

CR-3549-2024 (O&M)

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2025:PHHC:014755



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

114

CR-3549-2024 (O&M)
Date of decision:31.01.2025

Sham Lal @ Shyam Lal Verma

... Petitioner

Vs.

Sehdev Arya (deceased) through Legal heir

... Respondent

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

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

Mr. Arnav Gupta, Advocate for the caveator/respondent.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed against the judgments dated 11.07.2019 passed by the Rent Controller, Hisar, whereby rent petition filed by the respondent/landlord was allowed and 07.05.2024 passed by the learned Appellate Authority, Hisar, whereby appeal preferred by the petitioner/tenant was dismissed.

2. Brief facts of the case as per rent petition are that the rent petitioner is owner and landlord of the demised premises which was taken on rent by the respondent from the petitioner in the year 1970 @ Rs.1200/- per month plus house tax, for the business of making iron grills, gates, jail and shutters etc. In the year 1996, rent of demised premises was increased to Rs.3000/- per month plus house tax. Thereafter, respondent requested the petitioner to get constructed one store and shed in the premises in question and to renovate main gate and office. Petitioner got constructed two stores, a



big shed and renovated the main gate and office of the demised premises, upon which rent of the premises was increased to Rs.5000/- per month plus house tax w.e.f. 01.04.2011 vide rent note dated 30.03.2001. It was alleged that always rent was increased by the respondent with the mutual consent of the petitioner. Therefore, no fair rent has been fixed in respect of the premises in question. Eviction of the respondent from the premises in question was sought on the following grounds:

(a) That respondent/tenant had neither paid nor tendered the arrears of rent of the shop in question @ Rs.5000/- per month since 01.08.2007.

(b) The petitioner/landlord required the premises in question for his bonafide personal necessity, as he is owner of one big building adjacent to the premises in question (on the western side) which consists of many rooms on the ground floor and on the first floor which were previously used by the applicant for running a guest house. Due to shortage of parking and other facilities attached to said guest house, business of the petitioner to run the said building as a guest house did not flourish and entire building is lying vacant and unused. Petitioner wanted to start PG (Paying Guest House) in the said building by renting/letting out the rooms on the ground floor and first floor of the said building, to the students and working men and women. For this purpose, petitioner wanted to demolish the present construction of the premises in question after getting it



vacated from the respondent and wanted to construct a common room and canteen along with parking area for the tenants of the PG. He also wanted to leave an open passage for ventilation purpose and wanted to construct an underground water tank for catering to the water needs of PG.

(c) Premises in question was best suitable place to use the same as parking area, common room, canteen, passage etc., because premises in question was situated adjacent to the proposed building of PG.

(d) Petitioner was a senior citizen having crossed the age of 78 years. He had only one married son who was busy in his own occupation of running a marriage palace known as Millennium Palace near the premises in question. Petitioner had no right, title, interest or connection with the said business of his son. He wanted to start his own business of running a PG in the adjacent building after getting the premises in question vacated from the respondent. He was an income tax payee for the last many years and had sufficient funds at his disposal to raise the construction and to start the above said business of running PG.

(d) Petitioner was not earning sufficient income from his profession of Advocate so he wanted to increase his income by starting a PG in the adjacent building after getting it vacated from the respondent.

(f) Petitioner had not got vacated any such or similar non-



residential building after the enforcement of the Act of 1949.

The petitioner did not own or possess any such or similar non-residential building in the urban area of Hisar. Petitioner was also owner of many rooms and shops which were part of property No.11/27, Block No.16, Hisar, but all these shops and rooms were in possession of tenants. Moreover, these shops and rooms were situated far away from the premises in question and were not suitable for running the PG proposed to be started by the petitioner. The petitioner was also owner of 1/5th share of SCF No.187, Sector-14, Pocket-A, Hisar but no construction had been raised on this plot by the petitioner and other co-sharers. Moreover, this SCF was situated at a distance of more than 3 kms from the premises in question, therefore, this plot was not at all suitable to the petitioner for running the proposed PG. The petitioner was also a co-sharer and co-owner in a residential house situated at Mohna Mandi, Hisar which was also situated at a distance of about one kilometer from the premises in question and was not at all suitable for running the proposed PG. Thus, only premises in question was most suitable for the bonafide personal necessity of the petitioner. The petitioner was also owner of 17/18 shops in this area which were all occupied by other tenants. Moreover, the same were not suitable for the above said purpose. It was averred that no such similar eviction petition had been filed by the petitioner on



the aforesaid grounds against the respondent and it was prayed that respondent be evicted from the premises in question. Hence, the present rent petition was filed.

