoining shops which are in possession of Ashwani Kumar and legal heirs of Mohan Lal. It is not out of place to mention here that one shop in between the shop of Jatinder Pal Singh and the shop given to Mohan Lal is already in possession of the petitioner as the same has been got vacated by filing an ejectment petition titled as Pawan Kumar Versus Amarjit, decided on 5.10.2012. In that petition Amarjit handed over the possession of the shop in his possession to the petitioner. In this manner the petitioner intends to start a new business of



electronic goods by demolishing intervening walls of all the four shops and want to construct a big showroom for his son. The son of the petitioner is unemployed. The shop in question is required as bonafide necessity of landlord and adjoining shops shall also be merged with that of shop in dispute and will constitute in one unit where business of electronic goods shall be opened and the same has great career and future for settlement of petitioner and his son and the need of the petitioner and his son is bonafide. The petitioner and his son have enough experience and sufficient knowledge about the electronic goods. The tenanted shop is situated in a very thickly populated area of the Jalandhar Cantt and is the most suitable for the business to be set up by the petitioner and his son. So, the petitioner requires shop in question which is in occupation of the respondent as tenant for his own bonafide need and necessity for starting the business of electronic goods”

6. Although, the eviction petition has not been annexed along with the present revision petition but during the course of arguments, learned counsel for the petitioner has handed over the eviction petition as well as reply to the said eviction petition which documents are taken on record as Mark “A”. It would be relevant to note that the said eviction petition is dated 01.05.2015 and the same was filed on 02.05.2015. A perusal of the abovesaid pleadings with respect to bona fide requirement would show that the respondent-landlord had specifically detailed his and his sons’ requirement for getting the shop in question vacated and had stated that the respondent-landlord along with his son wanted to start a new business of electronic goods by demolishing the intervening walls of all the four shops and wanted to construct a big showroom. It was further stated that the



tenanted premises was situated in a very thickly populated area and was most suitable for their business.

7. The Rent Controller, vide judgment dated 14.07.2022, had allowed the said eviction petition on the ground of bona fide requirement. While doing so, the Rent Controller took into consideration the fact that the respondent-landlord had appeared as PW1 and had supported the case setup by him in the rent petition, more so, with respect to bona fide requirement. It was noticed that even the son of the respondent namely Vishal Kumar had got himself examined as PW2 and had deposed along the same lines as PW1. The documents i.e., copy of rent agreement Ex.P1, conveyance deed Ex.P2 and the site plan Ex.P3 were also duly considered. The Appellate Authority, vide judgment dated 22.10.2024, had dismissed the appeal filed by the present petitioner and on the aspect of bona fide requirement, had observed that the evidence of PW1 and PW2 fully supported the averments made in the eviction petition and that the oral testimony of both the said witnesses fully proved the factum of bona fide necessity qua the shop in question.

8. The Appellate Authority had relied upon the judgment of the Hon'ble Supreme Court in the case of *Sarla Ahuja Vs. United India Insurance Company Limited* reported as *1998(8) Supreme Court Cases 119*, in which it was observed that the Rent Controller shall not proceed on the presumption that the requirement of the landlord is not bona fide and when the landlord asserts that he requires the building and shows a prima facie case then it is open to the Rent Controller to draw the presumption that the requirement of the landlord is bona fide and that it is not for the tenant to



dictate terms to the landlord as to how he should adjust himself without getting the possession of the rented premises. Further reliance was placed upon the other judgments of this Court in which also it had been held that the respondent-landlord is the best judge of his needs and the tenant cannot dictate terms to him. Learned counsel for the petitioner has not been able to show any perversity or illegality in the said observations made by the Rent Controller and the Appellate Authority on the issue of bona fide requirement nor has cited any judgment in his favour and thus, this Court is of the view that the judgments passed by the Rent Controller and Appellate Authority holding that the requirement of the respondent-landlord was bona fide deserve to be upheld.

