

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

Civil Revision No.4659 of 2006 (O&M)

Date of decision: 29.07.2015

Brig. Harpreet Singh Chahal ... Petitioner

versus

Gopal Gupta Respondent

II. Civil Revision No.6215 of 2008 (O&M)

Dr. Kultaran Singh Chadha ... Petitioner

versus

Brig. Harpreet Singh Chahal Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. C.B. Goel, Advocate, with Mr. Manoj Sharma,
Advocate, for the petitioner in CR No.4659 of 2006.

Mr. Arun Jain, Senior Advocate, with
Mr. Kanwarbir Singh Sidhu, Advocate,
for the respondent in CR No.4659 of 2006.

Mr. Divanshu Jain, Advocate,
for the petitioner in CR No.6215 of 2008.

Mr. S.K.S. Bedi, Advocate,
for the respondent in CR No.6215 of 2008.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

I. The subject matter of civil revision petitions

1. The Civil Revision No.4659 of 2006 is at the instance of

the landlord seeking for ejectment of the tenant in respect of the

premises occupied by the tenant at the ground floor. The landlord had a case to contend that he was occupying the first floor of a larger portion measuring 66'x16' and yet another portion at the second floor measuring 12'x23'. The ground floor was also necessary for establishing security and computer education for the benefit of the grandson of the first petitioner and the son of the second petitioner. The petition was ordered by the Rent Controller but reversed in appeal by the appellate Court. The landlord is the revision petitioner in Civil Revision No.4659 of 2006.

2. The other connected petition in Civil Revision No.6215 of 2008 is with reference to another portion of the ground floor by the very same landlord for eviction of another tenant who was a doctor and the need expressed was the same as made for the petition filed in Civil Revision No.4659 of 2006, referred to above. The Rent Controller directed ejectment and the appellate court also confirmed the same. The tenant is the revision petitioner before this court in Civil Revision No.6215 of 2008.

II. The reasoning adopted by the courts below

3. Admittedly, the property was granted in lease by the first petitioner, who is the mother of the second petitioner. It was contended that the demised premises at the ground floor was necessary for carrying on with the business which they had already established at the first floor but it was necessary at the ground floor

as well as necessary space for carrying on the business and also for the requirement of the son of the second petitioner, who had physical ailment with some impairment beneath his hip and had to be on a wheelchair. The appellate court reversed the decision of the Rent Controller principally on the ground that the landlord already had in his possession a large extent of property at the first floor of dimension of 66'x16' and the ground for eviction made was not really a need but merely a desire. Before the appellate court, it was also contended that there was yet another portion at the second floor which fell vacant but it was let out by the other co-owner Chahal to another person and it would discredit the actual need of the landlord for additional accommodation. It was also brought at the trial that the landlord had actually advertised the property for sale during the pendency of proceedings and this was relied on by the tenant to contend that the landlord could not have had a bona fide requirement for eviction of the premise.

III. Contentions of the counsel for landlord

4. The counsel for the landlord, who is the revision petitioner in Civil Revision No.4659 of 2006 refers to me to the fact that the requirement at the ground floor was not merely for the customers who could avail of the services in computer education and security services but on account of the handicap of the second petitioner's son for whose requirement, the building was sought in

ejectment. The vacation of any portion at the second floor or letting by one of the co-owners cannot go to discredit their own need. The counsel would also refer to the fact that a plea for enhancement of rent which was made in the year 1995 or 1996 or even in the year 1994 or 1997 ought not to be material at all as the lower appellate court itself has observed referring to the judgment of the Supreme Court that a mere expectation of increase of rent cannot be a ground to doubt the bona fides. The petition had been filed only in the year 2002 that was 5 years after the previous enhancement and the lower appellate court was in error in finding that the requirement was not bona fide.

IV. The contentions in response by tenants

5. The learned senior counsel appearing on behalf of the tenant would take me to some photographs taken in relation to the property to point out that the landlord was already running his business of computer education at the first floor and a portion of the second floor and there was simply no need for additional accommodation at the ground floor. If the ground floor was necessary as contended by the landlord, admittedly, the landlord had not vacated the one tenant out of the three tenants including himself only because even as per the own showing of the landlord, one of the tenants was periodically increasing the rent and, therefore, the plea that the whole of the property was necessary cannot be true at

all. The counsel would also refer to me to the fact that during the pendency of the petition, the landlord has again filed a petition for enhancement of rent by another 10% which would show that the landlord was interested only in securing higher rentals and there was no bona fide need at all.

