

***Before Surinder Gupta, J.***

**RAJIV GUPTA AND ANOTHER—*Petitioners***

*versus*

**RAM PHAL GUPTA—*Respondent***

**CR No. 3481 of 2016**

December 19, 2018

***A) Haryana Urban (Control of Rent and Eviction) Act, 1973, Section 13—Eviction—Held, non-examination of son for whose benefit the premises is sought to be vacated is no ground to non suit the landlord.***

*Held* that Hon'ble Apex Court in case of Mehmooda Gulshan vs. Javaid Hussain Mungloo, 2017 (1) RCR (Rent) 273 has observed that nonexamination of son for whose benefit the premises is sought to be vacated is no ground to non suit the landlord. It was observed by Hon'ble Apex Court in para 21 of the judgment as follows:-

“21. Thus, the question is whether there is a reasonable requirement by the landlord of the premises. This would depend on whether the landlord has been able to establish a genuine element of need for the premises. What is a genuine need would depend on the facts and circumstances of each case. Merely because the landlord has not examined the member of the family who intends to do business in the premises, he cannot be nonsuited in case he has otherwise established a genuine need. The need is a matter of appreciation of evidence, and once there is no perversity in the appreciation of evidence on the need, the said finding of fact cannot be reopened.....”

(Para 7)

*Further held* no ground to doubt *bona fide* need of the premises by landlord to settle his son, when on record it is proved that son is in property business at Rohtak and has the earning from that source. Even if he is presently settled at Delhi and looking after some business there, it is no ground to infer that need of the premises as projected by landlord is not genuine. Every person has to keep himself busy in some avocation to earn his livelihood and to feed his family. Merely because an ejection petition has been filed to get premises for his need to start a business or office is no reason to expect from him to sit idle till he gets that premises.

***B) Haryana Urban (Control of Rent and Eviction) Act, 1973, Section 13— Eviction—Bona fide requirement cannot be doubted merely because during pendency of ejectment petition other means of earning adopted— One is not expected to sit idle—Sale of plot cannot defeat bona fide necessity of shop.***

*Held* that even after 10 years of filing of the petition seeking ejectment, the respondent-landlord has not been able to get possession of the shop. During this period son of the respondent had to do some business, job or involve himself in some profession to earn his livelihood for himself as well as for his family. Even if he is involved in jewellery business at Delhi and is living there with family, the same cannot be a reason to doubt the *bona fide* need as put forth by the respondent for the shop in question.

(Para 10)

*Further held* that mere sale of the plot by the respondent would not defeat his *bona fide* necessity for the shop in question.

(Para 11)

Sandeep Kumar Sharma, Advocate  
*for the petitioners.*

Sandeep Singhal, Advocate  
*for the respondent.*

### **SURINDER GUPTA, J.**

(1) Respondent-Ram Phal Gupta filed petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short 'the Act'), for ejectment of revision-petitioners (tenant) from the shop bearing no. 1542, Ward No. 17, Rohtak on the ground of personal bona fide necessity of the shop by his son and subletting. Learned Rent Controller, Rohtak allowed the petition and the appeal filed by the revision-petitioners was dismissed by the Appellate Authority, Rohtak. Not satisfied, the revision-petitioners have filed this petition seeking setting aside of order passed by learned Rent Controller and the Appellate Authority.

(2) Learned counsel for the revision-petitioners has argued that ejectment of petitioners from the demised premises has been sought on the ground of personal bona fide necessity of the son of respondent-landlord, but he was not examined as witness. This fact was proved on record that son of the respondent was employed as director of a diamond company, as such, was gainfully employed, but was not properly appreciated by learned Rent Controller or by the Appellate Authority. The son of respondent-landlord is

presently residing at Delhi and owns property at Rohtak, these facts were concealed. In case son of the respondent-landlord had appeared as witness he could be cross-examined about his need, income and business which he is carrying out and his requirement of demised premises.

