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VANEET JAIN

v.

JAGJIT SINGH

MAY 2, 2000

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[V.N. KHARE AND S.N. PHUKAN, JJ.]

Haryana Urban (Control of Rent and Eviction) Act, 1973 :

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Ss. 15(6) and 13—Revision—Power of High Court—Shop—Tenant—Application by landlord for eviction of tenant on ground of bona fide need—Landlord, an unemployed commerce graduate—Wanted to start his own business in the shop—Rent Controller and appellate authority allowing the application holding the need of landlord to be bonafide—High Court dismissing application of landlord on the ground that his need was not bonafide as he was enrolled in employment exchange—Held, High Court did not find that the conclusion reached by two authorities below was unreasonable—In the circumstances, it is, not permissible for High Court to reassess or re-appraise the evidence to arrive at a finding contrary to finding of fact recorded by the two authorities below—On request of tenant and there being no objection on behalf of landlord, tenant allowed one year's time to vacate premises.

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Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta, [1999] 6 SCC 222 and Sarla Ahuja v. United India Insurance Company Ltd., [1998] 8 SCC 119, relied on.

CIVIL APPELLATE JURISDICTION : Civil appeal No. 7109 of 1999.

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From the Judgment and Order dated 7.9.99 of the Punjab and Haryana High Court in C.R. No. 2027 of 1998.

M.L. Verma, A.P. Sinha, Dharmendra Sinha and Pavan Kumar for the Appellant.

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G.L. Sanghi, Atul Kumar, Hari Shankar, (Sunil Kr. Bharti) for Ranbir Singh Yadav for the Respondent.

The following Judgment of the Court was delivered :

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Appellant herein is the landlord of the premises whereas the respondent

is the tenant. The appellant filed an application before the Rent Controller under Section 13 of the Haryana Urban (Control of Rent) and Eviction Act, 1973 (in short 'the Act') for eviction of respondent-tenant on the ground of his *bona fide* need for the premises. The need set up by the appellant in the said application was that he is un-employed and his elder brother is carrying on business at Balasaur in Orissa and the said business is in the name of his elder brother wherein the appellant has no interest. It was also stated that he was suffering from asthma and as per medical advice coastal area is not fit for his habitation. It was further asserted that the appellant intended to carry on business of Karyana in the premises in dispute and for that purpose he deposited a sum of Rs. 45,000 in the fixed deposit. The need set up by the landlord was denied by the tenant. However, the Rent Controller, after considering the evidence on record, came to the conclusion that the need of the landlord was *bona fide* and consequently, the application filed by the landlord was allowed. Aggrieved, the tenant filed an appeal before the appellate authority constituted under the Act. The appellate authority affirmed the decision of the Rent Controller. The tenant thereafter preferred a revision under sub-section (6) of Section 15 of the Act. The High Court recorded at a finding that the need of the appellant is not *bona fide*. Consequently, the revision was allowed and the order of the Court below was set aside. It is against the said judgment the landlord is in appeal before us.

Shri Verma, learned counsel appearing on behalf of the appellant, urged that in view of the limited jurisdiction conferred upon the High Court, it was not open to the High Court to reassess and reappraise the evidence and come to a different finding. We find merit in the submission. The Rent Controller, after considering the evidence on record, recorded a finding that the need of the landlord was *bona fide*. The said finding was affirmed by the appellate authority. The appellate authority recorded finding to the following effect.

"10. Then *bona fide* requirement of the landlord for the demised shop cannot be said to be his mere wish. He, no doubt, is permanently residing with his family members in Orissa but he wants to start his business in the demised shop of Karyana food grains. Though after the institution of the petition but he has also deposited Rs. 45,000 in the bank so as to start business in the shop. He is a commerce graduate. No. doubt, he has got his name registered with the Employment Exchange for service but he has not got any service by now. So

A looking to his unemployment he has got every reason to start his
business in the shop, which belongs to him. Though the petitioner has
produced the medical certificate Mark-A and Mark-B to show that he
is suffering from asthma and the climate of Balasaur, which is sea
B shore, is not suitable to him but even if these certificates are ignored
there is no reason to hold his need to be *mala fide* when he has got
means as well qualification to support the business.”

