

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT  
CHANDIGARH

C.R. No.3261 of 2010

Date of Decision.30.07.2015

Smt. Jatinder Kaur

.....Petitioner

Versus

Mrs. S.K. Dhaliwal

.....Respondent

Present: Mr. Om Pal Sharma, Advocate  
for the petitioner.

Mr. G.S. Bajwa, Advocate  
for the respondent.

**CORAM:HON'BLE MR. JUSTICE K. KANNAN**

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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**K. KANNAN J. (ORAL)**

1. The revision petition is at the instance of the tenant, who has been ordered to be evicted by the Rent Controller on the ground of personal necessity by the Appellate Court reversing the decision of the Rent Controller. Before the Rent Controller, the landlord sought for eviction on the ground that the property which had been let out for running a business in general store had been modified for user of property for running some other business dealing with some gas products. The other ground urged was that the landlady who was running a boutique wanted to run a business in the same premises and that it was necessary for her own use.

2. The tenant contested the petition on the ground that the landlady had filed a petition with reference to change of user earlier along with several other grounds on 29.10.1994. Even when the petition

was pending, a second petition was filed on the same ground including

the ground of change of user and allowed earlier petition filed to be dismissed for default. There had been no attempt to have the petition restored and the petitioner was barred from prosecuting the petition without restoring the earlier application under Order 9 Rule 9 CPC.

3. Adverting to the issue relating to the ground of personal necessity, the contention was that in the earlier petition, there had been no such need expressed and at the time when the second application was filed in the year 1998, the learned counsel appearing for the landlord had actually been in occupation of the property that had fallen vacant in Shop No.21 which is an immediate adjacent property to the demised premise. The adjoining property in Shop No.22 had been originally rented to one Mr. Bawa, who had vacated the premises in the year 1987. The petition, without disclosure of a vacant property in her possession was, therefore, not competent to file the petition, especially without even complying with the requirement of law under Section 13 (ii) of the East Punjab Urban Rent Restriction Act, 1949. The trial Court dismissed the petition holding that the landlord did not examine herself to express her requirement and only her husband had been examined. He also found fault on account of the fact that the landlord had not disclosed the fact that she had yet another building vacant at that time. The trial Court adverted to the cross-examination of PW-1, husband of the landlady who spoke about the fact that one Bawa was having the shop on rent from the petitioner and he had vacated the premises in the year 1992-93. The husband had also admitted that the said fact of vacating the shop by Bawa had not been mentioned in the rent petition. It would appear that when the husband was examined in Court in the year 2007, he had

occupied the adjoining building at Shop No.22. The Rent Controller, therefore, found that the statutory requirement had not been fulfilled and there was, therefore, no bona fides. If the property had been vacant from the year 1992 itself, the landlord could have occupied the premises at the time when the petition was filed in the year 1998 and the occupation of the husband subsequently cannot cure the defect.

4. The Appellate Court affirmed the decision with reference to finding that the landlord had not established the fact of change in user but reversed the finding with reference to bona fide necessity by observing that the landlord's husband had actually started his own business in dealing with the spare parts after his retirement and the landlord was the best judge of her own requirement. If yet another property had been in occupation of the husband, she cannot be denied the right of obtaining eviction in respect of the same property.

5. As regards the bona fide necessity I would support finding of the Rent Controller where he has made specific reference about a property in the hands of yet another tenant Bawa as having fallen vacant in the year 1992-93 although the tenant's contention was that it had fallen vacant even in the year 1987. The Rent Controller had also found that this property had not been vacated by the landlord at the time when the petition was filed and she had not even disclosed the fact that yet another property in Shop No.22 was vacant at that time. The Appellate Court ought to have, therefore, examined the issue of whether the petition was competent and fulfilled the legal requirement. In the case of a non-residential rented land, the requirement under Section 13(3)(ii) is that (a) he requires it for his own occupation; (b) He is not occupying

another residential building, in the urban area concerned, any other such non-residential rented land and (c) he has not vacated such a building without sufficient cause after the commencement of this Act. There ought to be, therefore, a pleading or proof for the fact that the landlord was not in occupation of any other building. In this case, the landlord had yet another property available for her for occupation that had fallen vacant and it was not even disclosed that she had obtained eviction of the tenant in the year 1992-93 itself. The Appellate Court had completely deflected itself to examining the state of affairs in the year 2007 at the time when the landlord's husband was giving evidence that his occupation of the premises which had fallen vacant at the time when the petition was filed could not have been relevant at all. If the subsequent event was relevant, the subsequent event must be with reference to continuance of possession of yet another premise which existed at the time of filing of the petition. If on the day when the petition was filed, the property was vacant which the landlord had occupied but he had filed the petition without such disclosure, it will be no argument to place before the Court that yet another property that had fallen vacant had been occupied by her spouse subsequently and therefore, at the time of giving evidence no such property was available. The Appellate Court was importing wrong law that the landlord was the best judge for his needs when there was not even an expression on why the vacant property already with her was not best suited for her. If there was a contention already brought before the Court that there was yet another building which was vacant but it was not suitable for her business and therefore, she wanted this premise only, there could have been a reasoning by the

Court that the landlord was the best judge. I have pointed out to the fact that the evidence placed by the landlord through her husband clearly made an admission of the fact of yet another property as having been vacant from the year 1992-93. The statutory requirement under Section 13 itself was not fulfilled and the petition ought to have been dismissed on that ground. The Rent Controller had reasoned on the issue correctly by the failure of the landlord to disclose what was relevant and what was statutorily mandated under Section 13(3)(ii) of the Act. The reversal of the judgment by the Appellate Court was on a wrong reasoning of an event which was happened subsequently. Even the husband had occupied the same.

