

Natha @ Jeewan Saini v. Ashok Kumar, 2016 PLRonline 0108 , [ID 319901]

PUNJAB AND HARYANA HIGH COURT

Before:- Raj Mohan Singh, J.

CR No. 93 of 2016 (O&M). D/d. 23.8.2016.

Natha @ Jeewan Saini – Petitioner

Versus

Ashok Kumar and another – Respondents

East Punjab Urban Rent Restriction Act, 1949, Section 13 - Personal necessity of landlord - Bona fide requirement of landlord where his bona fide cannot be questioned by the tenant. The landlord would be the best judge of his requirement. The lack of bonafides of the landlord viz-a-viz his requirement cannot be questioned by the tenant on hypothetical basis and the landlord would have complete freedom to decide nature of business which would carry on in the demised premises. [Para 12]

East Punjab Urban Rent Restriction Act, 1949, Section 13 - Personal necessity of landlord - Held, landlord whose wish has to prevail in respect of property in which he wants to carry on his business. Tenant has nothing to do in forming such an opinion by the landlord, nor the tenant can direct the landlord to carry on business in a particular premises. The personal necessity has to be found from the view point of the landlord. The reasonable requirement has an element of need which is not a mere wish or desire, but the same should be based on personal requirement/necessity. [Para 10]

For the Petitioner :- S.K. Chaudhary, Advocate.

Raj Mohan Singh, J. - This revision petition has been preferred by tenant-petitioner against the judgment dated 19.10.2015 passed by the Appellate Authority confirming and upholding the judgment dated 01.03.2013 passed by the Rent Controller, Gurdaspur.

2. An ejectment petition was filed by the landlord-respondent No.1 against the petitioner-tenant and Jyoti Saini under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 in respect of shop marked by letters 'ABCD' having defined dimensions as shown in the ejectment petition.

3. The ejectment petition was filed with the averments that respondent No.1 (herein)/landlord was owner of the shop and mother of respondent No.1 Smt. Kaushalya Devi had given the shop to Chatru Ram father of the tenant-petitioner on rent @ L 15/- per month vide rent note dated 21.07.1984. After the demise of Chatru Ram, petitioner and

Jyoti Saini inherited the [tenancy](#) rights. Mother of respondent No.1 was owner of four shops including shop in question. She executed Will dated 30.04.1997 in favour of respondent No.1 in respect of two shops and other two shops were bequeathed in favour of her two sons namely Vijay Kumar and Raju.

4. Earlier respondent No.1 was doing Munari business along with his son Smarat Mahajan in a rented shop near Bata Chowk at Gurdaspur. He was ejected from the shop by the Rent Controller and he remained unsuccessful in appeal as well.

5. Respondent No.1 filed an ejectment petition in respect of other shop against the tenant in occupation of that shop. Ejectment was ordered against the tenant-Mohan Lal. Mohan Lal had purchased the said shop from respondent No.1 vide sale deed dated 31.07.2007. Respondent No.1 had also purchased the shop under his tenancy from its owner and started Munari business. Business was not flourishing as the shop was not situated in the main market. Son of respondent No.1 was doing business in said shop and he remained idle. In the ejectment petition, he sought ejectment of the petitioner-tenant on the ground of non-payment of rent w.e.f. 01.01.1996 onwards as well as on the ground of personal necessity.

6. The ejectment petition was contested by the tenant-petitioner. Relationship of landlord and tenant was admitted between the parties. Arrears of rent w.e.f. 01.01.1996 was also admitted with an explanation that the petitioners-tenants were offering the rent, but the same was not accepted by landlord-respondent No.1. Tenants showed their willingness to make good the arrears of rent with interest and costs as assessed by the Court. Personal necessity of landlord-respondent No.1 was denied on the ground that son of respondent No.1-landlord was not doing independent business and the same was being run by respondent No.1 as well, as a joint venture.

7. After completion of pleadings, both the parties went to trial on the following issues:-

“1) Whether the petitioner/applicant is entitled to ejectment of the respondent on the ground of non-payment of rent? OPA

2) Whether the property in dispute is bonafidely required by the applicant for his personal necessity? OPA

3) Whether the application is not maintainable in the present form? OPR

4) Relief.”

