

Punjab & Haryana High Court

Rajive Bhalla, J.

Anil Kumar v. Harpal Singh Banwait

CR 3151 of 2004

10.04.2008

Tenancy - Bonafide need - A landlord who establishes the prima facie existence of his necessity, is entitled to raise a presumption in law, that his need is bonafide and onus thereafter shifts to the tenant that plea of landlord was malafide, on this aspect, personal bonafide necessity had been held in favour of the landlord.

Held,

Another argument that as the adjoining portion has fallen vacant and the landlord has opened a store for selling shoes, cannot be accepted to discredit the landlords plea. The said shop fell vacant during pendency of the appeal and as noticed by the Appellate Authority, the landlord clearly maintained that both shops, would be merged and converted into one unit. The business started by the landlord in the adjoining premises, fortifies the landlord's plea that he wants to start a business in India. The landlord returned to India in 1991 and has set up a business in the adjoining shop/bay. The necessity pleaded is, therefore, bona fide, valid and discloses a necessity to occupy the tenanted premises to start a business. The respondent has returned from Manila. He filed a petition for ejectment in the year 1996 and planned to start his own business in the tenanted premises. There is nothing on record as would, enable this Court, to hold that the plea of necessity, is actuated by an ulterior motive to enhance rent or that the necessity does not fulfill the statutory requirements of Section 13 of the Act. The landlord is residing in India since the year 1991 and the only circumstance, asserted against his plea of bona fide necessity, is his alleged desire to increase the rent or to rent out the premises at a higher rate. As held herein before, the aforementioned contention is without merit. A landlord, is the best judge of his need and when successfully established, a Court would, in the absence of any material that would dis-entitle the landlord, to the relief claimed, necessarily have to hold in favour of the landlord. [Para 17]

Rajive Bhalla, J. (Oral) — The petitioner, impugns orders dated 31.1.2000 and 18.5.2004 passed by the learned Rent Controller and the Appellate Authority, Chandigarh, respectively, directing the petitioner's ejectment and the dismissal of his appeal.

2. The respondents/landlords, filed a petition for ejectment of the petitioner, from the

tenanted premises, on the grounds that the petitioner was in arrears of rent with effect from 1.5.1994 and the demised premises, as well as the adjoining shop portion i.e SCO No. 836 Sector 22-A, Chandigarh, were required for their personal use. It was averred that respondent no. 1, a Non Resident Indian, born to Indian parents residing in Manila, Philippines graduated as an Electrical Engineer in the year 1980 and thereafter lived and worked in Australia upto 1991. He decided to return to India, to set up a business for sale, service and maintenance of electric and electronics goods. As he could not find suitable premises, he decided to invoke his right to seek ejection, of the tenant, on the plea of a bona fide necessity to occupy the tenanted premises for setting up of a business.

3. The petitioner, filed a written statement, controverting the facts, and asserted that the plea of necessity was mala fide, as the landlords wanted to increase the rent to Rs. 30,000/- p.m and for that purpose had made a request to the tenant, in the presence of Sudhir Thapar, B.M Gupta and Ashok Kumar. As the petitioner expressed his inability to enhance the rent, the landlords threatened him with eviction and thereafter, filed the instant petition for ejection on a false plea of bona fide necessity. On the basis of the aforementioned pleadings, the learned Rent Controller framed the following issues :—

“1. Whether the petitioners require the demised premises for their personal use for business purposes? OPP

2. Whether the tender made by the respondent is legal and valid? OPR

3. Whether the instant petition is not maintainable in the present form? OPR

4. Relief.”

4. The issue with respect to arrears of rent was not pressed, as the tenant petitioner tendered arrears of rent. As regards issue no. 2, the learned Rent Controller held that the landlords prayer for the petitioner’s ejection was based on his bona fide necessity to occupy the tenanted premises, for starting a business. The petitioner’s ejection was, therefore, ordered. Aggrieved by the said order, the petitioner filed an appeal. The learned Appellate Authority, upheld the order passed by the Rent Controller and dismissed the appeal.

