

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 3263 of 2015 (O&M)
Date of Decision: 14.5.2015.

M/s Kalra Sound Service and others

.....Petitioners

Versus

Raksh Kumar Goyal

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Gurcharan Dass, Advocate
for the petitioners.

SABINA, J.

Respondent had filed the petition under Section 13 of East Punjab Urban Rent Restriction Act, 1949 seeking ejectment of the petitioners from the premises in question. Learned Rent Controller vide order dated 5.5.2011 allowed the ejectment petition. Aggrieved against the said order, petitioners preferred an appeal and the same was dismissed by the Appellate Authority vide judgment dated 18.3.2015. Hence, the present petition by the petitioners-tenant.

Learned counsel for the petitioners has submitted that the Courts below had erred in ordering the ejectment of the petitioners from the premises in question. In fact, the premises in question was jointly owned by the respondent and Gurpal Singh Grewal. While filing the ejectment petition, respondent had failed to disclose the property owned by the other co-owner. Gurpal Singh Grewal had taken two rooms on the first floor of the premises in question on rent from the previous owner and, thereafter, it was

purchased by the respondent and Gurpal Singh Grewal. In support of his arguments, learned counsel has placed reliance on **'Shri Banke Ram versus Smt. Sarasti Devi, 1977 PLR 112'** wherein it was held as under:-

“15. Reliance was placed by the learned counsel for the respondent on the decision of Goyal, J., in Civil Revision No. 1116 of 1976 (Amar Nath v. Sudarshan Singh) decided on November 2, 1976. In that case, the learned Judge noticed some of the above-mentioned decisions in favour of the proposition that it was essential to plead the ingredients of Sub-clauses (b) and (c), but then posed the question as to whether the non-pleading of the fact that the landlord was not occupying any other residential area in the urban area concerned was fatal to the cause of the respondent landlord. According to the learned Judge, every variance between pleading and proof is not necessarily fatal to the suit or defence and the test is to see whether the party aggrieved has really been taken by surprise or is prejudiced by the action of the opposite party. A perusal of the judgment shows that the learned Judge did not express disagreement with the proposition that it was necessary to plead ingredients of Sub-clauses (b) and (c) and decided the matter on the particular facts of that very case.

Thus, it is clear from the above discussion that the predominant view of this Court has been that it is imperative for the landlord to plead the ingredients of Sub-clauses (b) and (c) of Section 13 (3) (a). Even after the

decision of the Division Bench of this Court in Krishan Lal Seth's case (supra) to the contrary, Mahajan, J., (as he then was) one of the Judges on this Division Bench expressed a contrary view in Darshan Singh's case (supra). It is well established and salutary principle of law that in any civil proceeding, it is essential for a party to plead the ingredients of any facts in the pleading on which he wants to rely and in proof of which he may produce evidence. Order VI, Rule 2, Code of Civil procedure, specifically provides for the same. It is reproduced below:--

"Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures."

Though all the provisions of the Code of Civil Procedure, are not applicable to the proceedings in applications for eviction under the Act, but the principles which are the basis and foundation for the administration of justice as the one incorporated in Order VI, Rule 2 of the Code of Civil Procedure, will be undoubtedly applicable to these proceedings also. The purpose in following the procedure for framing of issues in eviction applications is also intended to pin-point the parties to the

matter in controversy between them so that none of the parties may be taken by surprise and subsequently none of them may allege that he was in any way prejudiced. If there is no specific pleading about certain matter, the respondent would have no opportunity to controvert the same and consequently, no issue would be framed. In these circumstances, the parties will be in the dark as to whether to lead evidence in affirmation or in rebuttal and thus, some important matter in controversy may be overlooked deliberately or inadvertently. Even the Division Bench in Krishan Lal Seth's case (supra), appreciated the weight of the principle of law and observed :-

"It is generally incompetent for a tribunal to adjudicate upon any controversial matter which does not find place in the pleadings of the parties."

In Siddik Mahomed Shah v. Mussammat Saran, which is the basic judgment on the subject, it was held:-

"Where a claim has been never made in the defence presented, no amount of evidence can be looked into upon a plea which was never put forward."

The ratio of the decision in the above said case was approved by their Lordships of the Supreme Court in Bhagat Singh v. Jaswant Singh."

Learned counsel for the petitioner has also placed reliance on '**Ajit Singh and another versus Jit Ram and another 2008(4) R.C.R. (Civil) 390**', wherein it was held as under:-

"11. From the aforesaid decision of this Court, it is therefore, clear that this Court has laid down

authoritatively that a non-residential premises, if required by a son for user by him would cover the requirement of words used in the Section, i.e. "for his own use" in reference to a landlord. Therefore, if "his own use" has been interpreted by this Court in the above-said manner, then the requirements as laid down in Section 13(3)(a)(ii)(b) and (c) of the Act has to be interpreted in the same manner to hold that (a) the son of the landlord has to plead in the eviction petition that, (b) he is not occupying in the urban area concerned for the purpose of his business any other such building or rented land as the case may be; and (c) he has not vacated such a building or rented land without sufficient cause after the commencement of the Rent Act, in the urban area concerned."

Respondent has sought ejectment of the petitioners from the shop in question on the ground of personal necessity. The case of the landlord was that the petitioners had taken the shop in dispute on rent from Dwarki Devi, Maya Devi, Kamla Devi and Bachni Devi who were the owners of the premises in question. Gurpal Singh Grewal took two rooms on the first floor on rent from the owners in the year 1985-1986. The landlord and Gurpal Singh Grewal became friends and started running their business in the tenanted premises on the first floor. Respondent and Gurpal Singh Grewal purchased the entire building vide sale deed dated 5.10.1993. Thus, the petitioners were tenants under the respondent and Gurpal Singh Grewal qua the shop in question. Respondent required the shop in question for his own use and

occupation as he wanted to run his profession as Chartered Accountant and Income Tax Consultant.

Petitioners admitted the relationship of landlord and tenant between the parties but on merits, the contentions in the ejectment petition, were denied.

In order to prove their case, parties led their evidence.

In the present case, relationship of landlord and tenant between the parties is not in dispute. Respondent while appearing in the witness box, deposed as per the contents of the ejectment petition and stated that he wanted to work as a Chartered Accountant and Income Tax Consultant in the premises in question. The rooms on the first floor were not sufficient for him to carry on his business. The case of the petitioners, on the other hand, was that, in fact, respondent as well as Gurpal Singh Grewal were not doing any business in the rooms on the first floor. Therefore, there was no occasion for the respondent to use the premises in question for his personal use. It is a settled proposition of law that the landlord is the best judge qua his needs and requirement. Respondent has categorically deposed that he wants to run his business in the premises in question as the portion on the first floor, was not sufficient. Respondent had disclosed in the ejectment petition that Gurpal Singh Grewal was the co-owner of the premises in question. Since the ejectment petition had been filed by the respondent on the ground of his *bona fide* necessity, there was no need for the respondent to have disclosed the property, if any, owned by the other co-owner. There is nothing on record to suggest that the need put-forth by the landlord, was not genuine or *bona fide*.

Moreover, as per Section 13 of the Act, protection has

been given to the tenant that in case the landlord fails to occupy the premises in question within the stipulated period or rents out the same to another tenant, then evicted tenant can apply for restoration of possession to the Rent Controller.

I have gone through the judgments relied upon by the learned counsel for the petitioners but the same fail to advance the case of the petitioners as they are based on different facts.

Hence, no ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

May 14, 2015
Gurpreet