9. Both the arguments raised on behalf of the petitioner do not call for setting aside the concurrent findings of fact by both the Rent Controller as well as the Appellate Authority. With respect to the plea raised on behalf of the petitioner on the aspect of there being no relationship of landlord and tenant between the parties, it would be relevant to refer to paras 1, 2, and 3 of the eviction petition which are reproduced hereinbelow:-

***“1. That the petitioner is owner of the property no. 9 situated at Mohalla No. 29, Jalandhar Cantt. Previously the property was owned by Hakim Ram son of Sh. Wazira Ram and after his death the property was inherited by Ram Asra son of Hakim Rai and after his death the property was inherited by Parmeshwari Devi wife of Ram Asra. After the death of Parmeshwari Devi the petitioner became owner of the property in question alongwith other legal heirs of the deceased. The property in question came to the share of the petitioner.*”**



2. *That during the life time of Ram Asra he entered into rent agreement with respondent and the tenancy commenced from 30.6.1979. The respondent agreed to pay Rs. 250/- per month as rent and since July 2000 the respondent has not paid the rent to the petitioner. Copy of the rent agreement, conveyance deed and site plan are attached herewith.*

3. *That the respondent after taking the property in question has failed to make the payment of rent since July 2000 @ Rs. 250/- per month to the petitioner.”*

10. The present petitioner had raised the plea of locus standi in para No.4 of preliminary objections of his written statement and also in para No.1 on merits. Para No.4 of preliminary objections of his written statement and also para No.1 on merits are reproduced hereinbelow:-

“Para No.4 of Preliminary Objections:-

4. *That the petitioner has no locus standi to file the present petition as after the death of Smt. Parmeshwari Devi, the petitioner has not even approached the answering respondent claiming himself as owner of the suit property. The respondent has taken the shop on rent from Ram Asra and after his death, his widow Parmeshwari Devi was receiving rent from the respondent. After the death of Smt.Parmeshwari Devi, none have approached the respondent for the rent. The respondent many times offered the rent but none has come to receive the same.*

Para No.1 on merits:-

1. *That the para no.1 is incorrect to the extent that the property in dispute was owned by Hakim Ram son of Wazira Ram and after his death, the property was inherited by Ram Asra son of Hakim Ram and after his death, the property was inherited by Smt. Parmeshwari Devi. In fact, the property in dispute was let out by Sh.Ram Asra to the answering*



respondent as detailed in the preliminary objections and after his death, his widow was receiving the rent from the respondent and thereafter the answering respondent has no knowledge regarding the ownership of the property in dispute. The petitioner never collected any rent from the answering respondent and therefore he be directed to prove his ownership. However, in case this Hon'ble Court will assess the provisional rent, the answering respondent is ready to pay the same."

11. A perusal of the above pleadings would show that it was the case of the respondent-landlord that he was the owner of the property in question and had stated that previously, Hakim Ram was the owner and after his death, the property was inherited by Ram Asra and thereafter it was inherited by Parmeshwari Devi wife of Ram Asra and after the death of Parmeshwari Devi, the respondent-landlord became owner of the property in question along with other legal heirs and that the property fell into the share of the respondent-landlord. It was also stated that the present petitioner had not paid rent since July, 2000. In the written statement, the factum that the shop was taken on rent from Ram Asra and after his death, Parmeshwari Devi, mother of the respondent-landlord was receiving the rent was admitted by the present petitioner. It was also stated that the present petitioner had many times offered rent but none had come to receive the same. Further in para 1 on merits, it was stated by the present petitioner that after the death of the mother of the respondent, he had no knowledge regarding ownership of the property in question and that in case the Court was to assess the provisional rent, the petitioner was ready to pay the same. From the abovesaid facts, it is apparent that there is no specific and absolute denial of



the right of the respondent-landlord to receive the rent or the fact that he had inherited the property from Parmeshwari Devi.

