

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 2738 of 2015

Date of Decision: May 8, 2015

Mahinder Kumar Jain and anr.

.....Petitioners

Vs.

Subhash Chand

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.O.P. Goyal, Sr. Advocate with
Mr. R.S. Smagh, Advocate
for the petitioners.

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M.M.S. BEDI, J.

This is tenants' revision petition under Section 15(5) of the Haryana Urban Control of Rent and Eviction Act, 1973, for short 'the Act'. The Rent Controller as well as the Appellate Authority have allowed the ejectment application under Section 13 of the Act passing an ejectment order from the shop in dispute situated in Ambala Cantt. on the ground of personal necessity. A concurrent finding of fact has been arrived at by both the authorities that the respondent- landlord bonafide requires the shop in dispute for the necessity of his son and daughter-in-law and that the son of

the respondent seeks to start his own business and the livelihood in the tenanted premises alongwith his wife who is having Diploma in Textile Designing.

Mr. O.P. Goyal, learned senior advocate appearing on behalf of the petitioners has submitted that the respondent-landlord has not pleaded the necessary three ingredients of Section 13 (3) (a) (i) (b) and (c) of the Act and that it is imperative for the landlord to specifically plead that he is not occupying any other residential building and that he has not vacated such building without sufficient cause. He has placed reliance on the judgment of **Banke Ram Vs. Shrimati Sarasvati Devi**, 1977 (1) RCR (Rent) 595, **Durga Parshad Vs. Har Narain**, 1978 PLR 772 and **Ajit Singh and another Vs. Jit Ram and another**, 2008 (4) RCR (Civil) 390 in support of his contention that it is mandatory for the landlord to plead and prove that he or his son was not occupying any other such building and have not vacated such building without sufficient cause whenever he requires any non-residential premises for his use or for the use of his son. Learned senior counsel has drawn the attention of this Court to the ejectment petition which has been appended as annexure P-3 and the written statement annexure P-4 filed by the tenant- petitioners. He has also referred to the affidavit of the landlord- respondent Subhash Chand annexure P-5 and Sachin Singal in support of his contention that the landlord has not pleaded or proved that he bonafide requires the premises and that he was not occupying any other such building or that he has not vacated such building without sufficient cause.

A perusal of the ejectment petition indicates that the landlord-respondent has, in para 3 pleaded as follows:-

“3. That the petitioner requires the tenancy premises for the bonafide need and necessity of his son and daughter-in-law. The son of the petitioner Sh. Sachin Singhal aged about 32 years is married but without any job, though he is sufficiently qualified. The son of the petitioner wants to start his own business to earn their livelihood in the tenancy premises alongwith his wife Smt. Vandana Singhal, who is having Diploma in Textile designing. Thus the petitioner requires the tenancy premises for bonafide need/ requirement of his totally unemployed son and daughter-in-law. Neither the petitioner himself nor his said son Sh. Sachin Singhal nor his daughter-in-law are occupying any other residential building in the urban area concerned nor they have vacated any such building without sufficient cause after the commencement of the 1949 Act in the said urban area.”

The tenant- petitioners has replied to para 3 as follows:-

“It is incorrect that the petitioner or his said son or his daughter-in-law are not occupying any other residential building in the urban area concerned or that they have not

vacated any such building without sufficient cause after the commencement of 1949 Act in the said urban area.”

The respondent- landlord while appearing as a witness has stated on oath in his affidavit under Order 18 Rule 4 CPC as follows:-

“2. That the deponent requires the tenancy premises for the bonafide need and necessity of his son and daughter-in-law. The son of the deponent Sh. Sachin Singhal aged about 32 years is married but without any job though he is sufficiently qualified. The son of the deponent wants to start his own business to earn their livelihood in the tenancy premises along with his wife Smt. Vandana Singhal, who is having diploma in textile designing. Thus the deponent requires the tenancy premises for bonafide need/ requirement of his totally unemployed son and daughter-in-law.

3. That earlier also the deponent filed an ejectment petition against the respondents but that was dismissed in default and that petition was not withdrawn by the deponent. Moreover, earlier petition was based on entirely different grounds than those mentioned in the present petition. The deponent does not want to enhance the rent illegally but requires the tenancy premises for his son and daughter-in-law.

4. That the son of the deponent is not at all settled with deponent in the ancestral business of oils etc. and the daughter-in-law of the deponent are qualified persons and want to do a neat and clean business. It is pertinent to mention here that the shop bearing No. 4412, Dal Mandi, Ambala Cantt. is on rent with the deponent in which the deponent alone is carrying on his business of oils etc. as a proprietor and the landlord of the said shop Sh.Digamber Jain Sabha has filed an ejectment petition seeking ejectment of the deponent from the said shop which is pending in the Hon'ble Court for 20.10.2009. The deponent never received Rs.8000/- from the respondents as litigation expenses and counsel fee. It is all false and concocted story fabricated by the respondents just to level false allegations on the deponent.”

The statement of his son Sachin Singal inter-alia reads as follows:-

“3. That the deponent tried his level best to get some job but could not find a suitable job for him. The wife of the deponent is having a diploma in textile designing and deponent along with his wife wants to start business to earn their livelihood but

the deponent does not have any business place to start his business with the help of his wife.

