



**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CR-8826-2016(O&M)**

**Date of Decision: May 14, 2025**

Ajay Kumar and others

...Petitioners

Versus

Rajesh Kumar

...Respondent

**CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Vaibhav Narang, Advocate  
for the petitioners.

Respondent proceeded against ex-parte.

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**ARCHANA PURI, J.**

The present revision petition has been filed by the petitioners-landlords, thereby, assailing the judgment dated 17.09.2016 passed by learned Appellate Authority, whereby, the eviction order passed by learned Rent Controller, was set aside and the ejection petition was dismissed.

The essential facts, to be noticed, are as follows:-

That, initially Ajay Kumar and other petitioners had filed the petition under Section 13 of the East Punjab Urban Rent Restriction Act III of 1949, thereby, seeking ejection of the respondent-Rajesh Kumar, from shop No.1-A, as detailed in the headnote of the petition. Therein, it was asserted that said shop was taken on rent by the respondent @ Rs.250/- per month.

**CR-8826-2016****-2-**

The tenancy was oral one, accompanied by delivery of possession. However, in order to reduce into writing, rent note dated 18.11.1992 was executed by the respondent in favour of the petitioners-landlords. The respondent, ever since the inception of tenancy, was paying rent to the petitioners and as such, there exists relationship of tenant and landlord between the parties.

There were two grounds pleaded in the ejectment petition. It was asserted that the respondent has neither paid nor tendered arrears of rent from 18.04.2012 till date @ Rs.250/- per month, despite repeated requests made and that secondly, the demised premises is required by the petitioner-Ajay Kumar for his son namely, Bharat Kumar, who is not running any business or doing any service and is dependent upon Ajay Kumar, in each and every aspect. Also therein, it was asserted that neither, petitioner-Ajay Kumar nor his son had vacated any such non-residential building, in the urban area of Amritsar, since the commencement of the Rent Act, without any sufficient cause. Thus, the demised premises is bonafide requirement for Bharat Kumar, who is aged about 23 years and is unmarried, as the same is required for running business in the said shop.

Upon notice, the respondent made appearance and filed reply, thereby, raising various preliminary objections, vis-a-vis, maintainability of the application and the same having filed without any cause of action. On merits, the fact of tenancy, as such, was not disputed. Even, the execution of the rent note dated 18.11.1992 as well as rate of rent as Rs.250/- per month, as such, was admitted. However, the grounds for seeking ejectment were



denied. In fact, it was asserted that petitioners-landlords always refused to accept the rent, as and when tendered. Further, also it was asserted that the plea of requirement of the shop by Ajay Kumar for his son Bharat Kumar is false. In fact, it was denied. Further, it was asserted that petitioners-landlords are in possession of many shops, lying vacant with them.

From the pleadings of the parties, following issues were framed:-

- “1. *Whether the premises are required bonafide by the applicant by his own use and occupation and for his son?OPP*
2. *Whether the respondent is liable to be ejected on the grounds of non payment of arrears of rent?OPP*
3. *Relief.”*

To substantiate their claim, petitioners-landlords examined Ajay Kumar, who stepped into witness box as AW-1 and thereafter, the evidence was closed.

On the other hand, to rebut the claim, respondent-Rajesh Kumar, himself stepped into witness box as RW-1 and also examined RW-2 Jang Bahadur and RW-3 Avtar Singh and thereafter, closed the evidence.

On appraisal of the evidence, brought on record, learned Rent Controller had held that since the rent, as assessed, for the requisite period, was tendered, therefore, the respondent was not in arrears of rent.

So far as, second ground of requirement of the shop for settlement of son of Ajay Kumar is concerned, learned Rent Controller, while making threadbare discussion of testimony of petitioner-Ajay Kumar as well as

**CR-8826-2016****-4-**

considering the testimonies of respondent-Rajesh Kumar as well as his witnesses RW-2 Jang Bahadur and RW-3 Avtar Singh and also considering the case law, on the subject, had concluded that the demised premises in question, is required by Ajay Kumar for settlement of his son and therefore, his 'need', as such, cannot be termed to be fanciful in any manner. Accordingly, issue No.1 was decided in favour of the petitioner and consequently, the ejectment petition was allowed, on the ground of bonafide requirement.

Being aggrieved, Rajesh Kumar-tenant had filed an appeal and vide impugned judgment dated 17.09.2016, learned Appellate Authority, while re-appraising the testimony of AW-1 Ajay Kumar, had concluded that there was one vacant shop, available with the landlords and therefore, the applicants-landlords have failed to lead any cogent and convincing evidence, as regards bonafide need and thus, the findings on issue No.1, were set aside and consequently, the appeal was allowed and eviction order was thus set-aside and the ejectment petition stood dismissed.