6. The tenant, who is the revision petitioner in Civil Revision No.6215 of 2008 would add ammunition to the whole line of defence by urging for additional points, namely, of certain admissions made by the landlord that a portion of the property at the ground floor was in the hands of yet another tenant and the landlord had been periodically collecting increases in rents and, therefore, no eviction action was taken against him. This is by way of reiteration of an argument already placed by the learned senior counsel in the other case that the landlord was interested only in securing higher rent. According to him, if it were to be contended that no action was being taken with reference to the other tenant because the said tenant was occupying a portion under the staircase, there was no reason for exempting that portion, since the landlord's case was the entire ground floor was necessary. The counsel would also make reference to the fact that the landlord had attempted to sell the property through an advertisement which will belie the contention that the landlord required the property for his personal need. As a point of law, the counsel would refer to the decision in **Ajit Singh and**

another Versus Jit Ram and another-AIR 2009 SC 1999 where the Supreme Court was holding that if the landlord was seeking for ejectment for his own use to refer to the use of the son, then the requirement of pleading for the personal need must be set out in every aspect under Section 13(3)(a)(ii). The said section requires pleading and proof of the fact that the landlord shall not have vacated any other premise or does not own any other property within the same urban area. This, according to him, is a technical defect in the pleading that the second petitioner, who wants the property for the benefit of the security agency and for computer education of his son, was bound to make a statement that there was no other urban property for the son of 2nd petitioner for whose benefit the property was sought. The counsel would refer to a decision of this court in **Manmohan Lal Versus Shanti Parkash Jain-2014 (2) RCR (Rent) 222** following the said decision that want of specific pleading regarding the bona fide need of an assertion that the landlord is not in possession of any other building nor has he vacated will vitiate the petition.

V. Bona fides of requirement of landlord-Expectation of good returns for property is not a ground to suspect bona fides

7. To me the case presents a simple situation of a landlord who admittedly has in his occupation the entire first floor presses for a need at the ground floor for expansion of the premises for computer education and services. Development and progress are

expressions to be understood in terms of physical expansion and greater prosperity. As with body, that hypertrophies on nutrition and good healthy, so with the needs which expands in any business. A computer education or security services that are run by a landlord at the first floor, if it is growing and seeks for a ground floor as well, it ought not to be even immediately a cause to suspicion that a requirement pleaded for expansion is motivated. If there is a motivation, it is a sound motivation. The additional need that comes about in this case is expressed through a peculiar situation that the landlord's son has personal handicaps. It is not denied that the second petitioner's son has a problem in mobility and he uses a wheelchair for his own ambulatory acts. I cannot, therefore, countenance an argument that the landlord is only looking for an excuse to obtain more rents.

8. From the times when there was a huge pressure on property and the tenant required reasonable protection against avaricious landlords, we have come to different situation now when any situation has to be appreciated on a case to case basis. It is not a sin for a landlord to expect appropriate returns for the property. If during the continuance of tenancy, a landlord has sought for appropriate and adequate returns, it could hardly be used against a landlord who is seeking for ejectment 5 years, after an incident of increase in rent. Indeed, even during the continuation of proceedings

in courts, we allow for parties to apply for adequate returns before allowing for the tenant to enjoy benefit of stay orders. The dispensation in **M/s Atma Ram Properties (P) Ltd. Versus M/s Federal Motors Pvt. Ltd.-2005(1) SCC 705**, the Supreme Court was taking stock of existing reality that any case in courts takes a decade or more for completion of proceedings and, therefore, the court was stepping in to keep the scales even while providing for stay orders to ensure that the landlord was getting adequate returns. If ever a landlord also to apply for a court for enhancement, it will be wrong to assume that the landlord was either avaricious or was prepared to settle for rent instead of obtaining eviction. No such inferences will ever be learnt. On the other hand, if the landlord secures reasonable returns of property and still asks for ejectment at a particular time, it should only be examined from the context of whether the need expressed at the time when the petition is filed was justified or not.

VI. Attempt of sale during pendency is relevant to test bona fides-Issue must be confronted to landlord

9. There are two aspects of the case that may seem little out of ordinary for a normal landlord who sues for ejectment. It is a case where the petition for ejectment is filed by a landlord and soon thereafter there was an advertisement for sale. It was surely an occasion for a landlord to explain. I asked the counsel for the tenant who pointed it out whether the advertisement itself was put to the landlord in the cross-examination. He points out to me that the

advertisement came after the landlord's evidence was put in court. If the tenant was trying to therefore use this advertisement on his side when he was giving his evidence, he ought to have even recalled the landlord and confronted him. There was perhaps a reason or an explanation to give. I will not venture the explanation on what the parties themselves have not offered but I will not at least take it to be a formidable circumstance to rule that the landlord has other ideas of selling the property but he was coming to court seeking for ejectment. An attempt of a landlord to sell the property was surely relevant fact for consideration of the bona fides, but since it came only during the tenant's evidence, I will have only to see whether any such eventuality really did take place. The proceedings have gone on for another decade or more. The reality, therefore, belies what the advertisement ought to achieve. I will not, therefore, find any relevance of such an advertisement.

