

(1985) 07 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 802 of 1985 and C.M. No. 1903-CII of 1985

Manak Lal Tayal

APPELLANT

Vs

Jog Dhayan Singal

RESPONDENT

Date of Decision: July 9, 1985

Citation: (1986) RCR(Rent) 359

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: Bhoop Singh, for the Appellant; M.L. Sarin, for the Respondent

Final Decision: Dismissed

Judgement

J.V. Gupta, J.

This is tenant's petition against whom eviction order has been passed by both the authorities below.

2. The landlord Jag Dhian Singal sought ejectment of his tenant Manak Lal Tayal from the premises in dispute inter alia on the ground of personal necessity. The application was filed on 14th January, 1983. It was pleaded therein that his wife had died on 4th October, 1982 and at present he is living in Chandigarh alongwith his three minor children Out of these three minor children, one is the son aged about 15 years and the two are daughters aged about 13 years and 10 years respectively. Since there was nobody with him to look-after the children at Chandigarh and that their uncle and other members of the family resides at Jind where the demised premises are situated, he wanted to keep his children there at Jind and, thus, the requirement was bonafide. In the written statement, the tenant controverted these allegations.

3. During the pendency of the application, the landlord was remarried in July, 1983. The wife which he married has a daughter from her earlier husband. Thus, an amendment was sought in the ejectment application that she being the step-mother and there already being a daughter with her, the necessity of shifting the three

children from the first wife was still there.

4. After the evidence, the learned Rent Controller came to the conclusion that he was fully satisfied that the requirement of the landlord was most bona fide as he wanted to see his children happily and comfortably away from the hands of their step mother. Consequently, eviction order was passed.

5. The tenant preferred an appeal against the said order of ejectment dated 10th November, 1983. The appellate authority vide order dated 5th November, 1984, sent for a report from the Rent Controller after allowing the amendment of the petition as to plead an additional ground of personal necessity and also allowed the parties to lead evidence. The Rent Controller made his report dated 19th December, 1984. It was held therein that from the evidence on the record, it could not be held that the relations between the children of the landlord from his first wife and the second wife have become strained and they cannot live together in the same house. However, objections to the said report were filed on behalf of the landlord. The learned appellate authority after appreciating the entire evidence came to the conclusion that the need put forward by the landlord is genuine and the landlord is entitled to get the house vacated on the ground of personal necessity. Thus, the finding of the Rent Controller vide order dated 10th November, 1983 was maintained. Dissatisfied with the same, the tenant has filed this petition in this Court.

6. During the pendency of this petition, the tenant also moved an application i. e. Civil Miscellaneous No 1903-CII of 1985 for seeking the amendment of the written statement. That application was ordered to be heard along with the main case.

7. At regards the laid application, suffice it to lay that such an application for leading additional evidence on the ground for which the amendment is being sought was also moved before the appellate authority. Surprisingly enough, the tenant did not pursue that application. Moreover, no such ground was taken in this petition while riling the revision petition. It was subsequently that the said application was moved in this Court. Thus, from the conduct of the tenant, it is quite evident that the said application has not been filed bona fide. Rather, the same has been riled to prolong the litigation. Consequently, the Civil Miscellaneous petition stands dismissed.

8. The Learned Counsel for the Petitioner contended that the present accommodation in occupation of the landlord at Chandigarh was more than sufficient and it has been wrongly held by the authorities below that the landlord bona fide requires the premises situated at Jind.

9. After hearing the Learned Counsel for the parties and going through the relevant evidence on the record. I do not find any merit in this petition. It has come in the evidence that the tenant was transferred from Jind to Rohtak earlier and then from Rohtak to Narwana. At present, he is posted at Narwana, where, according to him, he has taken a house on rent. The tenant in his statement dated 18th December,

1984 has admitted that his one son is a student of 5th class where as his elder son is in the Engineering College at Assam. Thus, it appears that the tenant was no more in occupation of the demised premises. He is just hanging on to delay his ejectment for some ulterior motive On the appreciation of the evidence, it has been concurrently found by both the authorities below that the requirement of landlord was bona fide and that being a finding of fact is not to be interfered with in revisional jurisdiction. Moreover, as observed earlier, the tenant was no more in occupation of the demised premises as he was transferred from Jind to Rohtak and then to Narwana where he is residing at present in a rented house as admitted by him. Consequently, this petition fails and is dismissed with costs. Costs assessed Rs. 500/-. However, the tenant is allowed one month's time to vacate the premises provided an undertaking in writing is filed within a week before the Rent Controller that he will vacate the premises and hand over vacant possession after the expiry of the said period had also deposits the arrears of rent up-to date.