

Mohinder Kumar Vs. Mohini Devi and anr.

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Court : Punjab and Haryana

Decided On : Nov-26-2008

Reported in : (2009)3PLR585

Judge : Mahesh Grover, J.

Appellant : Mohinder Kumar

Respondent : Mohini Devi and anr.

Judgement :

Mahesh Grover, J.

1. This revision petition is directed against the order of the Appellate Authority dated 11.10.2008.
2. The petitioner is the tenant who is facing ejectment proceedings on a petition having been preferred by the respondent-landlord under the provisions of Section 13-B Haryana Urban (Control of Rent and Eviction) Act, 1973.
3. The respondent had pleaded that the petitioner was in arrears of rent and also pleaded personal necessity. Initially the petition was filed by Siri Ram who is father of the present respondent. Siri Ram died during the pendency of the proceedings. For the purposes of prosecution, Siri Ram in his life-time has executed special power of attorney in favour of one of the respondents namely Prem Kumar PW-1

who is his son. The Rent Controller framed following issues:

1. Whether the respondent is in arrears of rent as alleged in the petition? OPP
2. Whether the tenanted premises is required by the petitioner for his own use and occupation as alleged in the petition? OPP
3. Whether the petition is liable to be dismissed. OPR
4. Relief'.

4. After appraisal of the evidence, learned Rent Controller dismissed the ejectment petition which resulted in appeal being filed before the appellate authority which has now accepted the ejectment petition and ordered the eviction of the petitioner by primarily holding that the bonafide need of the respondent-landlord stands established.

5. Assailing this finding of the learned Appellate Authority the learned Counsel for the petitioner contended that two shops immediately adjoining the demised premises were vacated prior in time and therefore, this answered the need of the respondent as he has pleaded that the shop is needed for setting two of his sons namely Harish Kumar and Deepak Kumar. It was further pleaded that there was absolutely no evidence to suggest that such a need existed as the said persons for whom the necessity has been pleaded were already carrying on business of poultry fanning. It was further pleaded that respondent-landlord is a man with means and he has sold properties implying thereby that the need is non-existent.

6. It was next contended that earlier petition filed against the petitioner was got dismissed as withdrawn and a subsequent petition under order 2 Rule 2 CPC would be barred.

7. After hearing learned Counsel for the petitioner, I am of the considered opinion that the present petition deserves to be dismissed. It has come in evidence, which has also been noticed by the learned Appellate Authority that the family consisted of eight persons who are barely literate. It has also come in evidence that two shops which were got vacated earlier were occupied by Pawan Kumar and Harish

Kumar respondents. If the petition is to be seen, eviction was sought for bona fide need for two persons namely Harish Kumar and Deepak Kumar. The two shops alleged to have been got vacated by the father of the respondent-landlord were vacated about 8 years and 3-4 years back. These shops were occupied by Pawan Kumar and Harish Kumar implying thereby that Deepak Kumar the other son still required one shop. The demised premises therefore would certainly be required for the other son Deepak Kumar while the other two shops have been consumed by Pawan Kumar and Harish Kumar. Apparently, the family of eight sons require the premises for carrying on their business. It is settled principle of law that the need of the landlord has to be judged from his view point and not from the view point of the tenant. It is also settled proposition that the tenant cannot dictate to the landlord as to which premises are to be utilized and in what manner.

8. There is thus little hesitation to hold that the bona fide need of the respondent stands established.

9. In so far as the plea of the petitioner that the provisions of Order 2 Rule 2 CPC would apply, I am afraid the contention is misplaced. A petition under the Rent Act filed on the basis of bona fide necessity is to be seen with a perspective on the existing need at that point of time and even if prior petition has been filed and withdrawn, the subsequent petition cannot be said to be barred as the need, if it arises subsequent to the filing of the petition, would be viewed separately and independently.

At this point, learned Counsel for the petitioner prayed that some time be granted to the petitioner to vacate the premises as he is in occupation of the shop for a long time.

10. In this eventuality, it is directed that in case the petitioner furnishes an undertaking before the Rent Controller within a period of four weeks from today to the effect that he shall hand over vacant physical possession of the premises to the respondent-landlord on or before 31.5.2009, the execution of the impugned order shall remain in abeyance and the petitioner shall not be dispossessed. However, he shall continue to pay rent either by making a deposit before the Rent Controller or to the respondent-landlord. He shall also pay the arrears of rent, if

any, alongwith an undertaking before the Rent Controller. Dismissed.

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