VII. Failure to take eviction against yet another tenant when relevant

10. Yet another argument which was made is that the landlord who pleads for entire ground floor has not after all vacated as tenant under the staircase. We have strange practices which are peculiar only to India. A watchmaker or a seller finds a staircase to be an attractive place for locating it all over India for whatever reasons. The manner of full exploitation of every space cannot be better realized than how a watchmaker finds its location. I can

hardly believe that it is an ideal place to locate a business for computer education. I cannot, therefore, find the landlord's needs to be suspicious. If there is some person, who was prepared to exploit a small space and still give him good and adequate returns and if the landlord has stated that he was happy with the tenant, who was paying him rents with periodical increases, at least the landlord was honest to admit what was true. That should reside there.

11. While the order of ejectment made against the doctor by the two courts below are confirmed, the reversal of the decision by the appellate court with reference to the tenant in Civil Revision No.4659 of 2006 is on flimsy ground of understanding the need to be the desire.

VIII. Nature of pleadings and practice in rent control proceedings

12. The decision in Ajit Singh (supra) would alone require a proper understanding. If the Supreme Court was holding that the person who is seeking for ejectment “for his own use” actually for the need of anyone else in the family, the requirement of such other person must be spelt out under Section 13 (3)(ii) and must be understood in a proper context. It is a repeated theme in our courts and if I make an attempt to explain the Supreme Court's judgment, it is only to ensure that some clarity obtains in this grey area. It is still an issue in our courts where the petitions get to be drawn, redrawn, amended, challenged in appeal or revision only on issue of nature of

pleading for bona fide requirement. The practice must stop somewhere. There is need to explain the Supreme Court judgment in **Ajit Singh** (supra). At a fundamental level, for me, the rules of pleadings must be reasonably flexible before any Tribunal. Tribunalization has come with several pluses and minuses. Wherever strict procedural in approaches were frowned upon as creating new obstacles for quick and efficacious disposal, Tribunals established through enactments invariably provide for respective Tribunals to set their own procedures for trial work. We have Tribunals that abound for determining compensation for motor accidents for recovery of amounts, for financial institutions for recoveries, and son. In each one of the enactments, the authorities are granted powers to frame their own procedures. The common thread in all these legislations is to provide for powers of summoning and enforcing attendance of witnesses as vested in a court under the Civil Procedure Code. If the Civil Procedure Code were to be applied in its full force, there is no necessity to even the limit of power to exercise of summoning of witnesses. In fact Section 16 of the Punjab Rent Restriction Act contains a similar provision giving the Rent Controller a power of a civil court under the Civil Procedure Code for summoning the enforcing agencies of witnesses. This provision would have been unnecessary and otiose, if the CPC were to be applied in all its full force for any other

activity as well.

13. Pleadings are methods of ensuring that there is no vagueness left in what the parties have to prove and when issues are framed for establishing the landlord's personal need, there needs to be objective basis for assessment of that need. That basis is provided under the statutory provision in requiring the Rent Controller to examine that the landlord was not vacated any other premises and applies to a court for ejectment giving out a need for ejectment, such a landlord shall not also be a person who already has no other property vacant in the same urban area. It is, therefore, expected that a landlord sets out in the petitions or volunteers information about the fact that he owns no other building which is vacant or he has not vacated any other building only in order to claim ejectment. If the parties go to trial on all aspects relating to the bona fide need and it is brought out in evidence that there is no other property which is vacant or the landlord has not vacated any other property to claim ejectment, then that itself should be taken as proving the bona fides. I will, therefore, rest the judgment in **Ajit Singh** (supra) to be confined to secure proof of what the law requires and if that proof is available by parties joining that issue with all adequate materials at the trial, it ought to serve the ends of justice.

IX. Juxtaposing law to facts in the case

14. In this case, the landlord was saying that the property is necessary as additional space for the existing business. It was nobody's case that any other property was there within the same urban area. Yet another property which was available with the landlord was in an adjoining city where the second petitioner was running a poultry farm. This was sought to be brought as an issue for arguments by the tenant but would contend that the landlord had not declared the existence of the business in an adjoining city. If there was no need under law to express, the point that has to be seen is only whether the fact that the landlord had yet another business in poultry in an adjoining city, he would be in some way barred in law from claiming ejectment of his tenant. This point also illustrates a need to understand trends in business. Every business house when it expands, expands horizontally as well as vertically. Vertical rise can be adding blocks to the existing business. The horizontal increase may even diversification. A person in poultry to have computer education cannot be a fetter and be taken as not after all needed by the landlord. It shall be the landlord who will decide how prosperous he wants to be. India perhaps needs to shed its obsession for finding virtue in poverty. The landlord wants to be more prosperous. *Tat Asthu.*

X. Disposition

15. I find the ejectment is sought on grounds which are bona fide and both the tenants must go. Civil Revision No.4659 of 2006 is allowed setting aside the order of the appellate court and the Civil Revision No.6215 of 2008 is dismissed confirming the order of eviction.

16. Time for eviction 2 months in both cases.

(K.KANNAN)
JUDGE

29.07.2015
sanjeev