

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.3641 of 2015(O&M)

Date of Decision : 27.5.2015

Shiv Kumar

.....Petitioner

Versus

Salamti

.....Respondent

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. Robin Dutt, Advocate for the petitioner.

GURMIT RAM, J.

This revision petition is preferred at the instance of petitioner herein Shiv Kumar (tenant) against the judgment dated 23.1.2014 passed by the learned Rent Controller, Naraingarh vide which ejectment petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act No.11 of 1973 (hereinafter referred to as '*the Act*') for the eviction of the tenant from the shop No.324/2 Ward No.7, Panjlasa Chowk, Tehsil Naraingarh (the demised shop) was accepted and the order dated 7.5.2015 passed by the learned Appellate Authority, Ambala vide which the appeal of the tenant preferred against the above said judgment dated 23.1.2014 passed by the learned Rent Controller was dismissed.

2. The case of the respondent herein who was the landlady before the learned Rent Controller in nutshell was that she purchased the demised shop from Smt. Raj Rani vide a registered sale

deed. The entry in this regard was duly made in the record of Municipal Council, Naraingarh. The tenant took the demised shop on rent @ Rs.450/- per month besides municipal tax, electricity charges etc. etc. from its previous owner. After the purchase of the demised shop, a fresh rent note was got reduced into writing between the parties to this petition on 12.1.2008. It was further her case that the earlier owner of the tenancy premises got its rent increased to the tune of Rs.450/- per month by filing a petition for fixation of fair rent before the competent Court of law in the year 2005. Further the tenant assured to increase the rent of the demised shop by 25% after every five years besides municipal tax etc. etc. Ejectment of the tenant from the demised shop was sought on the ground of non-payment of rent since 1.2.2008 to 31.12.2009; that the tenancy premises are required by the petitioner/landlady for her own use and occupation since her son namely Mustak Mohammad is unemployed and she wants to open a kiryana shop in that tenancy premises to settle his said son and also that tenant is a source of big nuisance and hence this petition.

3. On notice petitioner herein (tenant) filed a reply taking preliminary objection that the petition is not maintainable; that the landlady has no cause of action to file this petition and that she is also guilty of concealment of material facts from the Court. On merits, it was his plea that he had paid the rent to the landlady till date by tendering the same in Court as well as by sending the same to her through money-order. It was denied that the demised shop is required by the petitioner-landlady for her son Mustak Mohammad. In this regard, it was his plea that her

said son was already running a shop of spare parts in Tractor Market, Naraingarh. Rest of the averments were also denied by the tenant.

4. Learned Rent Controller after hearing the learned counsel for the parties and going through the record as well accepted the ejectment petition on the ground of personal necessity whereby ordering the eviction of the tenant from the demised shop vide impugned judgment dated 23.1.2014. An appeal preferred against this judgment by the tenant was dismissed by the learned Appellate Authority, Ambala vide impugned order dated 7.5.2015.

5. Being aggrieved with the judgment and order delivered by both the Courts below, the petitioner-tenant has come up before this Court by way of the instant revision petition.

6. Learned counsel for the petitioner was heard and record as available on the file was also perused.

7. The learned counsel for the petitioner-tenant has contended that the son of the respondent herein(landlady) namely Mustak Mohammad for whom she had filed this petition is neither residing with her nor he has any concern of any kind with her family. Then he has also submitted that said Mustak Mohammad is having his separate residence where he is residing with his family separate from the respondent herein (landlady). He is also doing the labour work in order to earn his livelihood and to afford his family as well. Neither he is dependent upon his mother i.e. respondent herein (landlady) nor she is dependent upon him for any purpose. Herein he has referred to the cross examination of said Mustak Mohammad who appeared as PW2 before the learned Rent

Controller and has contended that the learned Rent Controller has failed to appreciate this fact and the evidence relating thereto in a right prospective manner while passing the impugned judgment dated 23.1.2014. Then it is also his submission that respondent herein (landlady) is having two shops in the municipal limits of Naraingarh which fact was not disclosed by her in her petition. Hence she is also guilty of concealment of material facts from the Court. Then he has also argued that plea of personal necessity as put forth by the respondent herein (landlady) qua the demised shop is also not genuine one nor she required the same for the settlement of her son. In support of his above contention he has also relied upon the case law as delivered by this Court in **Rajiv Gupta Versus Jiwan Ram, 2015(1) R.C.R.(Civil) 762.**

8. In order to lend support to his above contention, the learned counsel for the petitioner herein (tenant) has laid much stress upon the deposition of PW1 Salamti (landlady) and PW2 Mustak Mohammad as made by them in their respective cross-examinations. So it is felt essential to discuss their cross-examination for the proper and effective appreciation of his above contention. PW1 Salamti in her cross examination stated that her son Mustak Mohammad is married having two children and living separate from her family since the last 5-6 years. He has been maintaining his family at his own by doing labour work, but he is residing in the same village in which she is having her residence. He is doing the same work which he was doing either before the filing of this case or thereafter. The cross examination of said Mustak Mohammad as PW2 is also on the same line as that of PW1 Salamti (landlady). In

addition to that, he also stated that his ration card is joint with his father. His parents are earning their livelihood by selling the milk.