3. On issuing of notice, respondent/tenant appeared and filed written statement taking preliminary objections on the ground of maintainability, cause of action, estoppel, concealment of facts etc. It was alleged that petition was malafide and counter-blast to the criminal complaint filed by the respondent against the petitioner and his associates, who were facing trial in case under Sections 420/467/471/120-B IPC instituted at the instance of respondent. Earlier petitioner filed Rent Petition No.31 dated 01.09.2007 against the respondent claiming the rent of demised shop @ Rs.5000/- per month on the basis of forged rent note dated 30.03.2001 and receipts in which the documents were sent to FSL Madhuban on the application of respondent and after inspection, said alleged rent note dated 30.03.2001 and receipts, were found to be fabricated documents. In order to pressurize the respondent, petitioner filed this petition on false and concocted grounds. Petitioner was a practicing lawyer and enrolled with District Bar Association, Hisar and in view of Advocate's Act and guidelines issued by the Bar Council of India, he was precluded from running any business like PG. It was averred that petitioner had concealed material facts that he was owing and occupying sufficient area which was much larger than the demised premises adjacent and near to the demised premises. Petitioner had made false declaration regarding non-occupation and non-vacation of such or similar non-residential



accommodation after the commencement of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred to as 'the 1949 Act'), rather petitioner and his family members had got vacated, let out and sold non-residential accommodation, but petitioner had concealed these material facts from the Court. On merits, it was submitted that the alleged rent note was a forged document. Rent of demised premises was never increased to Rs.5000/- per month. Petitioner had not disclosed as to what rate of rent was increased between the parties by mutual consent. The other material averments made in the petition were denied and it was prayed that rent petition filed by the petitioner be dismissed with costs.

4. Replication was not filed. On the basis of the pleadings of the parties, the following issues were framed:

- 1. Whether the petitioner is entitled for eviction of respondent from the demised premises on the grounds taken in the petition? OPP*
- 2. Whether the petitioner is estopped by his own act and conduct from filing the present petition? OPR*
- 3. Whether the petition is not maintainable in the present form? OPR*
- 4. Whether the petitioner has no cause of action to file the present petition? OPR*
- 5. Whether the petitioner has not come to the Court with clean hands? OPR*
- 6. Relief.*

5. Thereafter both the parties led their respective evidence. In order to prove his case, petitioner examined PW1 Hoshiar Singh Jangra, Draftsman, who prepared the site plan Ex.P1 of premises in question and



other properties of the petitioner. He also produced on record site plan Ex.P2 of the proposed construction to be raised on the premises in question.

PW2 Shatrughan Singh, Photographer, took the photographs of the property of petitioner at Ghora Farm Road near Malik Chowk, Hisar at the instance of petitioner. He produced on record photographs Ex.P3 to P19, showing construction of rooms on first and ground floor. Petitioner himself stepped into the witness box as PW3 and reiterated on oath the averments as made in the rent petition. He placed reliance upon the documents Ex.P1 and P2 site plans, Ex.P3 to P19 photographs, Ex.P20 receipt of electricity bill, Ex.P21 Electricity bill, Ex.P22 certified copy of order dated 22.05.2010, Ex.P22 certified copy of affidavit of Sham Lal tendered in evidence as Ex.RW1/A and his cross-examination dated 06.02.2013, Ex.P23 certified copy of site plan, Ex.PA statement of property tax for the year 2014-15 and 2015-16, Ex.PB and Mark 'A' receipts and EX.PW2/B receipt issued by Parbhat Digital Studio.