Being aggrieved, the petitioners-landlords have filed the present revision petition.

In pursuance of the notice issued, respondent did not make appearance, despite service and as such, he was proceeded against ex-parte.

Before proceeding to re-appraise the evidence, brought on record, vis-a-vis, the 'need' as projected by the landlords, it is pertinent to mention that ejectment petition was filed by four partners, namely, Ajay Kumar, Umesh Kumar, Meena Rani and Shama Rani. Undisputedly, as

**CR-8826-2016****-5-**

established from the evidence brought on record, there are four partners of the building, of which, the demised premises form a part. Also, it stands established that the business is run jointly by Ajay Kumar and others, in some of the shops, which form part of the building in question. Also, it is necessary to take note that the rent note executed by the respondent, in favour of the petitioners, has been proved as Ex.P1 and perusal of the same reveals that Rajesh Kumar had taken the shop in question, on rent from Ajay Kumar, Umesh Kumar, son of Amar Nath as well as Meena Rani, wife of Yash Pal and Shama Rani, wife of Rakesh Kumar.

Keeping this in mind, the 'need' of the shop, as put forth by the petitioners-landlords and as asserted by Ajay Kumar, when he stepped into witness box, for the settlement of his son, needs appraisal. Ajay Kumar, in his affidavit Ex.AW1/A, has categorically deposed about the inception of tenancy and manner of execution of the rent note dated 18.11.1992, executed in his favour as well as in favour of co-petitioners and the copy of the rent note is Ex.P1. He has also submitted therein, about the rent being paid by the respondent to the petitioners-landlords. Furthermore, he has categorically deposed about the requirement of the demised shop for his son Bharat Kumar, who is not running any business and not doing any service. He has categorically stated that the petitioners have not vacated any non-residential building in the urban area of Amritsar, since the commencement of the Rent Act No.III of 1949, without any sufficient cause. His son Bharat Kumar also does not own or possess any non-residential building in the area of Amritsar and his said son has not vacated any such non-residential

**CR-8826-2016****-6-**

building. in the urban area of Amritsar, since the commencement of the Rent Act No.III of 1949, without any sufficient case.

So far as, his cross-examination is concerned, Rent Controller had minutely appraised the same. Very true, as observed by learned Appellate Authority that the said petitioner has stated that on the third floor, a shop is lying vacant and is under his possession. However, Rent Controller had also threadbare discussed the testimonies of respondent-Rajesh Kumar as well as both his witnesses RW-2 Jang Bahadur and RW-3 Avtar Singh. It has been categorically observed by the Rent Controller that the respondent-Rajesh Kumar, in his cross-examination has stated that he had never gone to any part of the floor of the building, as the landlords did not permit him to go to any of the floor of the building. He had never seen first or second floor or any of the floor of the disputed building, where the landlords are carrying on business. He has visited only the ground floor of the building, where the landlords are carrying on their business. He further stated that landlords are having five shops in the building at the ground floor. He admitted to be correct that in all the five shops, landlord Ajay Kumar along with his family, is carrying on his business. He further admitted to be correct that on the ground floor, no shop is lying vacant.

Also, the said witness admitted that there is one hall and two-three shops, on the 1<sup>st</sup> floor, out of which, one shop is under tenancy of Shingar and rest are in possession of the petitioners, where they are doing their business. He further stated that there is no vacant shop on the 1<sup>st</sup> floor and there is one hall and one shop lying vacant on the 2<sup>nd</sup> floor. He also stated

**CR-8826-2016****-7-**

that R.K.Bali is tenant in the shop on 2<sup>nd</sup> floor and petitioners are storing bardana and parcels in the shops situated on the 2<sup>nd</sup> floor. He also admitted that the landlords are using the shops at the second floor as godown. He also admitted that Ajay Kumar is having son namely Bharat Kumar and is unmarried. He further admitted to be correct that Bharat Kumar is not having source of income and is fully dependent upon Ajay Kumar and he requires the shop for his son Bharat Kumar. He also admitted about the location of the said shop, which is accessible to the market and good for business. He further admitted that the landlords have not vacated any shop. He stated that landlords have big showroom, which is being used by Ajay Kumar, for his own business.

Likewise, Rent Controller has also made minute reference to the cross-examination of RW-2 Jang Bahadur, who had also stated about the existence of the number of the shops and further about the shops and godown to be used by the landlords. He also admitted that Ajay Kumar has four brothers, but he cannot tell name of the brothers. Similarly, reference has been made to testimony of RW-3 Avtar Singh, Draftsman, who prepared site plan Ex.R1. But however, in cross-examination that he was unable to tell the number of shops on ground floor, 1st floor and 2nd floor and he further stated that there was no vacant shop on ground floor. He further also stated that he had mentioned three shops in the site plan at 1st floor, one of them was vacant. He stated that three shops on 2nd floor are lying vacant as per his site plan. But, at the same time, he admitted to be correct that he mentioned the shops on 2nd floor as vacant because they were not opened.