9. Whatever is summed up from the above cross examinations of PW1 and PW2 is that Mustak Mohammad son of respondent herein(landlady) is earning his livelihood by doing labour work. He is not employed in any reputed industry/firm in order to hold that his alleged source of earning by doing labour work is of permanent nature. To work as a labourer is usually always of casual nature. Sometimes he may find labour work to do and sometimes not. So if the respondent herein (landlady) is intending to settle him permanently by opening a kiryana shop in the demised shop, then there is nothing wrong on her part. If her said son along with his family is living apart from respondent herein (landlady) then that does not mean that she is not dependent upon him or that he is not dependent upon her. Moreover, the fabric of our society is such that children always remained dependent upon their parents either one way or the other. Even if he is doing labour work to maintain his family, then also the *bonafide* of the respondent herein (landlady) that she requires the demised shop for her own use and occupation to settle her son therein permanently by opening a kiryana shop cannot be suspected on this count. Every person on this earth is to do something in order to ensure his own survival and of his family members. So the above contention of learned counsel for the petitioner herein (tenant) is declined and disposed of accordingly. Rajiv Gupta's case law cited supra cannot be attracted to the case in hand since it is on some different footing than the case in hand. In that case the ejectment

petition for the bonafide requirement for son was filed. The son did not appear as a witness for whose necessity the eviction was claimed. But in the case in hand, Mustak Mohammad son of respondent herein (landlady) for whose necessity the instant ejectment petition was filed had appeared as PW2 and supported the claim that demised shop is required for him bonafidely for starting a kiriyana shop therein. Herein I want to discuss an authority of Hon'ble Apex Court as delivered in **Joginder Pal Versus Naval Kishore Behal, 2002(2) Rent L.R.1**. In this case suit premises situated on the ground floor of the building owned by the landlord – respondent was in occupation of the tenant appellant for non-residential purpose. The same was required by the landlord – respondent for the office of his son who was a Chartered Accountant residing with him. In this case it was held as under:-

“We are of the opinion that the expression 'for his own use' as occurring in Section 13(3)(a)(iii) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove we have found the

pari materia provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependents and kith and kin in the requirement of landlord as "his" or "his own" requirement and user. Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire : (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close inter-relation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute

his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act."

10. Then it is also contended by learned counsel for the petitioner herein (tenant) that respondent herein (landlady) had failed to plead that the premises of demised shop is required for her own use and occupation and that she is not occupying any other building in the urban area concerned. But in para No.3 Clause (iv) of the petition, it has been specifically averred that petitioner required the tenancy premises for personal use and occupation since her son Mustak Mohammad is unemployed and she wants to open a kiryana shop for him in the said premises to settle him. Then it has come in her cross examination as PW1 that she owns two shops in Naraingarh and her one son Yaseen is running his work in one of these shops, whereas the second shop i.e. demised shop is in occupation of the petitioner herein (tenant). So the purpose of provisions of Section 13(3)(a)(i) of the Act is clearly fulfilled in the light of the above said cross examination of PW1. Moreover, the tenant did not take any such legal objection specifically in the written statement. Then, in the case in hand, no prejudice has been caused to the petitioner herein

(tenant) due to non pleading of the ingredients as envisaged under the above said Section 13(3)(a)(i) of the Act. So for the above-said reasons, the above contention of learned counsel for the petitioner herein (tenant) is also declined and disposed of accordingly.

11. Then it was the case of the petitioner herein (tenant) that Mustak Mohammad son of the respondent herein (landlady) had been running spare parts shop in Tractor Market at Naraingarh, but he had failed to bring on the record any trustworthy documentary evidence to substantiate his this plea. PW1 Salamti (respondent herein/landlady) and her son PW2 Mustak Mohammad have denied this fact in clear words in their respective statements and hence the above contention of the learned counsel for the petitioner herein (tenant) is also held to be not sustainable and the same is declined accordingly.

12. The learned Appellate Authority has rightly concluded that issue No.3 has been framed wrongly, since there was no pleading of the petitioner to this effect.

13. In the light of the above discussion, the instant revision petition being meritless stands dismissed and disposed of accordingly.

Since the main revision petition has been disposed of, the miscellaneous application, if any, also stands automatically disposed of having been rendered infructuous.

27.5.2015
Brij

(GURMIT RAM)
JUDGE

1. To be referred to the Reporters or not? Yes/No
2. Whether the judgment should be reported in the Digest? Yes/No