

Haryana Urban (Control of Rent and Eviction) Act 1973 S. 13 - Eviction - Respondent has pleaded that he has not vacated any shop without sufficient cause after 1949 - However, in an additional evidence, the tenant has made an attempt to produce a sale deed executed by the respondent - The Appellate Authority is the last Court to appreciate the facts and the evidence - In such circumstances, the Appellate Court should not have taken a myopic view of the matter - The tenant has the protection of the rent laws - In such circumstances, it is incumbent upon the authorities to maintain proper balance.

PLRonline 493573

(2022-3)207 PLR 382

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Anil Kshetarpal.

CHHOTE LAL - Petitioner,

Versus

SUKH RAM - Respondent.

CR-4789 of 2015 (O&M)

Mr. Aman Bahri, for the petitioner. *Mr. Munish Gupta*, for the respondent.

Anil Kshetarpal, J(Oral) - (5th April, 2022) - The petitioner herein is a tenant in the premises owned by the respondent. The Rent Controller dismissed the eviction petition filed by the respondent, whereas the Appellate Authority reversed the judgment passed by the Rent Controller.

2. Primarily, the eviction of the petitioner has been sought on the ground of bonafide personal necessity. In para 4B of the eviction petition, the respondent asserted as under:-

"That the shop in dispute is required by the plaintiff himself for personal necessity in which the plaintiff wants to do the business of goldsmith and the plaintiff has no other vacant shop in his possession. The plaintiff after 1949 has not vacated any shop without sufficient reason. Therefore, the respondent is liable to be evicted from the shop in dispute due to personal necessity of the plaintiff."

3. The petitioner while filing his reply, stated as under:-

4B. That para No.B is absolutely wrong and not acceptable. It is wrong that the petitioner is in need of shop in dispute for personal business. It is wrong that the petitioner personally

wants to do the business of goldsmith. It is also wrong that the plaintiff has no vacant shop in his possession. It is also wrong that the petitioner is personal in necessity of the shop in dispute. The fact is that the petitioner has no need of the shop in dispute for his personal need and a false ground has been prepared with the malafide intention to evict the respondent from the shop in dispute in unauthorized manners. The petitioner is already having a lot of shops and other commercial property and space in his possession in Narnaul. The petitioner and his family members are going on owners in possession of a lot shops and commercial property and the petitioner has intentionally not mentioned the detail of such properties which are in the possession of him and in his family. In fact Sham Sundar son of petitioner have commercial space and Sham Kunj Marriage Palace in Narnaul. In which a lot of shops can be built on the road. The petitioner had been purchasing a lot of shops and commercial space and selling and near Paniganj there are 15-16 vacant shops of the petitioner and near Azad Chowk Narnaul a site of the shop was vacant which was demolished and vacant land has been kept. Subhash Saini son of the petitioner and Rekha Soni daughter in-Law have many vacant shops in Gali Darjian measuring 3- 3 Khan and on that shops there are commercial rooms and there are shops in Purani Serai on which there is possession of petitioner and the petitioner himself is doing the business of supplying building material at Subhash Park Narnaul Sindhana Road and besides this the petitioner and his family had a vacant shop of D.C. M. Showroom which was sold by him to Basant Lal Sharma and there was a showroom of shoes in Pul Bazaar which was demolished by the petitioner and a new commercial Mall has been constructed and in Mohalla Misharwada outside the residents of petitioner, the shops have been constructed outside and the petitioner himself is doing the business as property dealer and when the petitioner has not done any work as stated by him till date, now the question of doing new work by him do not arise. The petitioner has prepared false grounds to evict the respondent. The petitioner has also not mentioned that from the year 1949 till. date how many shops and Commercial places have been purchased and sold and got vacated by him. The whole episode is wrong and baseless."

4. In replication, the respondent pleaded as under:-

"B. That the reply to the para No.4B of the petition is wrong which is not acceptable. The contents of petition are correct which are accepted. This statement is wrong that the petitioner is not in need of shop in dispute for his personal work and it is also wrong that the petitioner is not willing to do the business of goldsmith personally. It is wrong that the petitioner have any other vacant shop in his possession. It is also wrong that the petitioner is not in personal necessity of the shop in dispute rather the petitioner wants to do the business of goldsmith and the petitioner has no other vacant shop in his possession. The petitioner is in personal necessity of the shop in dispute. The remaining contents of the reply of petition are wrong and not acceptable."

5. As already noticed, the Rent Controller dismissed the petition. In an appeal filed by the respondent, the petitioner filed an application for permission to lead additional evidence in order to prove that the respondent was in possession of a shop which was subsequently sold by him in the year 1999. The Appellate Authority has dismissed the application while accepting the appeal of the respondent.

6. As per Section 13(3) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the 1973 Act'), the landlord apart from asserting that he requires the tenanted premises for his own occupation, is also required to assert that he is not occupying any other building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of the 1949 Act in the urban area. In other words, the landlord is required to assert the following three ingredients:-

(1) He requires the premises for his own occupation. (2) He is not occupying any building in the urban area concerned.

(3) He has not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area.

7. In the present case, the respondent has pleaded that he has not vacated any shop without sufficient cause after 1949. However, in an additional evidence, the tenant has made an attempt to produce a sale deed executed by the respondent in additional evidence. The Appellate Authority is the last Court to appreciate the facts and the evidence. In such circumstances, the Appellate Court should not have taken a myopic view of the matter.

8. No doubt, the landlord has a right to get possession of the tenanted premises, if he establishes the ground of eviction as specified in the 1973 Act. However the tenant has the protection of the rent laws. In such circumstances, it is incumbent upon the authorities to maintain proper balance.

9. Keeping in view the aforesaid facts, the order passed by the Appellate Authority refusing permission to the petitioner to lead an additional evidence is set aside. Consequently the judgment passed by the Appellate Authority is also set aside. The application for permission to lead additional evidence is allowed. It may be noted that before this Court, the petitioner has filed another application to bring on record an order passed by the High Court on the basis of a compromise in a different petition. The petitioner alleges that even that shop adjoins the petitioner's shop has also become available to the landlord.

10. Let the petitioner be granted sufficient opportunity to lead additional evidence.

11. Needless to observe that the respondent shall also be granted an opportunity to lead counter evidence , if any.

12. Let the Appellate Authority decide the appeal afresh within a period of 9 months, from today.

13. The arrears of rent, if any, shall be required to be paid before the Appellate Authority on the day of appearance.

14. Parties through their counsels are directed to appear before the Appellate Authority, on 20.04.2022.

All the pending miscellaneous applications, if any, are also disposed of.

R.M.S. – Petition disposed of.