

**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH.**

**CR No.6117 of 2008(O&M)**

**Date of Decision:-July 2<sup>nd</sup>, 2013**

**Sikander Lal.**

.....Petitioner.

Versus

**Mehar Singh & Ors.**

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH**

Present:- Mr. Arun Jain Senior Advocate with  
Mr. Harkesh Manuja, Advocate for the Petitioner(tenant).

Mr. Deepak Sibal, Advocate for the respondents(landlords)

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**JASWANT SINGH, J.**

Petitioner(tenant) is in revision under Section 15(6) of Haryana Urban(Control of Rent & Eviction) Act, 1973(hereinafter referred to as the Act), against the concurrent findings returned by the Authorities below, whereby eviction application filed by the respondents(landlords) was allowed on the ground of personal necessity by the learned Rent Controller, Karnal vide its judgment dated 22.04.2008 and the findings thereof were affirmed by the learned Appellate Authority, Karnal vide its judgment dated 20.09.2008.

In brief, facts of the case are that respondents(landlords) filed an eviction application of a shop in Timber Market, Karnal on the grounds of arrears of rent; unfit and unsafe for human habitation; & personal use and

occupation of landlord no.1 Mehar Singh as well as of landlord no.2 along with his son who are idle.

Upon notice, the petitioner(tenant) admitted the relationship amongst the parties, however denied the averments of the ejectment application as being baseless.

After hearing learned Counsel for the parties, the learned Rent controller ordered eviction of the petitioner(tenant) on the ground of personal necessity only and the findings thereof were affirmed by the learned Appellate Authority as well. Hence the present revision petition.

I have heard learned Counsel for the parties and have gone through the case file carefully with their able assistance.

Learned Counsel for the petitioner(tenant) has argued that the need as projected by the respondents(landlords) is not at all bona fide because they are well settled in Delhi. It was further argued that at the time of filing of the eviction application, respondent no.1/landlord no.1 was 72 years of age and respondent no.2/landlord no.2 was 64 years of age and out of them, respondent no.1 had retired almost 15 years back and whereas the respondent no.2 had retired around three years back. Thus, it was argued that if after all these years of retirement none of the respondents(landlords) ever sought any ejectment on their bona fide necessity, then this fact clearly shows that the present eviction application on the need of the respondents is also false and not bona fide. It was further argued by the learned Counsel for the petitioner(tenant) that prior to the filing of the present eviction petition, respondents(landlords) had earlier also filed an ejectment petition against the present petitioner regarding the same very shop, although the ground of bona fide requirement was never raised. The said ejectment

petition was dismissed as withdrawn vide order dated 10.11.1997. Thus, it was vehemently argued that both the Authorities below have failed to appreciate the fact of filing and withdrawal of the earlier ejectment petition completely.

Learned Counsel for the petitioner(tenant) has further argued that it is not in dispute that Devinder Pal Singh who is son of Avtar Singh (respondent no.2), whose need is being projected, is not dependent upon Avtar Singh as there is no evidence at all which could prove the said fact.

Learned Counsel for the petitioner(tenant) has finally challenged the veracity of the order passed by the learned Appellate Authority, where his application under Order 41 Rule 27 CPC has been dismissed by arguing that the said application would prove to the hilt that Devinder Pal Singh is already gainfully employed in his business and, therefore, there is no need of said Devinder Pal Singh of the present demised premises.

On the other hand, learned Counsel for the respondents (landlords) has supported the judgment passed by both the Authorities below and has argued that it is always the prerogative of the landlord to see as to what is more essential to him and tenant is nobody to dictate terms to the landlord. It was further argued that the previous ejectment application was filed on the ground of material impairment and subletting and thus, the ground of personal necessity taken by the landlords in the present eviction application is not barred and does not effect the merits of the case at all. As far as the dependency of Devinder Pal Singh on Avtar Singh is concerned, it is not in dispute that Devinder Pal Singh continues to live in Karnal since the very beginning and still continues to live there. Furthermore, it is not

expected by any person to remain idle until and unless the property is vacated. Learned Counsel for the respondents(landlords) has further supported the dismissal of application under Order 41 Rule 27 CPC by stating that the said application was rightly dismissed as no ground was made out for allowing the same.

After hearing learned Counsel for the parties and perusing the paper book, this Court is of the considered view that the present petition is devoid of any merit and same deserves to be dismissed. A perusal of the paper book would reveal that the necessity that has been projected by the respondents(landlords) is for themselves i.e. landlord no.1 and 2 namely Mehar Singh and Avtar Singh, both sons of Lal Singh and further of Devinder Pal Singh son of Avtar Singh. It is further not in dispute that both the landlords are retired and are absolutely idle. It is by now settled position of law that age is no bar for any person to start any business and court is no body to impose its own opinion regarding the ability of any person to work at any stage. In the present case, it is not only the landlords no.1 & 2 who intend to start the business but it is also son of landlord no.2 namely Devinder Pal Singh who concededly resides at Karnal and jointly intends to start the business. In such a situation, the first argument that has been raised by the learned Counsel for the petitioner(tenant) that need is not bona fide for the reason that landlords have if already retired and are settled in Delhi is absolutely misconceived and is hereby rejected.

As far as the second argument taken by the learned Counsel for the petitioner(tenant) regarding the previous filing of ejectment application is concerned, this Court is of the opinion that the same is also misconceived for the reason that admittedly, the previous ejectment application was filed

only on the ground of material impairment and subletting whereas the present eviction application is on the ground of personal necessity also. Thus, cause of action of personal necessity accrued to the respondents (landlords) and no adverse inference can be drawn against them.

As far as the plea taken by the petitioner(tenant) regarding Devinder Pal Singh not being dependent upon Avtar Singh is concerned, this plea is also devoid of any merit for the reason that it is not necessary that Devinder Pal Singh would remain idle for all times to come until and unless the building is vacated. It is not in dispute in the present case that Devinder Pal Singh has been continuously living in Karnal and this fact has not even been refuted by the petitioner(tenant). It is also not in dispute that there is another house in Karnal where Devinder Pal Singh is living and this fact also has not been refuted by the petitioner(tenant). Thus, in view of the above facts it cannot be said that respondents(landlords) were under obligation to show that Devinder Pal Singh was dependent upon Avtar Singh because such kind of evidence is normally not available.

As far as the challenge to the order whereby application under Order 41 Rule 27 CPC filed by the petitioner(tenant) is concerned, this Court is of the opinion that the learned Appellate Authority has rightly dismissed the said application. It is apparent from the record that petitioner (tenant) was aware of Devinder Pal Singh working as property dealer in Karnal right from the beginning, as is evident from the cross examination of the respondents whereby the question pertaining to Devinder Pal Singh, already working as a property dealer was put to them. Thus, it cannot be said that petitioner(tenant) was not aware of the facts and can be permitted to fill up the lacunae at later stage. Furthermore, this Court is of the opinion

that working or non working of Devinder Pal Singh in Karnal would not affect the merits of the case and rather by taking into consideration the fact that Devinder Pal Singh is working in Karnal, the case of the petitioner (tenant) becomes, even more weak because it is a case throughout set up by the petitioner(tenant) that the respondents/landlords did not intend to start any kind of business in the demised premises as they are permanently settled in Delhi. Thus, here is a peculiar situation where a double edged sword has gone against a party who had propounded a certain evidence and proved the case of the other party itself.

In view of the above, finding no merit in the revision, same is hereby dismissed.

**( JASWANT SINGH )  
JUDGE**

**July 2nd, 2013**  
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