8. Both the parties led their respective evidence to prove their case. Rent Controller allowed the ejectment petition vide order dated 01.03.2013 thereby ejecting the petitioner-tenant with a direction to hand over the vacant possession of the demised shop to respondent No.1-landlord within a period of 60 days from the date of order. Tenant-petitioner remained unsuccessful before the Appellate Authority who dismissed the appeal vide judgment dated 19.10.2015.

9. I have heard learned counsel for the petitioner to some length.

10. Tenant-petitioner tendered the rent along with interest and costs as assessed by the Rent Controller which was accepted by respondent No.1-landlord. Therefore, issue of ejectment on the ground of non-payment of rent was not pressed before the Rent Controller. On the issue of bona fide requirement of landlord, both the authorities below have found that it is the landlord whose wish has to prevail in respect of property in which he wants to carry on his business. Tenant has nothing to do in forming such an opinion by the landlord, nor the tenant can direct the landlord to carry on business in a particular premises. The personal necessity has to be found from the view point of the landlord. The reasonable requirement has an element of need which is not a mere wish or desire, but the same should be based on personal requirement/necessity. Respondent No.1-landlord has successfully demonstrated before the authorities below that his requirement is bona fide as he wanted to establish his business in the demised premises. The business of Munari in the shop in question is sought to be established. The tenant had no right to dictate as to where the landlord should start the business.

11. The stress made by the petitioner-tenant on the issue of running business by landlord-respondent No.1 in the shop owned by him at Bata Chowk has no value in the eyes of law as the said premises is not potentially situated and the son of the petitioner is operating therefrom. The evidence of RW 2 Photographer remained wanting with regard to doing of business jointly with his son or not. The photographer did not enter the premises for the purposes of clicking the photographs. Even otherwise, landlord is the best judge of his requirement and the tenant is not supposed to dictate terms with regard to his choice to start with.

12. It is also a settled principle that if the landlord establishes a prima facie existence of necessity that raises a presumption in his favour that his need is bona fide need and thereafter onus shifts upon the tenant to show that the need was mala fide. The evidence of respondent No.1 is sufficient to demonstrate his need based requirement to which there is no rebuttal of the petitioner-tenant.

13. In view of facts and circumstances of the case, the filing of ejectment petition was held maintainable by the authorities below and resultantly, ejectment of the petitioner was ordered. Even the testimony of Jeewan Saini-RW1 showed that respondent No.1 has sold one shop to Mohan Lal tenant at Bata Chowk, Gurdaspur. Landlord-respondent No.1 was earlier a tenant in a shop situated at Bata Chowk where he was running a business jointly with his son. The version of respondent No.1- landlord that the said business was not lucrative enough to fetch enough marketing has to be accepted as he is the best judge of his need.

14. The proposition of law as settled in ***Parikshat Suri and others v. Ashok Kohli and another, (2009-3)155 PLR 505***, is being followed to enumerate the bona fide requirement of landlord where his bona fide cannot be questioned by the tenant. The landlord would be the best judge of his requirement. The lack of bonafides of the landlord viz-a-viz his requirement cannot be questioned by the tenant on hypothetical basis and the

landlord would have complete freedom to decide nature of business which would carry on in the demised premises.

15. Similarly, in view of **Anil Kumar v. Harpal Singh, 2008(3) RCR (Civil) 319**, the landlord if establishes existence of personal need then he is entitled to raise presumption in law that such need is bona fide enough to oust the tenant. Thereafter, the onus heavily shifts upon the tenant to show and establish that the need of the landlord is not bona fide. There is no evidence on record to rebut such presumption on bona fide need of landlord-respondent No.1. His son may be joint in mess and business, but the need to carry out business in the demised premises is a subjective thing as per view point of the landlord and such a need cannot be questioned on any hypothetical basis.

16. In considered opinion of this Court, no indulgence can be granted in this revision petition against the judgments rendered by both the authorities below. Consequently, this revision petition is found to be totally bereft of merits and the same is accordingly dismissed.