

(2008) 04 P&H CK 0109
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3447 of 2001

Surinder Singh

APPELLANT

Vs

Dr. Davinder Mohan

RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:

Citation : (2008) 04 P&H CK 0109

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : A.K. Chopra, with Mr. Gagandeep Singh, for the Appellant; Nipun Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—The petitioner has impugned an order of his eviction from shop portion of SCF 49, Sector 23-C, Chandigarh. Respondent, Dr. Davinder Mohan, who is owner and landlord of the demised premises, has filed this petition for eviction of the petitioner. Petitioner is a tenant in a shop at monthly rent of Rs. 1500/- besides water and electricity charges. His eviction is sought on the ground that he has not paid the rent, not tendered the arrears of rent from 01.09.1995 despite repeated requests and that the said premises is required for use and occupation of Dr. Vivek Mohan, MBBS and Dr. Vandana Mohan, who are son and daughter-in-law of the respondent-landlord. It is pleaded that son of the respondent is practicing doctor in Homeopathy and his daughter in law is serving in the Haryana Government. They both intend to start practice after leaving the Government job and that is how the demised premises is needed for their use and occupation. It is further claimed that at present son of the landlord is practicing at Panchkula in a residential house, which is not permitted in view of the rules framed by HUDA authorities. The case also is that the son of the landlord is finding it difficult to practice at Panchkula as he is resident of Chandigarh and has a better scope for his profession at Chandigarh and so they can start this practice only if additional accommodation is made available to

them i.e. the demised premises. The building statedly is located in the good business shopping centre and the son of the landlord is practicing at Panchkula on account of non-availability of commercial premises at Chandigarh. It is also pleaded that accommodation in Sector 18 House of the landlord is not sufficient to establish the clinic and so the demised premises would be needed by the son of the landlord to avoid hardship to the patients who are basically from Chandigarh and Mohali.

2. Notice was issued to the petitioner, who filed a written statement. He has pleaded that the present litigation is offshoot of failure of previous litigation filed by the landlord. It is pointed out that earlier attempt to evict the petitioner was declined by Rent Controller on 31.08.1982, which was even taken upto Hon"ble Supreme Court but the order of the Rent Controller was up-held. The petitioner tendered the rent as claimed along with interest and claimed that eviction petition was not maintainable on the ground of personal necessity in view of the law laid down by Hon"ble Supreme Court, which is applicable to the territory of Punjab. The tenant would also point out in his reply that the landlord is having his homeopathic practice at his Sector 18 House but is now leading a retired life. He accordingly pleads that his son and daughter in law who are living in Panchkula are having good source of income and have the option of being in the house of 2 kanals at Chandigarh. The petitioner pleads that the respondent-landlord has undergone a major brain surgery and is unfit for practice and has also sold his SCF No. 48 Sector 23-C, Chandigarh, about 10 years ago. On the basis of these pleadings, the petitioner opposed his eviction.

3. The Revision Petition was admitted on 02.05.2002. While admitting the revision petition, this Court noticed that identical points as raised in this petition were pending before the Hon"ble Supreme Court in Civil Appeal No. 2891 of 2001. The dispossession of the petitioner was stayed while admitting the revision petition. The respondent landlord subsequently moved a miscellaneous application No. 15946 C-II of 2005 for fixing the fair rent for use and occupation of the demised premises by the petitioner. Notice of this application was issued to the petitioner and the same was decided by this Court on 24.05.2006.

4. Having regard to the different submissions made, this Court came to the conclusion that the amount of mesne profits comes to Rs. 18,650/- per month, which was rounded off to Rs. 18,000/- per month. Accordingly, Court directed the petitioner to deposit the mesne profit or compensation for use and occupation of the premises at the rate of Rs. 18,000/- per month. The mesne profits were held payable w.e.f. the date when the stay order was granted i.e. 11.07.2001. Finding that the mesne profits would work out to be substantial sum, the court itself directed that the arrears be deposited upto 31.08.2006, which shall be payable upto 10.09.2006. The mesne profits for subsequent months were directed to be paid by 10th of each month.