(3) Learned counsel for the respondent-landlord has argued that petitioners have placed on file income tax returns of son of the respondent as Ex. P-5 to Ex. P-7. He was not having any income from the diamond company of which he is a director. The petition was filed in the year 2008 and during the last ten years, it is not expected that son of the respondent will remain idle and earn no livelihood to feed his family. The need of the respondent and his son as it existed at the time of filing of petition is a relevant factor to be seen and learned Courts below have rightly held that the demised premises is required for the personal bona fide need of son of the respondent.

(4) Before proceeding further it will be relevant to have a look at the observations by learned Rent Controller and Appellate Authority about the bona fide requirement of the respondent qua the shop in question. The averment of revision-petitioners that son of the respondent-landlord runs a jewellery business at Delhi with his brother was discarded for want of documentary evidence. This plea of revision-petitioners that respondent had sold a plot of HSIDC during pendency of the suit was also discarded on the ground that landlord is the best judge of gainful utilization of his property and tenant cannot dictate term to him as to in what manner he may or may not dispose of his property. The Appellate Authority on the basis of evidence observed that respondent has no other shop or suitable accommodation for requirement of his son, who is a property dealer at Rohtak. Reliance was placed on income tax returns of son of the respondent showing income from property business. This argument of learned counsel for revision-petitioners that son of the respondent-landlord is running a jewellery business was also considered and it was observed in para 20 of the judgment as follows:-

“20.Learned counsel for the appellants-tenants has contended that Naveen son of respondent-landlord is running jewellery business at Delhi and is permanently settled there. The contentions of learned counsel for the appellants-tenants are not proved on case file as they could not bring evidence to show, that Naveen is running the jewellery business. Moreover, it is settled proposition of law that during pendency of the eviction petition, the petitioner or for whom the requirement of personal necessity is there, is not

expected to remain idle as the petitioner cannot be expected to remain unemployed, waiting for the result of eviction petition. I am further confirmed by the judgment of Hon'ble Apex Court in *Smt. Rankubai* versus *Hajari Mal, 2000 H.R.R.469*.

21. Further, I draw my support from the observation held in case titled as *Charanjit Singh* versus *Karnail Singh, 2011 (Suppl.) CCC 819 (P&H)* wherein Hon'ble High Court has held that:

“Eviction petition on ground of bona fide requirement:- Landlord alleged that he wants to set up his own independent business in demised premises after quitting his job. If landlord alleges that he wants to establish his own independent business after leaving the job, the need of the landlord cannot be said to be mala fide and it should always be presumed to be bona fide.”

22. The Apex Court in the matter of *Maganlal* versus *Nanasaheb, 2009 (1) Civil Court Cases 102 (SC)* in paragraph 16 has held as under:-

“This court in *Sait Nagjee Purushotam and Company Limited* versus *Vimalabhai Prabhulal and others, (2005) 8 SCC 252* held that it is always a prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business, this is no ground to say that the landlords are already having their business at Chennai and Hyderabad, therefore, it is not genuine need. Further, it is held that it is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of the business.”

(5) Firstly, I take contention of learned counsel for revision-petitioners that son of respondent-landlord was not examined to prove that he required the demised premises for his personal bona fide necessity. In support of his contention, learned counsel for revision-petitioners has relied on observations of a coordinate Bench of this Court in case of *Brij Bhushan and another* versus *Sanjay Harjai and another*<sup>1</sup> *Rajiv Gupta* versus *Jiwan Ram*<sup>2</sup> and *Manmohan Lal* versus *Shanti Parkash Jain*<sup>3</sup> and *Manmohan Lal* versus *Shanti Parkash Jain*<sup>4</sup>.