5. Counsel for the petitioner submits that the mala fides of the plea, raised by the respondents-landlords are established by the depositions of Sudhir Thapar RW-2 and Ashok Kumar RW-5. These witnesses have deposed in unison that the landlords asked the petitioner to enhance the rent to Rs. 30,000/- p.m and on his refusal to enhance the rent, threatened him with ejection. It is submitted that the Courts below have failed to assign due credence to these facts. It is further submitted that the landlords addressed letters Ex.R-1 and R-2, to a tenant on a first floor, requesting him to enhance the rent, as the market rent was Rs. 30,000/- p.m The landlords have not denied this fact. The issuance of these letters is by itself a fact sufficient to infer a desire, on the part of the landlords, to seek enhancement of rent.

6. Another argument, is that Subhash Mahajan RW-3, a tenant in the adjoining premises,

namely SCO No. 836, Sector 22-A, Chandigarh, vacated the premises, as the respondents requested that the premises were required for respondent no. 1. Though, he vacated the premises, the landlords instead of occupying the premises, rented them out, at an enhanced rate of rent. It is also argued that respondent no. 1 is a citizen of the Philippines and does not know the local language. Even otherwise, during the pendency of this petition, the adjoining bay of SCO No. 836, Sector 22-A, Chandigarh, has fallen vacant. Respondent no. 1 has opened a showroom for selling footwear. It is, therefore, asserted that ground of necessity i.e to open a showroom for sale of electric and electronic items no longer exists.

7. It is further argued that the plea set up by the landlords, in the ejectment petition is based upon on the sole deposition by respondent no. 1 and, therefore, should not have been accepted. By placing reliance on [Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta, 1999 \(6\) SCC 222](#) and [Kempaiah v. Lingaiah and others, 2002 \(1\) RCR \(Rent\) 532 : 2001 \(8\) SCC 718](#), it is argued that the facts of the present case disclose a mere desire and not a necessity or a dire need. A bona fide necessity refers to the state of mind and not the mere whim and fancy of a landlord and, therefore, the revision petition be allowed and the orders of ejectment be set aside.

8. Counsel for the respondents, on the other hand, submits that the Courts below have returned concurrent findings of fact, that the demised premises are bona fide required by the landlord for setting up a business. The petitioner has failed to advance any substantial argument or point out any error of jurisdiction, of law or such a perverse or arbitrary appreciation of evidence, as would warrant interference by this Court. It is further argued that the letters for increase of rent were addressed to a Government department, occupying the first floor of the building. This was a legitimate exercise of the respondents rights as landlords, to seek enhancement of rent. In case, the respondents wanted the petitioner to increase rent, they would have addressed a similar letter to him. Even otherwise, the mere address of a letter to a tenant, requesting for enhancement of rent, cannot draw an inference that the necessity is, in any manner, mala fide. It is further submitted that the argument advanced on the depositions by Sudhir Thapar and Ashok Kumar that the respondents directed the petitioner to pay enhanced rent has been duly considered and rejected by the Courts below and, therefore, does not merit consideration. It is further argued that Subhash Mahajan vacated the adjoining shop in the year 1987-1988 and it was let out to one Manjit Singh at Rs. 7,000/- p.m The petitioner returned to India in the year 1991 and, therefore, Subhash Mahajan's deposition, as also the arguments based thereon are irrelevant and incorrect. Subhash Mahajan vacated the premises 9 years before the filing of the ejectment petition.

9. It is also argued that the landlords require the premises for their bona fide personal necessity. The facts, in respect whereof have been accepted by both the learned Rent Controller, as also the Appellate Authority and, therefore, do not call for interference.

10. I have heard learned counsel for the parties and perused the impugned orders.

While exercising jurisdiction in revision, a Court, proceeds to appraise impugned orders/judgments, so as to ascertain, whether they suffer from any error of jurisdiction,

infraction of law or disclose an arbitrary or perverse appreciation of evidence that has led to miscarriage of justice. Concurrent findings of fact that do not suffer from any of the above disabilities, cannot, therefore, be reversed.

11. The petitioner's contentions that the findings returned by the learned Rent Controller and affirmed by the Appellate Authority are illegal and erroneous, do not merit acceptance. The impugned orders do not suffer from any of the above referred disabilities, namely an error of jurisdiction or an infraction of law or an arbitrary or perverse appreciation of evidence that has led to a miscarriage of justice.

12. A landlord, who establishes the prima facie, existence of his necessity, is entitled to raise a presumption in law, that his need is bona fide. The onus, thereafter, to establish otherwise, shifts to the tenant. In the facts of the present case, it would have to be held that the landlord has successfully established the bona fides of his plea of personal necessity, whereas the tenant has miserably failed in establishing the mala fides thereof.