6. To rebut this evidence of the petitioner, respondent/tenant examined Naresh Kumar, Clerk, M.C., Hisar as DW2 (no witness as DW1 had been examined), who produced the house tax assessment record for the year 1995-96 Ex.DW2/A, for the 2002-03 Ex.DW2/2, for the year 2006-07 Ex. DW2/3, for the year 2008-09 Ex.DW2/4, for the year 2011-12 Ex.DW2/5. He also deposed that property was recorded at Sr. No.1. Document Ex.PA was record of such property and house tax deposit receipt was Ex.PB.

DW3 Rajbir, Revenue Patwari produced *aks shijra* of total land



measuring 22 kanals 11 marlas comprised in khasra No.1805 to khasra No.1816 and proved copy of same as Ex.DW3/1.

DW4 Sham Lal respondent/tenant while appearing as his own witness has repeated the averments as made in the written reply and has placed reliance upon Ex.R1 certified copy of order dated 21.05.2009, Ex.R2 certified copy of order dated 04.06.2009, Ex.R3 certified copy of statement of Sham Lal dated 04.06.2010, Ex.R4 certified copy of statement of counsel for petitioner dated 04.06.2010, Ex.R5 certified copy of order dated 31.05.2010, Ex.R6 certified copy of order dated 20.12.2010, Ex.R7 certified copy of order dated 05.10.2011, Ex.R8 certified copy of order dated 23.09.2011, Ex.R9 certified copy of statement of counsel for petitioner dated 05.10.2011, Ex.R10 certified copy of statement of counsel for respondent dated 05.10.2011, Ex.R11 jamabandi for the year 2013-14, Ex.R12 certified copy of judgment dated 30.04.2013 passed in rent petition No.3 of 2017, Ex.R13 certified copy of document i.e. Rent deed tendered in evidence, Ex.R14 certified copy of statement of RW-2 Gulshan Rai, Ex.R15 attested copy of report dated 22.01.2013 in Sehdev Arya Vs. Sham Lal, Ex.RA attested copy of statement of Sham Lal dated 24.06.2009 Ex.PB certified copy of judgment dated 03.11.2015 passed by Appellate Authority, Hisar, Ex.DW2/1 copy of extract of assessment register, Ex.DW2/2 to 5 copy of extract of Tax demand register and Ex.DW3/1 aks-shizra.

7. Vide judgment dated 11.07.2019 passed by learned Rent Controller, Hisar, rent petition of the landlord/petitioner was allowed and the tenant/respondent was directed to vacate the demised premises within



a period of three months from the date of order. Aggrieved of the said order, tenant – Sham Lal filed an appeal before the Appellate Authority, Hisar which was dismissed vide judgment dated 07.05.2024 by the Court of learned Additional District Judge, Hisar. Hence, petitioner – Sham Lal/tenant has knocked the doors of this Court by way of filing the present revision petition.

8. Learned counsel for the revision petitioner/tenant has contended that demised premises was taken on rent from the petitioner in the year 1970 @ Rs.1200/- per month plus house tax, but said rate of rent was not raised to Rs.5000/- per month as claimed by the petitioner. He has further contended that petitioner had never run any guest house as alleged. The Courts below have erred in holding that there exists a guest house of the respondent/landlord situated at the main road, which is without parking facility etc. When existence of guest house is not proved then there is no question of raising construction of parking area, common room, water tank etc. for said guest house. The entire building which is alleged to be a guest house of the petitioner is lying vacant and unused and the photographs Ex.P3 and P19 that have been produced on record are not of said guest house. Petitioner/landlord has not proved on record any site plan of such guest house, passed by the Municipal Corporation in the year 1995 and no record of said guest house from the period 1995 to 2010 is available with the petitioner, for which the Courts below should have drawn adverse inference. He contended that Ex.P22 and Ex.P23 tendered in evidence are not admissible as it is well settled law that stray sentences



elicited in the cross-examination could hardly be construed as admission.

