

The Ferozpur Coop. Printing and Publishing Society Ltd. Vs Roshan Lal and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 19, 2000

Acts Referred: East Punjab Urban Rent Restriction Act, 1949 " Section 13(3)

Citation: (2000) 126 PLR 277 : (2000) 1 RCR(Rent) 229

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Arun Jain, for the Appellant; C.M. Munjhal, for the Respondent

Final Decision: Dismissed

Judgement

R.L. Anand, J.

This is a tenant's revision and has been directed against the order dated 4.11.1999 passed by the Appellate Authority,

Ferozpur who affirmed the order dated 6.6.1998 of the Rent Controller ordering eviction of the tenant from shop No. B1/1R/57 situated on Mall

Road, Ferozpur City, on the ground of personal necessity, for the reasons given in paras No. 10 to 14 of the judgment as follows :-

10. The learned counsel for the appellant then argued that both the respondents are running a shop in the same bazar in which the premises in

dispute are situated and there is no personal necessity for them to get this shop vacated. The contention of the applicants is that the said shop is

owned by Roshan Lal applicant alone and Som Parkash is an employee in that shop. This fact is controverted by the learned counsel for the

appellants on the ground that they are residing together in the shop, they have a single mess and therefore, Som Parkash cannot be considered to

be an employee of Roshan Lal having no right in the business. This contention of the appellants was not accepted by the learned Rent Controller. I

also do not find any merit in this contention. It is proved by Ramit Kumar, AW.2, Som Parkash himself appearing as AW.3 and Narinder Kumar

AW.4 that the said business is owned by Roshan Lal alone and Som Parkash is only an employee therein. If Som Parkash had a share in that

business as a proprietor he would have been the last person to depose so. Moreover, there is no evidence produced by the appellants to prove the

ownership of Som Parkash to the said business.

11. In this manner, it is proved that Som Parkash is not in occupation of any shop. He wants to start his own business. He has the expertise and

the knowledge to start this business because he has been working as such in the shop of Roshan Lal. His need to get the shop vacated on personal

necessity is, therefore, bona fide.

12. As regards the remaining half portion of the shop which is owned by Roshan Lal, the contention of the appellants is that the same cannot be got

vacated by the landlord for the personal necessity of his son. This contention was not accepted by the learned Rent Controller. Rightly so, because

in our society, it is the duty of the father to settle his son who has not been able to otherwise settle in life. Ramit Kumar AW.2 has not got job so

far. Roshan Lal wants to settle him in business and therefore, needs the shop in dispute for this purpose. It cannot be said if the need of the shop

for starting the business of Ramit Kumar is not the need of Roshan Lal.

13. In support of his contention learned counsel for the respondents has cited a number of authorities. In case Dharampal v. VIIth Additional

District Judge, Bulandshahr, 1997(2) RCR 676, a shop was needed by the landlady to settle her unemployed son in business. The need of the

landlady was held to be bona fide. In case G. Sastha v. G. Somathi Ammal 1998(1) RCR 245, it was held that even though the word "members"

is not used in Section 13(2)(c) of Tamil Nadu Buildings (Lease and Rent) control Act, a landlord can seek eviction of tenant for additional

accommodation for being used by a member of his family. In that case, the landlady was held entitled to evict the tenant for requirement of her son.

In case Tara Devi Jalan v. Radheshyam Ruia 1997(2) RCR 600, the provision of bona fide requirement of landlord as mentioned in West Bengal

Premises Tenancy Act, 1956 was interpreted and it was held that the expression "his own" included the off springs, normal emanations of landlord

who are resident with him until there was a division of estate. In that case the son of the landlady was having a separate kitchen and was not

financially or otherwise dependent on her but even then she was held entitled to eject the tenant for the need of her son. In case G.R. Ragupathy v.

Dr. K. Sankar 1997(2) RCR 422, a landlord wanted to start a separate clinic and medical shop for the benefit of his son. The Madras High Court

held his need to be bona fide. In case S. Mariappan v. Kadar Beevi 1998(1) RCR 175, the landlord wanted the premises for business of her son

which was held to be her bona fide requirement. In case Ganesharam v. Laxmibai 1998(1) RCR 44, the landlord wanted the premises for his son

to start business. It was held that the need of landlord would be the need of his family and such business falls within the meaning of the words "his"

business"". In case Abdul Hafeez Khan v. Illrd Additional District Judge 1998(1) RCR 175, the landlord wanted the premises for residence and

office of his son who was living in village and was commuting daily. The need of the landlord was held to be bona fide. In view of this last it cannot

be said that the need of Roshan Lal to settle his son Ramit Kumar to start a business with his uncle Som Parkash applicant-landlord in the shop in

dispute is not bona fide.

14. It is argued by the learned counsel for the appellants that Roshan Lal applicant has not been examined, who is the landlord of half portion of

the shop and therefore, in his absence it cannot be said if he wants to settle his son in the premises. I do not find any merit in this argument. The

ejectment application is signed by Roshan Lal also. His son Ramit Kumar had appeared as AW.2. Som Parkash landlord has also appeared in the

witness box as Aw.3. It was held in case Tara Devi v. Radheshyam Ruia 1997(2) RCR 600 that in case of bona fide requirement where the

daughter-in-law of the landlord appeared in the witness box, the non-examination of the landlady was not fatal to the suit for eviction. In the

present case, not only the son but the brother of Roshan Lal have appeared in the witness box. Similarly the fact the landlord did not plead that his

son had no other non-residential accommodation was held to be immaterial in case G.R. Ragupathy v. Dr. K.Sankar 1997(2) RCR 422.

2. I have heard Shri Arun Jain, Advocate appearing on behalf of the petitioners and Shri CM. Munjal, Advocate appearing on behalf of the

caveator-landlords and with their assistance have gone through the record of this case.

3. Learned counsel for the petitioners has vehemently argued that findings of the Rent Controller as well as Appellate Authority are factually

incorrect. Unfolding his submissions Mr. Jain submitted that mere wish of the land lord does not give him right to seek ejectment of the premises

especially in this case there is mala fide intention on the part of the landlord proved on record when he earlier filed an ejectment petition against the

petitioners and that ejectment petition was dismissed by the Rent Controller as well as Appellate Authority. The argument is not acceptable to the

Court because the earlier ejectment was on different ground. If the law has given an additional right to a landlord to seek ejectment on an

additional ground such a bonafide necessity and even with regard to commercial premises and if the landlord has been able to prove his case, there

is no difficulty in allowing such ejectment application in favour of the landlord. It is proved on the record that landlord requires the premises in

order to run business for Ramit Kumar who is son of Roshan Lal landlord No. 1. "Necessity" has been proved to be bonafide, as a matter of fact,

by the Rent Controller as well as by the first Appellate Authority. In these circumstances, when there is concurrent findings of fact on the record

regarding bonafide necessity, no interference can be done in this revision unless there is total wrong appreciation of evidence which is not in the

present case.

4. Learned counsel for the petitioner then submitted and relied upon the judgment Gulab Bai v. Nalin Narsi Vohra 1991 HRR 427 and submitted

that mere wish of the landlord cannot prevail upon the mind of the Rent Controller who is supposed to formulate an independent opinion about the

bonafide necessity of the landlord. There is no dispute about the proposition laid down by the Hon"ble Supreme Court but in the present case, it is

proved that landlord Roshan Lal wanted the demised premises for the necessity of his son and he wants to induct his son in the demised premises.

Protection has already been granted to a tenant u/s 13(4) of the Act. Hence, I do not see any illegality, impropriety or material irregularity in the

order of the Rent Controller or Appellate authority. I do not find any merit in this revision and dismiss the same.