

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.3447 of 2013(O&M)
Reserved on:05.02.2015
Date of decision: 04.03.2015

Uttam Chand

.....Petitioner

Versus

Kusum Lata

.....Respondent

CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.M.L.Sarin, Sr.Advocate
with Ms.Hemani Sarin, Advocate, for the petitioner.

Mr.G.C.Shahpuri, Advocate, for the respondent.

G.S.Sandhawal J.

Challenge in the present revision petition, filed under Section 15 (6) of the Haryana Urban Control Rent and Eviction Act, 1973 (for short, the 'Act'), is to the eviction order passed by the Rent Controller, Palwal, regarding the shop in question bearing No.108, New Sabzi Mandi, Palwal, on the ground of *bona fide* requirement of Anuj Singla, son of the landlady. A finding was recorded that the wife of the present petitioner-tenant was having other properties in the same urban area and therefore, the present petitioner was liable to be evicted as there was sufficient accommodation with him. Challenge has also been laid to the order of the Appellate Authority, Palwal, whereby the appeal of the present petitioner was dismissed on 30.04.2013 and the finding recorded by the Rent Controller was approved by holding that son of the landlady, Anuj Singla was running a general store was not substantiated. Resultantly, the present revision

petition has been filed.

The respondent-landlady filed the eviction petition under Section 13 of the Act, taking the plea that the petitioner was a tenant in the shop on a monthly rent of ₹1,200/- including house tax and he had defaulted in payment of rent from 01.08.2005 to 30.09.2008, of 36 months, amounting to ₹43,200/-. The shop in question was required by her son Anuj Singla, who was 28 years old and unmarried and she had a moral obligation to settle her son in her lifetime. Specific averment was made that neither her son nor she had any other shop in the urban area of Palwal town for their own use nor had vacated any other shop in the town, after the commencement of the Act and thus, prayed for vacated under Section 13(3)(a)(i) of the Act. It was pleaded that the present petitioner, his father, mother and brother have other properties in the urban area which were lying vacant and he could shift in those properties and he was liable to be evicted as provided under Section 13(3)(a)(iv) of the Act.

In reply, the petitioner took the plea that the landlady had not received the rent and the amount of arrears had been tendered upto 30.11.2008 along with interest and costs to the tune of ₹5572 and ₹3000/-. A total sum of ₹52,972/- had been tendered out of which, rent was of ₹44,400/- for 37 months and the same had been received on 27.11.2008. The unemployment of the son of the landlady was denied and it was pleaded that he was in occupation of a shop within the Municipal limit of Palwal town and running a business there and it was denied that he has any shop in the urban area or that he had vacated any other such shop. The petition had been filed only to enhance the rate of rent. The factum of the family members owning several other properties was also denied and plea taken

was that the petitioner was living separately from his father and brothers for the last many years and he had no other shop in his possession.

Counsel for the petitioner-tenant has vehemently submitted that Anuj Singla, for whom eviction had been ordered, was running Nishu General Store and was an occupant and placed reliance upon the statement of RW3, to submit that the same had been misread to hold that he was not owner of the said store. It is further submitted that the mandatory requirement of Section 13(3)(a)(i) of the Act had not been pleaded and therefore, in view of the judgment of this Court in **Manmohan Lal Vs. Shanti Prakash Jain 2014 (2) RCR (Rent) 222** and the judgment of the Apex Court in **Ajit Singh & another Vs. Jit Ram & another 2008 (2) RCR 328**, the eviction petition was liable to be dismissed. It was further pleaded that on earlier occasions, the rent had been enhanced and a compromise had been arrived at and therefore, there was a *mala fide* intention. Reliance was placed upon **Sant Lal Vs. M/s Kanshi Ram Dewat Ram 1989 (1) RCR 375**.

Counsel for the respondent-landlady, on the other hand, submitted that issues No.2 & 3 pertaining to no cause of action or estoppel were never pressed before the Courts below and there was no specific averment regarding the running of Nishu General Store in the occupation of Anuj Singla. It was submitted that *bona fide* requirement stood duly proved before both the Courts below and this Court would not interfere with the concurrent findings under the revisional jurisdiction. Reliance has been placed upon the judgment of the Apex Court in **Vaneet Jain Vs. Jagjit Singh 2000 HRR 429**.

Admittedly, it has been proved that Anuj Singla, who himself appeared as PW5, was unemployed since he was also registered as such

with the Employment Exchange and an official, namely, Tek Chand was examined as PW1. The landlady herself also appeared as PW3 to depose apart from examining her son as PW5 who further deposed that he had got married thereafter, on 09.11.2009, after the date of the institution of the rent petition on 08.09.2008. He was registered with the Employment Exchange since 2006. In order to rebut the case, the present petitioner appeared as RW3 and also examined Joginder Singh as RW1 and one Niranjana and Satish as RW2 & RW3, respectively, wherein it was stated that Anuj Singla was running a shop as Nishu General Store at Kotwali Road, Palwal. However, it is pertinent to note that no such pleading had been made in the written statement filed regarding the running of the shop in the name and style of Nishu General Store and it was for the first time, in defence, the specific instance was given and therefore, the respondent-landlady never got an opportunity to rebut the same by filing any replication. Keeping in view the fact that apart from the bald statements of the witnesses, who further, in their cross-examination, admitted that they did not know who was the owner of the said store, the Rent Controller was right in recording that Anuj Singla was not the owner of the said store or that it was possessed by him. In the absence of any documentary proof that he was running the shop in question, the defence was rejected by noting that he was residing with his father and dependent upon him and the entire family was residing jointly. The principle regarding the fact that the tenant is not the person who can dictate to the landlord the type of business he has to carry on and where and what is the accommodation needed by him, it was held that there was a *bona fide* requirement, which was genuine and the eviction had been rightly ordered from the shop in question.