He argued that the petitioner failed to prove that he required the premises in question for his bonafide personal necessity, when no such guest house as claimed by the petitioner was proved to be in existence at the spot. Petitioner is owing and occupying sufficient area which is much larger than disputed premises and is adjacent to the disputed premises which fact has been concealed by the petitioner. He urged that the petitioner/landlord had not disclosed all his properties in the petition with malafide intention. He further submitted that during pendency of the appeal, respondent/landlord expired on 17.10.2022 and his son was impleaded as his L.R. As per pleadings, son of respondent was running a marriage palace known as 'Millennium Marriage Palace' near the demised premises and he could not be said to be dependant upon the respondent. Thus, need of landlord ceased to exist during pendency of appeal by tenant. In this respect, he placed reliance upon **Kedar Nath Agrawal (dead) Vs. Dhanraji Devi (Dead) by LRs. 2004 (2) RCR (Rent) 498, Raj Kumar Vij Vs. Hem Raj Singla & others, 2008(1) RCR (Civil) 44 and Hasmat Rai & another Vs. Raghunath Prashad, 1981(2) RCR (Rent) 401** and prayed that the impugned judgments passed by the Courts below be set aside and eviction petition filed by the landlord/respondent be dismissed.

9. Per contra, learned counsel for the caveator/respondent contended that the petitioner required the premises in question for his bonafide necessity for the purpose of construction of common room, canteen and parking area for PG, already constructed on land adjacent to



the premises in question. He argued that premises in question was most suitable for raising of aforesaid construction for the business of petitioner/landlord. While placing reliance upon decision of Hon'ble Supreme Court in **Shakuntala Bai & others Vs. Narayan Dass & others, 2004 (1) RCR (Rent) 580** and decision rendered by this Court in **Kamaljit & others Vs. Gudial Singh & others passed on 05.07.2017 in CR-1785-2008** and **Krishna Ornaments & others Vs. Phera Singh dated 19.03.2020 in CR Nos.5962, 3310 and 3311 of 2012**, he submitted that with the death of landlord during pendency of the appeal, the ground of personal bonafide requirement, in rent eviction petition would not come to end. He further submitted that findings recorded by both the Courts below while justifying in the facts and circumstances of the present case does not call for any interference.

10. I have heard learned counsel for the parties and have gone through the relevant record.

11. In the present petition, eviction of respondent/tenant has been sought on the ground of bonafide personal necessity for raising construction of parking facility, water tank, common room etc. for the guest house which was being run by the petitioner, but now it was lying vacant and unused as the guest house was not having the aforesaid facilities. Though, existence of guest house is denied by the respondent/tenant, but he himself tendered in his evidence Ex.R12 copy of judgment dated 30.04.2013 in earlier rent petition titled as 'Sehdev Arya Vs. Sham Lal. In para 10 of the judgment, it has been specifically mentioned that respondent had deposed that there was



guest house near his shop and the 'Millennium Marriage Palace' was behind the guest house. Thus in the earlier litigation, respondent/tenant has admitted the existence of Guest House.

12. It is the claim of the tenant that petitioner was in possession of another vacant land adjacent to the guest house which could be used for the purpose of construction of parking area, canteen etc. for guest house, but no evidence in this respect has been adduced by respondent. Site plan Ex.DW3/1 is merely an *aks shijra* of the total land measuring 22 kanals 11 marlas comprised in khasra No.1805 to khasra No.1816 owned by the petitioner/landlord and it does not depict any portion which was lying vacant and could be used by the petitioner for the aforesaid purpose. So there is no such evidence on record that petitioner was in possession of sufficient vacant land to serve his purpose. From the evidence on record, it is evident that tenant/respondent is in occupation of the disputed property since the year 1970 and after such a long period of time, the personal necessity of the petitioner is bonafide.

13. This plea of leaned counsel for the revision petitioner is also without any substance that the landlord/petitioner has concealed the material facts from the Court and has not disclosed the details of his all properties. The petitioner/landlord has disclosed the details of his all properties in the pleadings and also asserted that the same were not suitable for the purpose for which the demised premises were required by him. The Appellate Authority has rightly held that with changing times, needs of people have changed and people require luxurious amenities while availing the facilities



of paying guest house and value and potential of paying guest house with parking area, common room and canteen etc. would rise manyfold in comparison to a paying guest house without such amenities and as such the need of the petitioner/landlord was bonafide, the demised premises being the most suitable property for his requirement.