5. The petitioner appears to have filed SLP against the order passed by this Court. However, he has remained unsuccessful. It is conceded before me that the

petitioner has not deposited the mesne profits as directed by this Court and, thus, is in arrears of rent. Mr. Nipun Mittal would contend that the petitioner can not be heard on merits since he has failed to comply with the direction of this Court in regard to payment of mesne profits for use and occupation of the demises premises. Counsel prays that the defence of the petitioner is required to be struck off. Mr. Chopra, however, would insist for hearing the case on merit and would basically urge that the respondent was unable to satisfy the need for bona fide use of the demised premises of his son and daughter-in-law. Mr. Chopra has made reference to some evidence to show that son of the landlord is having roaring practice at Panchkula and the need as projected by the landlord is not bona fide but is a made up one. He would further plead that no sufficient evidence was led to show that son of the landlord was interested in shifting to Chandigarh as he was staying at Panchkula. According to the counsel, the patient register was also not produced to show if he has clientage at Chandigarh or Mohali to substantiate his need for bona fide use of the premises as such.

6. I find substance in the submissions made by learned counsel for the respondent. Once the petitioner is found to be in arrears of rent and has not obeyed the direction given by this Court, he can not be heard on merits. The person who has not complied with the direction issued by this Court, would not have any right to be heard on merits and his petition, as such, is liable to be dismissed on this short ground. Even then, I had gone through the material placed on record and so also the evidence led in this case. The counsel for the respondent has also placed before me large number of judgments to say that it is now settled that the need of a landlord can not be limited to his personal requirement and if premises are required for need of other family members, such requirement will be deemed to be a need of the landlord. Reference is made to Mahesh Chand v. Firm Hindu Khandan Mustarka Kripa Ram and Sons, 2006(3) CCC 701 (P&H) : 2006(1) HRR 526. Counsel would also refer to the case of Rakesh Vij v. Dr. Raminder Pal Singh Sethi and others, 2005(3) CCC 734 (S.C.) : 2006(1) ACJ 149 (S. C.): 2005(2) HRR 584 to urge that the landlord can not be deprived of his right of eviction from a non-residential building when it is needed for his own business use. This being the main ground for which this petition was admitted, has now been decided by the Hon"ble Supreme Court. It is now held that landlord in Chandigarh is entitled to seek eviction of his tenant from a shop-cum-flat consisting of a ground floor and first floor. In the case of Rakesh Vij (supra), the ratio of law laid down in Harbilas Rai Bansal v. State of Punjab, 1996(1) CCC 110 (S.C.) : 1996(1) ACJ 94 (S.C.) : 1996 HRR 1 SC has been applied and up-held for Chandigarh as well.

7. To rebut the argument of Mr. Chopra that daughter in law of the landlord is in Government service and as such, would effect the need as projected, reference is made by counsel for the respondent to M/s. Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal & Ors., 2005(2) ACJ 639 (S.C.) : 2005(3) CCC 763 (S.C.) : 2005(2) HRR 598. In this case, it is held that it is not possible for a landlord to await for the disposal of the case and it is not necessary for his son to

return from America to India for seeking eviction of the tenant. Need for starting and expansion of business by the family member was held to be bona fide necessity. It is accordingly pleaded that there is no requirement for a daughter in law to leave the Government service for substantiate the need of premises for personal use. Reference is then made to the case of Joginder Pal v. Naval Kishore Belial, 2002(1) ACJ 605 (S.C.) : 2002(2) CCC 633 (S.C.) : 2002 HRR 356 to urge that landlord requirement for non-residential premises for the office of his son, who is a Chartered Accountant and wanted to start his job was held justified for the landlord to seek eviction of the tenant for his son, who is dependent upon him. The Hon"ble Supreme Court in this case has held that it is the moral obligation of the landlord to settle his son in life. The words "for his own use" has been held to include family members of the landlord who are dependent on the landlord or on whom the landlord is dependent. The counsel would also refer to the ratio of law laid down in Sarla Ahuja v. United India Insurance Company Limited, 1998(2) ACJ 704 (S.C.): 1999 HRR 57 to urge that Rent Controller is not to proceed on presumption that the requirement of a landlord is not genuine. In this very case, it is held that the tenant is nobody to dictate his terms to the landlord in the matter of bona fide requirement and only relevant factor showing bona fide requirement should be the deciding factor. Even the financial capacity of a landlord to start business has been held to be irrelevant in the case of G.C. Kapoor Vs. Nand Kumar Bhasin and Others, . Thus, I am of the considered view that all these judgments cited before me have relevance for deciding the present case. The landlord-respondent, in my view, was able to sufficiently establish the need and use of this demised premises by his son. The evidence and material on record would also show that it is not possible for the son of the landlord to conduct his practice at Panchkula in view of certain regulations made by authorities of HUDA. Accordingly, I do not find any ground to interfere in the impugned order passed against the petitioner.

I would, thus, dismiss this revision petition, it being without merit.