13. An argument, advanced by counsel for the petitioner that as the sole deposition by respondent no. 1, as to the plea of personal necessity, is not supported by any other evidence it should, therefore, be discarded, disregards a salutary principle of law, namely, that it is the quality and not the quantity of evidence that matters. Respondent No. 1, while deposing before the learned Rent Controller set out his plea of personal necessity and answered all questions, directed at him. The fact that respondent No. 1 alone came forward to depose, in support of the averments in the ejectment petition, is irrelevant.

14. An argument raised by counsel for the petitioner that the tenant has successfully established the mala fides of the landlords plea as the landlords addressed letters Ex.R-1 and R-2, to the tenant on the first floor, asking for enhancement of rent, is incomprehensible, as its irrelevance, to the present controversy is, beyond argument. Asking a tenant, on the first floor, (the demised premises are situated on the ground floor) to enhance rent, is a legitimate exercise of a landlord's right to request for enhancement of rent and would, therefore, be insufficient to infer any intention on the part of the landlord to seek the petitioner's eviction, so as to let out the tenanted premises at an enhanced rate of rent.

15. The next argument, pressed into service to discredit the landlords plea, flows from the depositions of Sudhir Thapar and Ashok Kumar, who have deposed that the landlords, in their presence asked the petitioner to enhance the rent. The said submission does not inspire confidence. The landlord denied these suggestions in his cross-examination and these witnesses have been disbelieved by the Courts below. Nothing much would hinge on their deposition, as under the Rent Act and pursuant to amendments carried out therein, a landlord was barred from seeking ejectment of a tenant occupying commercial premises, on the ground of his bona fide need. The amendments were struck down by the Supreme Court in Dr. **Harbilas Rai Bansal v. State of Punjab, 1995 (2) RCR (Rent) 672 : : 1996 HRR 1 (SC)**. Before this judgement, landlords owning commercial premises could only request a tenant to enhance the rent, with no consequences of eviction, if the tenant refused to enhance the rent. Thus, the depositions by Sudhir Thapar and Ashok

Kumar do not merit consideration.

16. The next argument that a tenant Subhash Mahajan vacated the adjoining shop in the year 1987-1988, but the shop was promptly let out to one Manjit Singh @ Rs. 7000/- p.m disregards, a fact that Subhash Mahajan vacated the shop in the year 1987-1988. The petitioner returned to India in the year 1991 and, therefore, the fact that Subhash Mahajan, may have vacated the shop in the year 1987-1988 is irrelevant. It would also be necessary to mention here that the bald assertion by Subhash Mahajan that he vacated the premises at the asking of respondent no. 1's father, as respondent no. 1 was to start a business, is apparently a desperate attempt by a tenant to create evidence in his favour. The argument based upon the deposition by Subhash Mahajan has been concurrently rejected by both the Courts below and, therefore, does not merit any further consideration.

17. Another argument that as the adjoining portion has fallen vacant and the landlord has opened a store for selling shoes, cannot be accepted to discredit the landlords plea. The said shop fell vacant during pendency of the appeal and as noticed by the Appellate Authority, the landlord clearly maintained that both shops, would be merged and converted into one unit. The business started by the landlord in the adjoining premises, fortifies the landlord's plea that he wants to start a business in India. The landlord returned to India in 1991 and has set up a business in the adjoining shop/bay. The necessity pleaded is, therefore, bona fide, valid and discloses a necessity to occupy the tenanted premises to start a business. The respondent has returned from Manila. He filed a petition for ejection in the year 1996 and planned to start his own business in the tenanted premises. There is nothing on record as would, enable this Court, to hold that the plea of necessity, is actuated by an ulterior motive to enhance rent or that the necessity does not fulfill the statutory requirements of Section 13 of the Act. The landlord is residing in India since the year 1991 and the only circumstance, asserted against his plea of bona fide necessity, is his alleged desire to increase the rent or to rent out the premises at a higher rate. As held herein before, the aforementioned contention is without merit. A landlord, is the best judge of his need and when successfully established, a Court would, in the absence of any material that would dis-entitle the landlord, to the relief claimed, necessarily have to hold in favour of the landlord.

18. The concurrent findings of fact returned by the Courts below, in my considered opinion, do not disclose any error of jurisdiction or of law, as would require interference. The revision petition is consequently dismissed, with no order as to costs.

Petition dismissed.