4. That the shop in question in the present petition is most suitable place for the deponent to do his business as it is in the heart of the city. The deponent or his father does not own any other shop for doing business by the deponent.

5. That the deponent does not do the oil business with his father and wants to do his own business.”

In the light of the above said pleadings and the evidence, I have considered the contentions of learned counsel for the tenant- petitioners. The landlord has specifically mentioned in the plaint that he requires the tenanted premises for bonafide need and necessity of his son and daughter-in-law and that neither he nor his son or his daughter-in-law are occupying any other residential building in urban area nor they vacated such building after the commencement of the 1949 Act. The said plea had to be specifically denied by the tenant- petitioners in the written statement by clarifying that the landlord was in occupation of any other premises or that he had vacated any other premises without any sufficient cause. He had also pleaded that his son or daughter –in-law had not vacated any other shop in the urban area.

In **Banke Ram's case** (supra) in para 9, it was observed as follows:-

“One of the main objects of the Act is to protect the tenant from the caprice and whim of the landlord to eject him without any valid and sufficient reason. It has been specifically provided under Section 13 (1) that a tenant will not be ejected except in accordance with the conditions laid down in sub-sections (2) and (3). The landlord has been enjoined from evicting the tenant even on the ground of the need of his own occupation unless two other conditions provided in sub-clauses (b) and (c) are also fulfilled. The fulfilment of the conditions is a pre-requisite for any order of ejectment. If this objective is to be achieved, it is essential that both landlord and tenant must state all the facts specifically and expressly in their pleadings before they enter on evidence. In its absence, the proceedings will be a fertile source of objections that the tenant was taken by surprise because the landlord had not made specific averments in his pleadings and the objection by the landlord that the tenant had not raised specific objection in his reply. In a large number of cases, it has been seen that after a long time, the Appellate Authority or the High Court, are

required to deal with the question whether amendment of the pleadings by the landlord should be allowed or not. This results in unnecessary prolonged litigation and avoidable burden of expenditure consequent thereto. Such a course is neither in the interest of the landlord nor the tenant. The interest of speedy justice makes it imperative that both the landlord and the tenant must be absolutely clear in their minds from their respective pleadings as to what case is required to be proved by the landlord and rebutted by the tenant. Viewed from any angle, there is no escape from the conclusion that the landlord must make specific averments in regard to the ingredients contained in sub-clauses (b) and (c). In my considered opinion, the judgment of the Division Bench in Krishan Lal Seth's case (1961-63 Pun LR 865) (*supra*) so far as it lays down that it is not necessary for the landlord to plead the ingredients of sub-clauses (b) and (c) in the pleadings does not lay down good law and the same is reversed.”

A perusal of the above said observations of the Division Bench clearly indicates that it is essential for both landlord and tenant that they must state all the facts specifically and expressly in their pleadings before they enter in evidence. In its absence the proceedings will be fertile source

of objections that the tenant was taken by surprise because the landlord has not made specific averment in the pleadings and the objection of the landlord that the tenant has not raised specific objection in his reply. In the interest of justice, it was made imperative for both the landlord and tenant that they must be absolutely clear in their mind their respective pleadings as to what case was to be proved by the landlord and rebutted by the tenant. Even otherwise, principles of Order 8 Rule 3 CPC lays down that it shall not be sufficient for a defendant in his written statement to deny generally the ground alleged by the plaintiff but the defendant must deal specifically with each allegation fact of which he does not admit the truth. As per Order 8 Rule 2 CPC, the defendant must raise by his pleadings all matters which show the suit not to be maintainable. Applying the principle of Order 8 Rule 5 CPC to the written statement of tenant, he would be required to deny allegation of fact in the plaint and he must not do so evasively. It is mandatory for a tenant to answer the point of substance specifically and not evasively otherwise the provision of Order 8 Rule 5 CPC which provide that every allegation of fact, if not denied specifically in the written statement would be deemed to be admitted by implication.

In the present case, the necessary ingredients of the personal necessity as required under law had been pleaded. The tenant- petitioners had vaguely denied the said allegations. It was incumbent upon the tenant while specifically denying the three ingredients to further refer to any building which had been occupied by the landlord or his son or daughter-in-

law or any such building having been vacated by them. That was the bare minimum required as per the law of pleadings. It does not lie in the mouth of the tenant to urge at a later stage that the landlord had not pleaded and proved the necessary ingredients under law after he having himself avoided to specifically deny or having not specifically pleaded the specific facts by answering the point of substance. In view of the said circumstances, it cannot be said that the landlord- respondent had not pleaded and proved the necessary ingredients as per judgment in **Banke Ram's** case (supra) which judgment, as mentioned hereinabove, lays down that it is essential for both landlord and tenant to state all the facts specifically and expressly. The tenant having not expressly denied the three ingredients pleaded, cannot seek the benefit of the judgment of **Banke Ram's** case (supra).

The petition is dismissed. However, taking into consideration the fact that the petitioners had been in possession of the premises and would require some reasonable time to vacate, they are granted six months time to vacate the premises subject to the condition that they will furnish an undertaking within a period of one month before the Rent Controller that they will handover the vacant possession of the shop to the landlord and will not handover the possession to anyone else and would pay the entire arrears of rent within a period of one month and future rent by 7th of every month and they will not cause any damage to the building before vacation.

May 8, 2015
sanjay

(M.M.S.BEDI)
JUDGE