12. The Rent Controller had, in para 11 of its judgment, recorded the fact that the present petitioner had already paid the arrears of rent assessed till 30.04.2015. Similar observations were made by the Appellate Authority in para 14 of its judgment. On a pointed query raised by this Court, learned counsel for the petitioner has stated that the assessment of provisional rent was done and in pursuance of the same, the rent as assessed was paid by the petitioner to the respondent and has further stated that no challenge was made to the order of assessment. In case the present petitioner was to put forth his objection to the effect that the respondent was not the landlord, then in that situation, the petitioner would have opposed/challenged the order of provisional assessment, as it is settled law that in case the relationship of landlord and tenant is disputed then there is no requirement for the Rent Controller to pass an order of provisional assessment of rent, nor the petitioner was required to pay rent to the person alleging himself to be the landlord i.e., respondent. Further perusal of para 12 of the judgment of the Rent Controller would show that it had been specifically recorded that the only contention raised on behalf of the petitioner was to the effect that the respondent was not the sole owner of the property in dispute and that the same was joint property.

13. Since, the respondent-landlord is admittedly one of the LRs of Parmeshwari Devi and Parmeshwari Devi has been admitted to be the landlord by the petitioner, thus, the respondent would come within the definition of landlord as defined under Section 2(c) of the 1949 Act,



inasmuch as, the said Section specifically provides that the landlord would also include every person who from time to time derives, title from the landlord. In the present case, the respondent would derive title from his mother, Parmeshwari Devi, on the basis of inheritance. Section 2(c) of the 1949 Act is reproduced hereinbelow:-

*“2(c). **“Landlord”** means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit, of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorised, **and every person, from time to time, deriving title under a landlord;**”*

14. Moreover, there is nothing on record to show that after the death of Parmeshwari Devi, the present petitioner had paid the rent to any of the other LR. The Appellate Authority had also come to a positive conclusion after considering the entire evidence that the relationship of landlord and tenant exists. The said finding is in accordance with law. Additionally, it would be relevant to mention that it is a matter of settled law that even if the respondent-landlord is taken to be one of the co-owners of the property in question then also he being the co-owner is entitled to seek eviction. With respect to the plea regarding other co-owners objecting to the eviction petition, learned counsel for the petitioner has very fairly submitted that in the written statement, no such plea had been taken, thus, the said plea raised is beyond pleadings and is not permissible. It is also not in dispute that no co-owner has appeared in the present proceedings to oppose the



present petition. It is a matter of settled law that in case the tenant wishes to succeed on the plea that some of the co-owners are objecting to the eviction of the petitioner, then, it is for him to show by virtue of positive evidence as to who the said co-owner is and as to whether the said co-owner is objecting to the eviction of the petitioner. It is not enough for the tenant to plead that there is some dispute between the co-owners inter se or that there is no consent in writing of the said co-owners and thus, it is for the tenant to show in positive terms that a co-owner is opposing his eviction, which has not been done in the present case. Moreover, no law has been cited by learned counsel for the petitioner in support of his arguments.

15. Even the second argument raised on behalf of the present petitioner to the effect that son of the respondent-landlord was doing job in MES in the year 2017 and thus, there was concealment in the eviction petition is also meritless. It is reiterated that the eviction petition was drafted on 01.05.2015 and was filed on 02.05.2015. The cross-examination of PW1 which has been referred to by the learned counsel for the petitioner would show that it had been stated by the said PW1 that his son Vishal Kumar was doing job in MES in the year 2017. No suggestion had been put to the said PW1 as to whether he was doing job in the year 2015 or not. Once, the eviction petition had been filed in the year 2015 and there is nothing on record to show that in the year 2015, i.e., on the date of filing of the eviction petition, the said Vishal Kumar was doing job in MES, thus, the question of concealment would not arise. Moreover, it is a matter of known practice that eviction petition takes several years to culminate and thus, it cannot be expected from the landlord or from his son to do no other work in the hope



of getting the vacant possession of the shop in question. There is nothing which stops the respondent or the son of the respondent from carrying on their work to earn their livelihood during the pendency of the eviction petition. The present case is also a classic case where sufficient time has elapsed since the filing of the eviction petition till its culmination, as the said eviction petition was instituted in May, 2015 and the order of eviction was passed by the Rent Controller in 2022 which was upheld by the Appellate Authority in October, 2024 and even till date, the possession has not been handed over by the petitioner to the respondent.

16. Keeping in view the abovesaid facts and circumstances, both the judgments passed by the Rent Controller and the Appellate Authority are in accordance with law and deserve to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

17. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

21.02.2025

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No