14. Apex Court in **Ragavendra Kumar Vs. Firm Prem Machinery and Co. 2000(1) RCR 135** has also held that “landlord is the best judge of his requirement for residential or business purpose – landlord has complete freedom in the matter.”

15. Appellate Authority has rightly held that once the petitioner proved that he required the premises in question for his bonafide personal necessity, it being the most suitable property for his requirement, then onus shifted on tenant to prove that the need of landlord was not bonafide and petitioner had other suitable land available to serve his purpose, which evidence is lacking.

16. Learned counsel for the revision petitioner also laid much emphasis on his this contention that in view of subsequent death of landlord/petitioner during pendency of the appeal, the personal necessity of owner came to an end and as such the eviction petition was liable to be dismissed. On the other hand, learned counsel for the caveator/landlord contended that once order of eviction had been passed by the Rent Controller, the subsequent death of landlord/owner would not adversely effect the rights of the legal heirs.

17. Hon'ble Supreme Court of India in **Usha P. Kuvelkar & others**



Vs. Ravindra Subrai Dalvi, 2008(1) SCC 330 held that question, since the landlord had died, the need had expired with him and that the question will have to be examined again regarding the bonafide personal need of the landlord, is no more *res integra* and is covered by decision of the Apex Court in **Shakuntala Bai & others Vs. Narayan Dass & others, 2004 (1) RCR (Rent) 580.**

18. In **Shakuntala Bai's case (supra)**, the Hon'ble Supreme Court after discussing the previous judgments in the case of **Phool Rani (Smt) & others Vs. Sh. Naubat Rai Ahluwalia (1973) 1 SCC 688** and **Shantilal Thakordass & others Vs. Chimanlal Maganlal Telwala (1976) 4 SCC 417** has held as under:

“The bona fide need of the landlord has to be examined as on the date of institution of the proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as his heirs are fully entitled to defend the estate.”

19. Hon'ble Supreme Court in **M/s Speedline Agencies Vs. M/s T. Stances & co. Ltd. 2010 (2) RCR (Rent) 229** again drew a clear distinction between the case where the death of landlord occurred after the decree of eviction was passed and where death of landlord occurred prior thereto and referred to its earlier decision in **Gaya Prasad Vs. Pradeep Srivastava, 2001(1) R.C.R (Rent) 221**, wherein it was observed as under:-

“15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many



many events are bound to take place which might happen in relation to the parties as well as the subject matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.”

20. Thus, in abovesaid decision, it was specifically held that death of landlord after passing of eviction does not *ipso facto* destroy the accrued right under the decree.

21. Thus legal position is well settled that bonafide need of landlord has to be examined as on the date of institution of proceedings and if a decree for eviction is passed, the death of landlord, during pendency of the appeal preferred by the tenant, will make no difference as his heirs are fully agreed to defend the case. In the instant case also merely because the original landlord/petitioner died during pendency of the appeal preferred by the tenant cannot be a ground to non-suit the legal heirs, when order of eviction had already been passed by the Rent Controller. Case law cited by learned counsel for tenant/revision petitioner is of no help to him it being based on distinguishable facts.

22. While exercising revisional jurisdiction, the power of High Court is confined only to find out that the findings of the fact as rendered by Rent Controller or the Appellate Authority do not suffer from any error of law and it cannot re-appreciate evidence on record.

23. In the present case, the order of ejectment passed by Rent Controller and affirmed by Appellate Authority are based upon proper appreciation of evidence and this Court neither finds any perversity in the



findings of facts as recorded by the Courts below nor finds any error of law.

24. As there is no merit in the present revision, the revision petition stands dismissed. However, revision petitioner/tenant is allowed a period of two months for handing over the vacant peaceful possession of the demised premises to respondent.

25. Pending application(s), if any, also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

31.01.2025
harjeet

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |