

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 5294 of 2011

Date of Decision: August 10, 2015

Babu Lal

.....Petitioner

Vs.

Indu Devi

.....Respondent

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

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

Mr. Aman Bahri, Advocate
for the respondent.

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M.M.S. BEDI, J.

Tenant has filed the present revision petition under Section 15 (6) of the Haryana Urban Control of Rent and Eviction Act, 1973, for short 'the Act', aggrieved by the ejectment order passed by the Appellate Authority, Narnaul dated July 27, 2011, setting aside the order passed by the Rent Controller dismissing the ejectment application of the landlord-respondent.

Petitioner was inducted as a tenant in the shop in dispute on July 7, 1975 at the rate of Rs.100 per month by Lala Sadhu Ram. After the death of Lala Sadhu Ram, the shop came to the share of his son Rajiv Ahuja by oral settlement vide decree dated March 19, 1991. After the death of Rajiv Ahuja, the shop alongwith other properties was inherited by his mother Krishna Devi. Krishna Devi had sold the said shop to the petitioner and Sarita Devi vide sale deed dated January 12, 1998 as such the relationship of landlord and tenant came into existence w.e.f. the date of the sale deed dated January 12, 1998. The ejectment was sought on the ground of non-payment of rent w.e.f. January 12, 1998 and also on the ground of material impairment of value and utility of the shop and personal requirement of the landlord and her husband Satish Kumar for starting their business in the shop.

The Rent Controller rejected the claim of the landlord on all the three grounds. So far as the ground of personal necessity is concerned, the Rent Controller observed that the husband of the respondent was not unemployed as such he did not bonafide require the shop in dispute.

In an appeal filed by the respondent- landlady before the Appellate Authority, the findings of the Rent Controller were challenged. The Appellate Authority believing the testimony of Satish Kumar who appeared as PW2, as the husband of the landlady, accepted the ground of personal necessity and passed the ejectment order. Aggrieved by the said

ejectment order on the ground of personal necessity, the tenant has preferred this revision petition.

Mr. O.P. Goyal, learned senior counsel for the tenant- petitioner has vehemently contended that the Appellate Authority has acted illegally in setting aside the order of the Rent Controller dismissing the ejectment application. He argued that the landlord has not been able to establish the three necessary ingredients of personal necessity. He has argued that the three ingredients have neither been pleaded nor proved by the landlady- respondent. He placed strong reliance on the judgment of **Banke Ram Vs. Smt. Sarasvati Devi**, AIR 1977 (P&H)158, **Shankar Lal Vs. Madan Lal and others**, 2011 (1) RCR (Rent) 139 and **Baldev Raj Vs. Ram Lal**, 2006 (4) CCC 264 (P&H) wherein it has been held that on account of the failure of the landlord to plead that landlord is not occupying any commercial building in the urban area concerned and has not vacated any other commercial building without any sufficient cause and that he bonafide requires the premises, is not entitled to seek eviction on the ground of personal necessity. It was urged that the said grounds are required to be pleaded and proved. He also argued that the landlady has intentionally not appeared as a witness in support of her plea of personal necessity. Mere examination of her husband as a witness is not sufficient enough to establish the ground of personal necessity. Learned counsel for the petitioner has contended that the husband of the petitioner is running the business of Mines Lease Owner Quartz Mines and does not require the premises in dispute.

Annexure P-2, the income tax returns and annexure P-3 have been placed on record to defeat the rights of the landlord- respondent for seeking eviction on the ground of personal necessity.

I have heard learned counsel for the petitioner, counsel for the respondent and with the assistance of counsel for both the parties, I have gone through the pleadings in the ejectment petition. Para 5 (c) of the ejectment petition as well as para 5 (c) of the written statement are reproduced hereunder for ready reference:-

“5 (c) That husband of the petitioner has no place for his business and wants to start his own business in the shop in dispute. It is note worthy that the petitioner and her husband has no commercial premises in the whole country including Narnaul and she and her husband has not vacated any shop after the commencement of the Rent Act. Therefore, the petitioner requires the premises for her personal need and the respondent is liable to be ejected.....”