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<sup>1</sup> 2015 (2) RCR (Civil) 68

<sup>2</sup> 2015 (1) RCR (Civil) 762

(6) I have given a careful thought to submissions of learned counsel for revision-petitioners but find no merit therein. In cases of ***Brij Bhushan*** (supra) and ***Rajiv Gupta*** (supra) non-examination of son of landlord, for whose necessity the eviction was claimed, was considered to be a fact to disprove the plea raised by the landlord that the demised premises was required for the bona fide need of his son but in case of ***Manmohan Lal*** (supra) (relied upon by learned counsel for revision-petitioners), same Bench which observed examination of son for whose necessity eviction was sought is not necessary if statement of landlord is all pervasive, complete and believable.

(7) Hon'ble Apex Court in case of ***Mehmooda Gulshan*** versus ***Javaid Hussain Mungloo***<sup>5</sup> has observed that non-examination of son for whose benefit the premises is sought to be vacated is no ground to non suit the landlord. It was observed by Hon'ble Apex Court in para 21 of the judgment as follows:-

“21. Thus, the question is whether there is a reasonable requirement by the landlord of the premises. This would depend on whether the landlord has been able to establish a genuine element of need for the premises. What is a genuine need would depend on the facts and circumstances of each case. Merely because the landlord has not examined the member of the family who intends to do business in the premises, he cannot be non-suited in case he has otherwise established a genuine need. The need is a matter of appreciation of evidence, and once there is no perversity in the appreciation of evidence on the need, the said finding of fact cannot be reopened.....”

(8) In this case there is no ground to doubt bona fide need of the premises by landlord to settle his son, when on record it is proved that son is in property business at Rohtak and has the earning from that source. Even if he is presently settled at Delhi and looking after some business there, it is no ground to infer that need of the premises as projected by landlord is not genuine. Every person has to keep himself busy in some avocation to earn his livelihood and to feed his family. Merely because an ejection petition has been filed to get premises for his need to start a business or office is no reason to expect from him to sit idle till he gets that premises.

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<sup>3</sup> 2014 (5) RCR (Civil) 667

<sup>4</sup> 2014 (5) RCR (Civil) 667

<sup>5</sup> 2017 (1) RCR (Rent) 273

(9) The revision-petitioners moved application before the Appellate Authority under Order XLI Rule 27 CPC to prove that Naveen Gupta son of the respondent is the Director of M/s R.P. Mahal Jewellers Pvt. Ltd., Karol Bagh, New Delhi and is living there with his family. The application of revision-petitioners was declined by the Appellate Authority with the observation that allowing of additional evidence is not necessary in order to adjudicate the real controversy between the parties.

(10) The contention of learned counsel for revision-petitioners that son of landlord is Director of a jewellery firm in Delhi and is living there has been rightly rejected by the Appellate Authority. Even after 10 years of filing of the petition seeking ejection, the respondent-landlord has not been able to get possession of the shop. During this period son of the respondent had to do some business, job or involve himself in some profession to earn his livelihood for himself as well as for his family. Even if he is involved in jewellery business at Delhi and is living there with family, the same cannot be a reason to doubt the bona fide need as put forth by the respondent for the shop in question.

(11) It has been argued that respondent-landlord had sold industrial plot at Rohtak during pendency of ejection petition, which shows that he is not having bona fide requirement for the shop in question. This argument of learned counsel for revision-petitioners has no merit. A person has to start his business or office at a suitable place. The mere sale of the plot by the respondent would not defeat his bona fide necessity for the shop in question. It is a settled proposition of law that even if a landlord occupies

(12) some other building or plot in the urban area he can still seek ejection of the tenant from the building suitable for his requirement. The Appellate Authority has also looked into this aspect while declining this argument put forth before it.

(13) As a sequel of my above discussion, I am of the considered opinion that learned Rent Controller and Appellate Authority have committed no error while relying on statement of respondent-landlord and evidence produced on file while arriving at the conclusion that demised premises is required by the respondent for his personal bona fide necessity, calling for any interference. This petition has no merit and the same is dismissed.