Considering the testimonies of aforesaid witnesses and weighing all the three, learned Rent Controller had relied upon the version put forth by the petitioners and concluded about the 'need' as projected, to be not fanciful, in any manner and thus, ordered the eviction of the respondent.

In this backdrop, it is pertinent to mention that learned Appellate Authority had solely made reference to testimony of AW-1 Ajay Kumar and on the basis of the shop, having stated to be vacant on the 3<sup>rd</sup> floor, concluded that it cannot be said that petitioners do not occupy any shop. Considering the same, further taking into consideration the size of the shop, which was lying vacant on the 3<sup>rd</sup> floor, as well as the size of the demised shop, learned Appellate Authority also made an observation about the shop lying vacant to be good for business and that the petitioners have failed to lead any cogent and convincing evidence, as regard their bonafide need and thus, the appeal was accepted and the eviction order was set aside and the ejectment petition was dismissed.

Before proceeding further, it is pertinent to mention that the decision so rendered by learned Appellate Authority is palpably wrong. Learned Appellate Authority without meeting the appreciation of evidence, facts and attending circumstances, as done by Rent Controller and findings arrived at, on such appreciation, had sweepingly reversed the findings of Rent Controller. It is further pertinent to mention that learned Appellate Authority only appraised the testimony of AW-1 Ajay Kumar, with emphasis upon his one sentence, coming forth, in his cross-examination, about the

**CR-8826-2016****-9-**

shop on the 3<sup>rd</sup> floor to be lying vacant and that being under his possession. This sentence or admission, as asserted cannot be considered singularly. The appraisal has to be there of the entire testimony of Ajay Kumar and that too, weighing the same with the testimonies of the respondent and his witnesses. It is pertinent to mention that though Ajay Kumar had stated about the shop lying vacant on the 3<sup>rd</sup> floor and that being in his possession, but however, in the later portion, after 4-5 sentences, in his cross-examination, he has categorically stated that there are no vacant shops in the disputed property and that he requires the tenanted shop under the possession of the respondent specifically, as he intends to start business of dupatta in the demised shop, with his son. This part of the cross-examination has not been addressed to.

As already observed, the building in question, of which, the demised premises is also a part, is owned by four persons, who had jointly filed the ejectment petition. The rent note was executed by the respondent in favour of all four such persons, which is Ex.P1. Time and again, it is coming forth in the cross-examination of RW-1 Rajesh Kumar also, that the building in question is owned by four persons and that Ajay Kumar and his other companions are also transacting business in part of the shops of the said building.

Considering the same, the shop, as such, reference whereof is made, existing on the 3<sup>rd</sup> floor, to be lying vacant and to be in possession of Ajay Kumar, as such, cannot be taken to be solely in possession of Ajay Kumar (if any). The property is owned by multiple persons, more

**CR-8826-2016****-10-**

particularly, when not established to be in exclusive possession of Ajay Kumar, it would obviously be inconvenient in the minimum, to initiate business, on the basis of the projected 'need'. It is quite obvious that the other co-sharers, even if be family members, may not agree for excessive user of the joint property by one landlord, for settlement of his son. They may be interested to let out the same, to make themselves entitled to proportionate rent of the said property.

This is one aspect of the availability of the shop, which needs to be taken into consideration. Since, there are four owners of the demised building, one shop, as such, cannot be said to be solely, in possession of Ajay Kumar, when no other convincing evidence has been brought on record, with regard to the alleged vacant shop and also, with regard to four persons, who owned the building, of which demised premises is part, to be in exclusive possession of their shares, in the said building. There is no such evidence, coming on record.

Learned Appellate Authority has itself observed in the impugned judgment that petitioner-Ajay Kumar, being partner, is in possession of the said shop. This observation is presumptuous, when no evidence, relating to the allocation of the shops, in favour of the separate partners, as such, has come on record.

Even if, this singular line of Ajay Kumar to be in possession of the shop on the 3<sup>rd</sup> floor, is to be looked into, then also, it was required on the part of the respondent also, to further lead convincing evidence, to show about the alleged shop, to be in possession of Ajay Kumar. Relating to the



same, no evidence, as such, has been led.

