

**(2009) 04 P&H CK 0379**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 2117 of 2009

Vinod Kumar

APPELLANT

Vs

Sat Paul Kapoor

RESPONDENT

---

**Date of Decision:** April 21, 2009

**Citation:** (2010) 1 RCR(Civil) 633 : (2010) 1 RCR(Rent) 92

**Hon'ble Judges:** Hemant Gupta, J

**Bench:** Single Bench

**Advocate:** Sudeep Mahajan, for the Appellant;

**Final Decision:** Dismissed

---

**Judgement**

Hemant Gupta, J.

The tenant is in revision aggrieved against the order of ejectment passed by the Authorities under East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as the "Act") on the ground that the demised premises measuring 23 feet 7 inches x 12 feet 6 inches is required by the landlord for his own bona fide use and occupation.

2. The petitioner was inducted as a tenant in the year 1977 by the father of the present respondent. The respondent retired on 30.06.2000 from his employment with the Canara Bank and thereafter by way of present petition filed on 14.08.2004 sought the ejectment of the petitioner, inter alia, on the ground that the demised premises is required for bona fide use and occupation of the landlord himself and his two sons, namely, Gautam Kapoor and Deepak Kapoor. It was pleaded in the petition itself that Gautam Kapoor is doing private job but his salary is meagre and with the said salary it is not possible for him to make his both ends meet. It was pleaded that the shop in possession of Deepak Kapoor is hardly 4 feet X 6 feet and the said shop is so small that it is not even possible to keep extra chair in the said shop. It was pleaded case of the landlord that his sons are joint in food and residence and he intends to start large scale business of books and note-books in the demised premises.

3. In support of the aforesaid contentions, the landlord himself appeared as PW1 in the witness box and also examined his two sons i.e. Gautam Kapoor as PW2 and Deepak Kapoor as PW3, apart from examining other two witnesses Bhagat Singh PW4 and K.K.Bhatia PW5. Learned Rent Controller returned the finding that the premises in occupation of the tenant are bonafidely required by the landlord for his own use and occupation and also for the use of his sons. The Id. Appellate Authority affirmed the finding recorded by the Rent Controller. It was found that, as per the documents produced by the tenant himself i.e Ex.R138, the shop of Deepak Kapoor is 4"X6".9" as against the shop in possession of tenant measuring 23".7" X 12".6".

4. Before this Court, learned counsel for the petitioner has vehemently argued that the application for leading additional evidence filed before the Appellate Authority so as to produce the judgment and decree dated 24.02.2006 passed by Civil Judge Jalandhar and the judgment and decree dated 30.10.2006 passed by the Appellate Court has not been decided. The learned Appellate Authority while deciding the appeal did not consider and decide the above mentioned application for additional evidence. Therefore, the matter is required to be remitted back to the Appellate Authority to enable the said Authority to decide the application for additional evidence as well as the appeal on merits. It is also argued that the landlord retired in the year 2000 whereas the ejectment petition was filed in 2004 i.e. after a gap of four years. Such ejectment petition was filed on 10.08.2004, i.e after the suit for permanent injunction was filed by the petitioner, which shows that the ejectment of the tenant was not on any bona fide reason but as a counter blast to the suit of permanent injunction. It is also an admitted fact that the landlord has another portion at the back of his shop, which if utilised, will make sufficient accommodation available for the use of landlord and his sons. It is also argued that Deepak Kapoor, one of the sons, has not been examined as a witness in support of the plea that the premises, in fact, are required for bona fide use by him. Learned counsel for the petitioner relies upon *Ajit Singh v. Jit Ram* 2008 (3) ACJ 419 (S.C.) : 2008 (4) CCC 528 (S.C.) : 2008 (2) RCR 328 to contend that the landlord has not pleaded the three ingredients required to prove the bona fide requirement of his son as well, which is also mandatory requirement.

5. Having heard learned counsel for the petitioner at some length, I do not find any substance in any of the arguments raised by learned counsel for the petitioner. The judgment sought to be produced by the petitioner as additional evidence has arisen out of the suit for injunction filed by landlord on 25.09.2004 seeking restraint order against the tenant for using the demised premises for sale and purchase of mobile phone and its accessories. The said suit was dismissed on the ground that the plaintiff has no cause of action to institute the said suit as grievance raised does not fall within the scope of suit for injunction.

6. The aforesaid judgment and decree on the face of it is not relevant for determining the controversy between the parties which relates to requirement of

shop for bona fide use of the landlord. Even otherwise, the trial Court dismissed the suit on 24.02.2006 and the appeal on 30.10.2006. The application for permission to lead additional evidence was not filed when the matter was pending before the Rent Controller but after the Rent Controller decided the same. The filing of said application at such stage itself shows that such application has been filed with a motive to delay the proceedings and not with any bona fide intention. Therefore, even if the said judgment is read into evidence, the result of the appeal or revision would have not been different.

7. The argument that Deepak Kapoor, one of the sons, has not been examined, cannot not detain us for long. Though Para No.5 of the judgment of learned Rent Controller shows that Deepak Kapoor has been examined as PW3, yet the learned counsel for the petitioner submits that he has not been subjected to cross-examination. Though the said factual position could not be satisfactorily canvassed by the petitioner but assuming so, admittedly Deepak Kapoor is in possession of the portion of the shop measuring 4x6 feet. Such finding has been returned on the basis of Ex.R138 produced by the tenant himself.

8. In these circumstances, the argument of the tenant that the sons of the tenant should continue to work in a same portion or should join the portion in the back which is a dry latrine is wholly unsustainable. A finding has been returned that the portion which is alleged to be available with the landlord, in fact, an open space court-yard. Therefore the finding recorded by Authorities below that the premises is required by the landlord and his two sons cannot be said to be suffering from any patent illegality or irregularity.

9. It is not necessary for the landlord to seek eviction of the tenant soon after his retirement. The period of four years after retirement is not much on the basis of which any inference doubting the bona fide of the landlord can be raised.

10. The argument raised by learned counsel for the petitioner, relying upon the judgment of Hon"ble Supreme Court in Ajit Singh's case (supra), is again misconceived. In the aforesaid case the shop fell to the share of the son. The ejectment was sought for the requirement of the son by the father. It was found that after family settlement the shop fell under the share of the son, therefore, the said son is landlord competent to seek ejectment. The said judgment has no applicability to the facts of the present case.

11. I do not find any illegality or irregularity in the order passed which may warrant any intereference in the present revision petition. The same is, therefore, dismissed.

12. Learned counsel for the petitioner submits that some time may be granted to the tenant to vacate the demised premises. It is true that the Appellate Authority has not granted any time to the tenant to vacate the premises, but the petitioner has remained in occupation of the demised premises after the decision of the Rent Controller for about four months. In view of the said fact, I do not find any merit in

the submission of the petitioner to grant him further time to vacate the premises.