Sub-section (6) of Section 15 of the Act confers revisional jurisdiction
upon the High Court which reads as under :

C “The High Court, as revisional authority, may, at any time, on its own
motion or on the application of any aggrieved party, made within a
period of ninety days, call for and examine the record relating to any
order passed or proceedings taken under this Act for the purpose of
satisfying itself as to the legality or propriety of such order or
D proceedings and may pass such order in relation thereto as it may
deem fit. In computing the period of ninety days the time taken to
obtain a certified copy of the order shall be excluded”.

Sub-section (6) of Section 15 of the Act empowers the High Court to
exercise its revisional jurisdiction for the purpose of satisfying itself if an
E order passed by the Rent Controller or the appellate authority is in accordance
with law. The question that arises for consideration is whether the High Court
in its revisional jurisdiction can reassess or re-evaluate the evidence only to
come to a different finding than what has been recorded by the court below.
This Court in the case of *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta*,
[1999] 6 SCC 222 held, that the High Court cannot enter into appreciation
F or reapreciation of evidence merely because it is inclined to take a different
view of the facts as if it were a court of facts. However, the High Court is
obliged to test the order of the Rent Controller on the touchstone of whether
such an order is in accordance to law. For that limited purpose the High Court
would be justified in re-appraising the evidence. In *Sarla Ahuja v. United*
G *India Insurance Company Ltd.*, [1998] 8 SCC 119, it was held that the High
Court while exercising the jurisdiction can re-appraise the evidence only for
a limited purpose for ascertaining as to whether the conclusion arrived at by
the fact finding court is wholly unreasonable.

H A perusal of sub-section (6) of Section 15 of the Act shows that the
power of High Court to revise an order is not an appellate power, but it is

also true that is not akin to power exercisable under Section 115 of Code of Civil Procedure. It is no doubt true that the High Court would be justified in interfering with the order passed by the appellate authority if legality or propriety of such order demands such interference. We are, therefore, of the view that it is not permissible for the High Court to reassess or re-appraise the evidence to arrive at a finding contrary to the finding of fact recorded by the court below. Keeping in view the scope of the revisional power under sub-section (6) of Section 15 of the Act, in the present case, we find that the case of the appellant was that he was unemployed. He was neither in service nor has any business and, therefore, he *bona fide* required the premises for carrying on business. The High Court merely on the fact that the appellant was enrolled in the Employment Exchange at Orissa, concluded that the need of the landlord was not *bona fide*. Thus recorded the finding that the appellant does not intend to carry on business in the premises and his need is not *bona fide*. From the fact that the appellant was enrolled in the Employment Exchange at Orissa, the Rent Controller and the appellate authority concluded that the appellant is unemployed and is seeking his employment by running a business in the premises in dispute. Such a conclusion by the court below cannot be said as wholly unreasonable. It is not the case of the respondent that as a result of appellant being on the roll of employment exchange he has got appointment in any service. The High Court did not find that such a conclusion arrived at by the courts below was wholly unreasonable. We are, therefore, of the view that the conclusion arrived at by the High Court after reassessment of evidence was not permissible under law. Consequently, the judgment under appeal deserves to be set aside. We order accordingly. The appeal is allowed. No costs.

Mr. G.L. Sanghi, learned senior counsel, appearing for the respondent, expressed an apprehension that the landlord, after taking possession of the premises either alienate the premises or let it out to another tenant and for that eventuality the interest of the respondent may be safeguarded. We are not required to pass any such order as the tenants' interest is very well protected by virtue of sub-section (6) of Section 13 of the Act.

After the judgment was dictated, Shri Sanghi, learned senior counsel, appearing for the respondent stated that in the event the respondent is to vacate the premises immediately, he would suffer a great hardship and for that purpose he may be allowed to continue to stay in the premises for one year. To this, learned counsel for the appellant has no objection. We,

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- A** therefore, direct that the respondent shall not be evicted from the premises in dispute till 30th April, 2001 provided he files a usual undertaking within four weeks from today and he shall further deposit the entire arrears of rent/damages, if any within the same period and shall further continue to deposit the damages as and when it falls due during the period he continues in possession by virtue of our order, failing which this order shall automatically stand vacated without further reference to this Court.
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R.P.

Appeal disposed of.