“5 (c) That the contents of sub-para (c) are wrong and denied. The fact is wrong that there is no other place/ shop for the husband of the petitioner for his business. The husband of the petitioner deals with cloth business and there is a shop available for the husband of the petitioner for his business. This fact is also wrong that

the petitioner require this shop for her own requirement/ need. The petitioner did not want shop for her own use and occupation. This fact is also wrong that the husband of the petitioner has not got vacated any shop. The husband of the petitioner has many shOps in Narnaul.”

No doubt, the landlady- respondent did not herself appear as a witness but Satish Kumar had appeared on behalf of his wife Indu Devi. His statement has been placed on record as annexure P-4. So far as his personal need is concerned, he stated that he needed the shop to do his business. He has passed M.Sc. Geology and he wanted to do the business in the shop relating to minerals. He was cross-examined. In his cross-examination he stated that he traded in minerals on orders and used to supply minerals after getting the orders. Earlier he was contractor of the minerals which had stopped because of the policy of the Government. He explained that the work of contract had been finished. He alongwith Gopal Saran and four brothers Daulat Ram and Raj Kumar are dealing in the partnership firm called ‘Royal Minerals’. In the cross-examination he stated that other partner is Savita Devi alongwith him. He admitted that he files income tax returns but he was not able to tell orally the income earned during the year 2002-03. He clarified that Gopal Saran was owner of Gopal Textiles being sole proprietor. He denied that he used to sit in his shop permanently. He clarified that he sat on the shop by the name of ‘Royal Mineral and Marbles’ and generally remain present on ‘Royal Marble’. He explained that his wife

wanted to get the shop vacated for him. It was got clarified that he has four brothers living separately and had their mess separate. He deposed that Gian Sarup is tenant in one of the two shops which is in the side of the demised shop, since 1976. Savita and Indu are the joint owners of the demised shop.

A perusal of the cross-examination and written statement indicate that the tenant has nowhere made any attempt to establish that the landlady- respondent has got any other premises available in the same urban area to be occupied by her or by her husband. In the written statement, the petitioner has not specifically mentioned whether the landlady had any other premises in the urban area or that she had vacated the same. There is no dispute regarding the proposition of law as laid down in **Banke Ram's** case (supra) but at the same time the tenant cannot be absolved of his duty to specifically deny the averments in the ejectment petition and to avoid evasive denial. As per the principles of Order 8 Rule 4 CPC where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. As per Order 8 Rule 5 CPC, every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be deemed to be admitted.

In the present case, the tenant- petitioner has not specifically pleaded that the landlady was in occupation of a particular premises or that she had vacated a specific building without any sufficient cause. No doubt, in **Banke Ram's** case (supra) a landlord is required to specifically plead and

prove that the landlord requires the premises for his/ her own occupation and that he or she is not occupying any residential building in the urban area or that he/ she has not vacated any commercial building after the commencement of the Act in the same urban area but at the same time it was held that it is essential even for the tenant to state all facts specifically and expressly in pleadings before he enter into evidence. In this context, the observations of the Division Bench in **Banke Ram's** case (supra) that it is obligatory for both the landlord and tenant to state all the facts specifically and expressly in their pleadings before they enter into evidence, made in paras 9 and 12 of the judgment are reproduced as under:-

“9. 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.....

