

(2012) 05 P&H CK 0170

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 4016 of 2011

Ram Dass Bagga

APPELLANT

Vs

Ram Chander

RESPONDENT

Date of Decision: May 30, 2012

Acts Referred:

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 15(6)

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Kiran Bala Jain, for the Appellant; Anil Kshetarpal, for the Respondent

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

Tenant Ram Dass Bagga has filed this revision petition u/s 15 (6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short - the Act), having failed before both the Authorities below. Respondent-landlord Ram Chander filed ejectment petition u/s 13 of the Act against tenant-petitioner seeking ejectment of the petitioner from demised shops No. 2 and 3, on the ground of nonpayment of arrears of rent and bona fide requirement of the demised property for the landlord for his own business. Ground of nonpayment of rent was not pressed in view of payment made by the tenant. As regards personal necessity, it was pleaded that the landlord has retired from service in Saraswati Sugar Mills and was doing no work, and therefore, he wanted to start his independent business in the demised shops.

2. The tenant controverted the ground of personal necessity of the landlord. It was also alleged that the disputed shops were let out by Kamlesh Kumari wife of the landlord and later on, both of them started receiving rent from the tenant-petitioner. It was also alleged that Kamlesh Kumari filed ejectment petition regarding adjacent shop No. 1 in the same building against Natha Ram-tenant thereof, on the ground of necessity of the said shop for son of the landlady. The said

ejectment petition was allowed by Rent Controller, but was dismissed in appeal by the Appellate Authority and revision petition against the same is pending in this Court. It was pleaded that the landlady suffered consent decree qua the demised shops in favour of her husband i.e. landlord-respondent herein just to make out a ground for eviction. Plea of the respondent-landlord regarding necessity of the demised shop was also denied.

3. Learned Rent Controller, Jagadhri, vide judgment dated 17.03.2010, allowed the ejectment petition. Appeal preferred against the said judgment by tenant-petitioner has been dismissed by Appellate Authority, Yamuna Nagar at Jagadhri, vide judgment dated 25.05.2011. Feeling aggrieved, tenant has filed this revision petition.

4. I have heard learned counsel for the parties and perused the case file.

5. Counsel for the petitioner vehemently contended that there is another shop No. 4 in the same building, which is lying vacant and is owned by wife of the landlord, and therefore, landlord can use the said shop because husband and wife have natural dependence upon each other, as observed by this Court in the case of Sunita Rani Vs. Ramesh Chander, It was also contended that wife of landlord has suffered consent decree in favour of landlord just to seek eviction of the tenant-petitioner, and therefore, petitioner has right to challenge the said decree. Reliance in support of this contention has been placed on judgment of Delhi High Court in the case of Rajinder Kumar Vs. R.K. Bajaj and Others, . It was also argued that mere wish of the landlord is not sufficient to order ejectment and there has to be element of necessity, which is much higher than mere desire. Reliance in this regard was placed on observation of Hon"ble Supreme Court in Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, . It was also submitted that even partial eviction of the petitioner from one of the two demised shops can be ordered to satisfy the requirement of the landlord. Reliance in this regard has been placed on judgment of Hon"ble Supreme Court in the case of Dinesh Kumar Vs. Yusuf Ali, . It was also submitted that landlord has three shops in Anand Market, Jagadhri, which can be used by him for his own necessity.

6. On the other hand, counsel for respondent-landlord contended that alleged shop No. 4, said to be vacant, is not shop, but is a room of residential part of the building and is located in side street, whereas the demised shops are located on main road. It was also submitted that necessity of the landlord is bona fide as having retired from service, he wants to run his own business. In ejectment petition filed by landlord's wife, necessity of their son was pleaded and necessity of the present petitioner-landlord was not pleaded. It was also submitted that partial eviction cannot be ordered under the Act nor any such pleas was raised by the tenant either in the written statement or before the Authorities below. It was also pointed out in this regard that demised property is a single shop, although described as shops No. 2 and 3, but there is no intervening wall dividing the same into two shops, and

therefore, partial eviction cannot be ordered.

7. I have carefully considered the rival contentions.

8. Alleged shop No. 4 is, in fact, not a shop. That is a room situated on side road, whereas demised shops are on the main road. Width of the main road, as per own evidence of the tenant, is 25 feet, whereas width of the side road or street is only 9/10 feet. Even the tenant himself stated that he was not ready to carry on his business in the alleged shop No. 4, which was referred to as side room/office because the same was in street and his business would not run there. It is thus manifest that contention of counsel for the petitioner-tenant in this regard is wholly untenable, as per statement of the tenant himself. If tenant's business cannot run in the said shop, how the tenant can contend that the landlord should run his business in the said shop. Obviously, the said side room located in the side street has no potential for business as compared to the demised shops located on the main road. Consequently, contention of counsel for the petitioner in this regard and judgment in the case of Sunita Rani (supra) have no applicability to the instant case.

9. As regards partial eviction, no such picas was taken by the tenant in the written statement nor any such plea was raised before the Authorities below. Even otherwise, under the Act, partial eviction is not permissible. Moreover, demised property is only single shop without any intervening wall, although detailed as shops No. 2 and 3. Thus, it is a single shop and question of partial eviction does not arise. Judgment in the case of Dinesh Kumar (supra) relating to Madhya Pradesh Accommodation Control Act, 1961 has no applicability to the instant case.

10. As regards alleged shops in Anand Market, Jagadhri, that is in fact a vacant plot. Even according to the tenant's version, the alleged shops have no roof. According to the tenant, the roof has not been laid intentionally by the landlord, but in fact, even so-called walls of the alleged shops have also not been raised by the landlord, but are walls of the owners of the adjoining properties. Thus, it is only vacant plot in Anand Market, Jagadhri, which cannot be used as shop for running business by the landlord.

11. In the instant case, there is averment of necessity and bona fide requirement of the landlord of the demised shops because admittedly the landlord has retired from service. He, therefore, needs the demised shops for running his own business. The element of necessity, as opposed to mere desire, is fully proved in the instant case.

12. As regards consent decree suffered in favour of landlord by his wife, even the wife could claim ejectment of the tenant on the ground of necessity of her husband i.e. present respondent. Consequently, consent decree suffered in favour of respondent by his wife has no bearing on the ground of personal necessity for seeking ejectment of the tenant-petitioner. Even otherwise, the said decree is not shown to be invalid in any manner. For the reasons aforesaid, I find no merit in this revision petition. Authorities below have recorded concurrent finding regarding

bona fide requirement of the landlord for the demised property. The said finding is based on proper appreciation of evidence and is not shown to be perverse or illegal or based on misreading or misappreciation of evidence. On the contrary, the said finding is the only finding that can be arrived at on the basis of evidence on record. The said finding, therefore, does not warrant interference. Impugned judgments of the Authorities below do not suffer from any illegality, impropriety or jurisdictional error so as to call for interference in exercise of revisional jurisdiction.

The revision petition is accordingly dismissed being devoid of merit.