In the reply to the ejectment petition, a sweeping assertion was made about the petitioners to be in possession of many shops lying vacant. No specific details, as such, have been given. However, the respondent in his affidavit Ex.RW1/A, had stated that many shop are lying vacant on the 1<sup>st</sup> and 2<sup>nd</sup> floor of the demised premises. He did not touch the status of the shops, as existing on the 3<sup>rd</sup> floor, to which the mention was made by Ajay Kumar, in his cross-examination. Again, in the later part of his affidavit, the said tenant had stated that petitioners are in possession of 1<sup>st</sup> and 2<sup>nd</sup> floor and are running business smoothly and are not in need of the shop under his tenancy bonafidely.

However, in cross-examination, he had also not been able to state about the date of visit of the draftsman, who prepared the site plan, so relied upon by him. Even, the seriatim of the shop, as asserted in affidavit and as coming forth in cross-examination, is different. Though, this witness, categorically admits about the 'bonafide need', as projected by Ajay Kumar, but with regard to vacant shop in possession of Ajay Kumar, no satisfactory evidence was led. Similar, is the testimony of RW-2 Jang Bahadur, who, in his affidavit, has also stated about the many shops to be lying vacant, on 1<sup>st</sup> and 2<sup>nd</sup> floor of the property, but he had not made mention of the 3<sup>rd</sup> floor.

Now, coming to the testimony of RW-3 Avtar Singh, Draftsman, who had prepared site plan, relied upon by the respondent. This witness had stated in his affidavit that he had prepared the site plan, but no date, as such, has been mentioned about his visit to the property in question. Further also,



in his cross-examination, he had stated that many shops were lying vacant on 1<sup>st</sup> and 2<sup>nd</sup> floor of the property, when he inspected. Further, he did not make mention of 3<sup>rd</sup> floor, in his affidavit. Likewise, in his cross-examination also, he was unable to state about the date of his inspection of the property and further also, having not given any written notice, regarding his visit, to the parties concerned. He was also not in a position to tell the number of shops, existing on ground floor, 1<sup>st</sup> floor and 2<sup>nd</sup> floor.

Furthermore, he had though stated about the shops to be lying vacant, but while facing cross-examination, he had also admitted to be correct that he had mentioned the shops to be lying vacant on 2<sup>nd</sup> floor as they were not opened. Meaning thereby, he prepared the site plan, when the shops were closed. Thus, the status of those shops, being in occupation of tenant or in occupation of the landlords, for the transaction of the business, as such, could not be ascertained by the said witness.

In the light of the aforesaid discussion, weighing the testimonies of petitioner-Ajay Kumar as well as respondent-Rajesh Kumar and his witnesses, it does not established that landlord-Ajay Kumar was in possession of the vacant shop, as asserted. No convincing evidence, in this regard, has been led by the respondent to substantiate the one singular line, coming forth in cross-examination of Ajay Kumar, about one shop to be lying vacant and in his possession.

Faced with aforesaid conclusion, it is pertinent to mention that learned Appellate Authority had over-reached the question of 'need' of the landlords. The tenant, as such, is no person, who can dictate terms to the

**CR-8826-2016****-13-**

landlord, with regard to the occupation of the shop, on the ground floor, 1<sup>st</sup> floor, 2<sup>nd</sup> floor or 3<sup>rd</sup> floor, for the settlement of his son. The law is well settled that 'need' of the landlord has to be seen from the angle of the landlord and not from the view point of the tenant. It is for the landlord to determine the suitability of the accommodation for his requirement. No terms, as such, can be dictated by the tenant, with regard to the suitability. The size of the shop, may be big may be small, has to be considered by the landlord, for the suitability of the 'need', so projected.

Considering the same, the area of the shop, which is suitable or not, cannot be decided by the tenant. The only requirement is that '**need**' should be sincere and honest and not a mere pretense. The landlord is the best judge to make assessment of his '**need**'.

Given the same, learned Rent Controller had correctly appraised the testimony of Ajay Kumar, in the backdrop of testimonies of tenant-Rajesh Kumar and his two witnesses RW-2 Jang Bahadur and RW-3 Avtar Singh and reached the conclusion about 'need' to be bonafide. The '**need**' projected by the landlords, is neither whimsical nor fanciful. Considering the clear and cogent evidence threadbare, learned Rent Controller, had rightly allowed the ejection petition and ordered eviction of the tenant. The order of eviction was reversed by learned Appellate Authority, without appropriate appreciation of the evidence, facts and attending circumstances.

Considering the same, the impugned judgment dated 17.09.2016 passed by learned Appellate Authority is palpably erroneous and



thus, the same is set aside. Consequently, the eviction order passed by learned Rent Controller is hereby restored.

In view of the aforesaid observations, the revision petition stands allowed.

**May 14, 2025**  
Vgulati

**(ARCHANA PURI)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

**Yes**  
**Yes/No**