Admittedly, nothing was brought on record by way of any document to show that the shop in connection which was being referred to was being run by Anuj Singla or that he was in occupation of the said shop. It was open to the petitioner to have brought on record any documentary evidence to show that Anuj Singla was having some telephone connection, some Income Tax Return, cash memo, postal correspondence, photographs, in order to rebut the presumption in favour of the landlady that the property was required for a *bona fide* purpose of settling her son. Thus, it cannot be said that the requirement of the premises was a mere wish as such as nothing could be demonstrated that Anuj Singla was already in occupation of another set of premises due to which he did not require the premises in question.

The Apex Court in *Ragavendra Kumar Vs. Firm Prem Machinery & Company 2000 (1) SCC 679* held that the freedom for starting his business by the landlord was absolute and could not be faulted. Similarly, in *Joginder Pal Vs. Nawal Kishore Behal 2002 (5) SCC 397*, the Apex Court held that the concept of *bona fide* necessity has to be meaningfully construed and the Courts have to adopt reasonable and balanced approach and give equal treatment to both landlord and tenant. Relevant observations read as under:

“32. If we do not meaningfully construe the concept of requirement the provision may suffer from the risk of being branded as unreasonable, arbitrary or as placing uncalled for and unreasonable restrictions on the right of the owner to hold and use his property. We cannot place a construction on the expression 'for his own use' in such a way as to deny the landlord a right to evict his tenant when he needs the accommodation for his own son to settle himself well

in his life. We have to give colour and content to the expression and provide the skin of a living thought to the skeleton of the words which the Legislature has not itself chosen to define. The Indian society, its customs and requirements and the context where the provision is set in the legislation are the guides leading to acceptance of the meaning which we have chosen to assign to the words 'for his own use' in Section 13(3)(a)(ii) of the Act."

This Court in **Mohinder Kaur Vs. Balwinder Kumar 2010 (1) CCC 717** has taken a similar view that the requirement of the accommodation has to be seen from the angle of the landlord and not from the view point of the tenant.

The argument raised that it was only a ground for enhancement of the rent in view of the earlier settlement arrived at on 19.11.1997 (Ex.RA) before the Addl.District Judge, is without any basis. Admittedly the present revision petition was filed after a period of almost 11 years, i.e., on 27.10.2008 and during that decade, the requirement of the landlady had changed as such as her son had grown up and was unemployed and had got married. The premises were, thus, required for his use and occupation and therefore, no reliance can be placed upon Exhibit RA.

Similarly the earlier petition filed for non-payment of rent from 01.08.2003 to 11.08.2005, admittedly dismissed in default on 30.09.2008, was only for the payment of the arrears of rent for that period. Separate cause of action having been accrued on account of personal requirement and for non-payment for the subsequent period does not debar the landlady from filing a fresh petition and therefore, no *mala fide* can be attributed on account of the earlier litigation *inter se* the parties.

Another aspect which has to be noticed is that it is also in record

that the petitioner is having sufficient accommodation in the urban area itself, which is owned by his wife, which has been proved by bringing on record the house tax assessment register for the year 2009-10.

The Rent Controller was, thus, well justified in coming to the conclusion that the eviction was also liable under Section 13(3)(a)(iv) of the Act, in view of the judgments passed by this Court in *Laxman Dass Vs. A.K.Bahl (Ambala Cantt.) 1986 HRR 152* and *H.N.Sood Vs. Vinod Kumar & others 1996 (1) RCR (Rent) 488*, wherein it has been held that the property acquired by the wife may be considered to be that of the husband and thus, form one unit. Rather a categorical and damaging finding has rightly been recorded on the conduct of the petitioner that by virtue of the family settlement arrived between the brothers in the property of Sadhu Ram, their father, an award had been passed on 24.02.2007 and the property had been allotted to Sheela Devi, the wife of the present petitioner, which, in normal circumstances, would have been allotted to him. Thus, she was owner of the two shops in the same locality, i.e., New Sabzi Mandi, as per Exhibits PW4/1 and PW4/2. Even otherwise, the sequel of events, as narrated above, would go on to show that the petitioner has an evil eye on the property of the landlady.

The judgments referred to by counsel for the petitioner are, thus, not applicable, in the facts and circumstances of the present case, in the absence of any specific averments that the landlady or her son were in occupation of any particular shop and in the absence of any substantiated evidence coming on record. Similarly, on account of reasonable period having been passed between the two litigation, no adverse inference can be drawn regarding the conduct of the landlady.

This Court, in revisional jurisdiction, is not sitting as a Court of appeal as has been held by the Apex Court in **Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh, 2014 (9) SCC 78**. Concurrent findings have been recorded by the authorities below, which do not warrant any interference and in the absence of any illegality or infirmity in the orders impugned, finding no merit in the present revision petition, the same is hereby dismissed.

At the stage of pronouncement, request was made by the counsel for the petitioner that as the petitioner has been tenant since long, therefore, two months' time be granted to vacate the premises in question. Accordingly, the petitioner is granted two months' time provided all the arrears of rent are cleared upto date within a period of one month from today and deposited with the Rent Controller, Palwal.

In case the needful is not done, the above indulgence granted shall be deemed to be not having been granted.

04.03.2015
sailesh

(G.S.Sandhawalia)
JUDGE