12. In the present case, we are concerned only with the question as a principle of law as to whether it is essential to plead in an eviction application the ingredients of Sub-clauses (b) and (c) and not the question that if in a particular case these ingredients are not pleaded, but the parties have led evidence with regard to them, what will be the effect? In any given case, where facts have not been averred in the pleading, a number of questions can arise as to whether proper evidence has been adduced by the landlord regarding those facts which do not find place in the pleadings and secondly whether such evidence will be admissible or not and lastly, whether the tenant was taken by surprise or not and had led evidence with full knowledge of the requisite contentions raised by the landlord and whether the tenant has in those circumstances been prejudiced or not. The Court would be required to give full consideration to the contentions raised by the respective parties and the facts and circumstances of each case before giving its decision in

favour of the landlord or the tenant, tout the decisions of the High Courts or the Supreme Court, in this regard, cannot be of any avail to detract from the validity of the proposition that it is necessary for the landlord to make averments regarding the ingredients of Sub-clauses (b) and (c). **However, it may be made clear that when it is held that it is essential to plead the ingredients of Sub-clauses (b) and (c) in the eviction application by the landlord, it should not be understood that under no circumstances, in the absence of pleadings, the evidence regarding the ingredients envisaged in Sub-clauses, (b) and (c) can be looked into. This is not peculiar to the eviction applications. Similar considerations come into operation even in the case of suits which are governed by the specific and detailed provisions of the Code of Civil Procedure regarding pleadings. (emphasis supplied)”**

In **Sat Parkash Chaudhary Vs. Kewal Krishan Malhotra**, 2011 (2) RCR (Civil) 828, following the judgment in **Banke Ram’s** case (supra) it was held that in case the landlord failed to prove that he was not occupying any other premises in the area, the flaw will not be fatal.

Similarly in **Gurbaj Singh Vs. Parshotam Singh and others**, 2011 (3) PLR 653, it was observed that when tenant failed to take any

objection about the non-pleading of mandatory ingredients of statute regarding bonafide need despite the fact that the landlord failed to plead the ingredients to lead evidence to that effect, then non-pleading of ingredients would not be fatal to warrant dismissal of application for ejectment.

Similar is the ratio the judgment in **Mohan Lal Vs. Rakesh Kumar Bhakoo and another**, 2006 (2) RCR (Rent) 209 where emphasis was laid upon the requirement of tenant to raise specific objection in the written statement at the earliest in regard to the necessary ingredients having not been pleaded. In **Kesho Ram Vs. Jagan (deceased) represented by his legal representatives Om Parkash and others**, 1977 (1) RCR (Rent) 622, referring to **Banke Ram's** case (supra) it was observed that failure to plead all the three ingredients may not be necessarily fatal to the ejectment petition when no objection regarding non-pleading of ingredients was raised before the Appellate Court.

In view of the above said judgments, I am of the considered opinion that the respondent-landlady had pleaded necessary ingredient of personal necessity. The tenant had not raised any objection to the same and had vaguely denied the same not specifically mentioning that the landlady or her husband were in occupation of any specific shop. The cross-examination conducted by the tenant- petitioner is sufficient enough to bring to the notice of the Court the bonafide need of the landlady- respondent. Merely because the landlady has opted to produce her husband to establish her bonafide need is not sufficient enough to reject the ejectment petition. In

this context, reference can be made to **M/s Sant Footwear Pvt. Ltd. and another Vs. Daya Bindra**, 2013 (2) RLR 547 holding that if the attorney who happens to be close family member produced as a witness in a case of personal necessity, it is always possible to accept the evidence of such attorney so far as the establishment of bonafide need of the landlord/landlady is concerned.

In view of the above said circumstances, I am of the considered opinion that the bonafide need of the respondent -landlady is to be seen from her point of view. She having established that the need to occupying the shop is bonafide, no ground is made out for interference in the order of ejectment passed by the Appellate Authority.

The petition is dismissed. Since the petitioner has been in possession of the tenanted premises for the last number of years, six months time is granted to the petitioner to vacate the premises and to handover the vacant possession subject to the condition that the petitioner will furnish an affidavit before the Rent Controller to handover the vacant possession on expiry of six months from the date of this order i.e. August 10, 2015, subject to payment of entire arrears of rent within a period of one month. Petitioner would be liable to pay the electricity or water charged, if any.

August 10, 2015
sanjay

(M.M.S.BEDI)
JUDGE