6. Learned counsel appearing on behalf of the respondent wants to buttress his argument with the plea that the landlord was running boutique in her own house and it was not suitable for her to continue the said business from shop No.22 which had been left vacant by the tenant. According to her, only after evicting the tenant Mr. Bawa and only after evicting the present petitioner, she could remove the partition wall between the two buildings and use the same for her boutique business but since the property had not been evicted by the tenant, her husband had occupied shop No.22. All these elaborate explanations, I would take to be mere lame excuses which are not based on pleadings or evidence in Court. I would discard the whole contentions raised on behalf of the landlord with reference to the bona fide need and reverse the decision rendered by the lower Appellate Court and confirm the finding of the Rent Controller.

7. Learned counsel appearing on behalf of the respondent states

that the finding regarding the change of user by the Appellate Court and the Rent Controller was not correct and he is entitled to urge for a reversal of the finding even without a cross-appeal, for, he had already obtained an order of eviction on one ground and it will be competent for him to seek for reversal of a finding on a ground which was not favoured to him. I have allowed the benefit of such argument and the counsel says that the original letting was for a general store and there had been a subsequent change of user for sale and installation of gas kits in motor vehicles. I am afraid, such contention is not possible for two reasons. One, admittedly the landlord had filed a petition for eviction amongst other grounds including a ground of change of user through a petition filed on 29.10.1994. During the pendency of the petition and before its disposal, the present petition has been filed on 17.01.1998 reiterating the same ground including additional ground of change of user and occupation. Although the Code of Civil Procedure is not directly applicable, some of the provisions are invoked by the Rent Controller and the Appellate Court which include the provision relating to restoration of petitions which are dismissed for default and petitions for setting aside ex parte decrees. If a petition filed in the year 1994 containing the relief for change of user had been dismissed for default then without an application for its restoration, a subsequent petition filed on the same ground will be barred under the provisions of Order 9 Rule 9 CPC. There is also another view expressed in Surinder Kaur and another Vs. Rattan Chand Duggal alias R.R. Duggal 2006(1) PLR 123 that Order 9 Rule 9 CPC barring a fresh suit without restoration is not applicable to rent control proceedings. I am not prepared to take a final call on the

proposition and let a future case resolve the controversy. Even otherwise the matter relating to different user or unauthorized change in user has undergone a change for a judicial approach that in every such situation, there shall be super-added condition that change of user must be shown to have caused a prejudice. In *Gurdial Batra Vs. Raj Kumar Jain (1989) 3 SCC 441*, the Supreme Court was dealing with the ground of change of user under the East Punjab Urban Rent Restriction Act. That was a case where the premise had been let out for cycle and rickshaw repair through a rent note. There had been no specific stipulation that the business cannot be changed and petition seeking for ejectment on the ground that the tenant had started selling television sets side by side had not afforded a good ground of eviction by the landlord. In *M Arul Jothi Vs. Lajja Bal (2000) 3 SCC 723*, the Supreme Court was rejecting the argument of change of user on the ground that it will be tested in the light of provisions of Section 108(B)(o) of the Transfer of Property Act that, according to the Supreme Court, would make an express agreement regarding use as redundant. In *Mohan Lal Vs. Jai Bhagwan (1988) 2 SCC 474*, the original letting was to run a business of English liquor vend. The landlord complained of a change of user from liquor business to general merchandise. The case dealt with was under the Haryana Urban (Control of Rent and Eviction) Act, 1973 and the Supreme Court said that the change of user in the instant case would not cause any mischief or detriment or impairment of the shop in question and hence in the modern expanding concept of departmental stores, there could be no ground for change of user. A change from a grocery shop to a book shop (*Rattan Lal Vs. Asha Rani (1988) 3 SCC 586*), a general provisional store to

textile business (Mehta General & Provisional Store Vs. Prem Wati (1995) Supp 1 SCC 319) are other instances where the Supreme Court was rejecting pleas by a landlord that change of user which did not cause any prejudice could afford any valid ground for eviction. These illustrations are brought out only to lay emphasis that judicial approaches have leaned in favour of allowing for certain flexibility for tenant to alter the character of business which would fall within the expanded concept of business and cast an additional burden for the landlord to show that there was a prejudice caused. I will find no prejudice as emerging in that regard.

8. The landlord also contends that the rent is not paid. It was brought out through the interim order in this case that some arrears of rent had not been paid and when it was pointed out that the interim stay was vacated when the tenant was seeking for an extended time for making the payment. All the arrears of rent till date are brought through demand drafts and the counsel for the tenant says that the rent was not being received by the landlord and hence, he has now made demand drafts upto July, 2015. In view of the fact that rents are paid till date, there is no ground available for consideration of eviction on the ground of non-payment of rent.

9. The order passed direction by the lower Appellate Court is reversed and the findings of the Rent Controller are restored. The civil revision is allowed.

(K. KANNAN)  
JUDGE

July 30, 2015  
Pankaj\*