

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

Civil Revision No.939 of 2004 (O&M)

Date of decision: 22.04.2015

Bharat Petroleum Corporation Limited ... Petitioner

versus

Smt. Bhagwanti Devi (through LRs) and others. Respondents

II. Civil Revision No.819 of 2004 (O&M)

Lal Chand and another ... Petitioners

versus

Rishi Narang and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Raman Sharma, Advocate,
for the petitioner in CR No.939 of 2004.

Mr. Sandeep Punchhi, Advocate,
for the petitioners in CR No.819 of 2004.

Mr. R.C.Setia, Senior Advocate, with
Mr.Sandeep Khunger, Advocate,
for the respondents.

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)

1. The revisions are against the concurrent orders of
eviction passed against the tenant which is presently Bharat

Petroleum Corporation Limited and its alleged sub-tenants, but who were but its dealers, according to the tenant. The case for eviction was filed on 4 grounds initially of sub-letting, non-payment of rent, material impairment of the premises and personal necessity of the landlord. It was the plea of the landlord that the property had been leased out on 01.08.1964 to Burmah Shell @ ₹200/- for a period of 20 years and the tenant continued in possession without the landlord's concurrence. The leasehold right over the property had been taken over by the Union of India and they had sub-let the premises to the Bharat Petroleum, who, in turn, sub-let the premises to respondents 4 and 5. The rent payable was ₹4,000/- and even that was not paid. The landlord had no other property in the urban area and she required it for her own personal necessity for demolishing the existing structures, put up new constructions and also build for herself a residential building for her own accommodation.

2. The Bharat Petroleum filed a reply pointing out to the fact that the private Company was later nationalized through the Act called Burmah Shell (Acquisition of Undertakings in India) Act of 1976. By virtue of the said Act, all the assets had stood vested in a Corporation established by the Union and the legislation also provided for an option to exercise a right of renewal of lease which was so exercised and, therefore, the position of Bharat Petroleum

Corporation could not be termed to be that of a sub-lease under the Union. Even under the original document of lease created in the year 1964, there was a clause that provided for the lessee to grant a licence for the purpose of carrying on business in petroleum products and the clause No.5 of the lease deed stipulated that such a liberty of the lessee to grant a licence for doing the business could be exercised without restrictions and without reference to the lessor. The respondents 4 and 5 were only the licensees carrying on the business in such capacity and they could not be treated to be sub-lessees. As regards the plea regarding non-payment of rent, the contention was that after the conclusion of the initial period of 20 years, the landlord refused to receive the tender of rent @ ₹200/- and demanded the rent at ₹4,000/- which was not paid. Consequently, there was no default in payment of rent. The plea of material impairment was not pressed and the respondent denied the landlord's requirement for personal necessity.

3. At the trial, the landlord did not examine herself but her son was examined as a power of attorney. The respondents offered no evidence at all after taking as many as 17 opportunities to give evidence and on the basis of the evidence brought before the Rent Controller, he found that there had been no rent at all paid from the year 1984 till the date of payment and the amount that was paid fell short of what was due and payable. As regards the plea of sub-

letting, the Rent Controller found that the sub-lease is invariably a covert act and if person other than the original lessee was actually carrying on the business, they were required to give evidence. Neither the 4th respondent nor the 5th respondent offered any evidence to explain the character of possession. The case of sub-letting was, therefore, found to be established. The Rent Controller also examined that the personal necessity had been clearly established by the fact that there was no proof adduced to deny the assertions made on behalf of the landlord that she owned no other property in the urban area and that the property was necessary for establishing her own residence and for building new shops.

4. The order of eviction passed was on the consideration, inter alia, of the fact that the respondents gave no evidence at all and the petitioner's assertion stood proved. At the appellate Court, the decision of the Rent Controller was confirmed in all respects except the fact that there was no reference at all about the non-payment of rent. By the time when the appeal was filed, the landlord had expired and her own grandson had been impleaded as a legal representative, who projected his own needs through reply filed in the application for impleadment that the necessity originally pleaded by the landlord would operate in his favour as a member of family. He claimed that he was a qualified BDS doctor practicing as a Dental Surgeon at Abohar and was not having any other immovable

property for his non-residential purpose to run his clinic/hospital. He also asserted that he had neither owned/occupied his own building nor vacated any other non-residential premises in Abohar. The appellate Court stated the law that the need shall be assessed only on the date of the filing of the petition and the legal representative would be entitled to take the benefit of the order of eviction that was already passed, if her need was shown and accepted by the landlord till the time when the eviction was passed.

5. The tenant as well as the persons alleged to be sub-tenants are revision petitions before this court pointing out inter alia that there was no reference to the ground of non-payment of rent in the appellate court judgment only on account of the fact that the appellate Court took note of the situation that the landlord was not receiving the rent in spite of tender and when the court was passing an interim order of stay directing that the amount @ ₹200/- from 01.08.1984 to 31.07.1993 would also be payable, the counsel would state that the said amount was paid. That was why there was no separate discussion as regards the ground urged and the finding rendered by the Rent Controller as regards non-payment of rent. The learned senior counsel appearing on behalf of the respondents would state that till the date of conclusion of proceedings, the rent had not been paid and there was not even a ground urged before the appellate authority that the finding was wrong. I must observe that

non-payment of rent as a ground of eviction under the provisions of the Punjab Rent Restriction Act has come to be interpreted through several decisions and the preponderance of the judicial view is that the court shall make an assessment of the rent when there is a dispute and shall call upon the tenant to make payment before a stipulated date. The counsel would argue that when the landlord was asking rent @ ₹4,000/- and when the tenant was prepared to pay ₹200/-, the Rent Controller did not assess the rent that was payable and, therefore, there cannot be a finding of default in payment of rent as the Rent Controller had done. If the appellate Court was, therefore, giving a direction for making payment of arrears @ ₹200/-, it was literally discarding the landlord's plea for a rent at ₹4,000/- and when the payment was also made as per the order of the appellate Court on 16.10.2001, the ground of eviction for non-payment of rent did not any longer exist. I would accede to the plea of the counsel for the petitioner and hold that eviction on the ground of non-payment of rent cannot be sustained. Subsequent to the judgments of the courts below, there was also a decision of the Supreme Court in **Rakesh Wadhawan Versus M/s Jagdamba Industrial Corporation-2002(1) RCR (Rent) 514** where the court laid down a procedure to be adopted in cases where the claim for ejectment is made on non-payment of rent. The contemplated procedure enjoins that the provisional assessment of rent is made by

the Rent Controller in the event of dispute and without affording an opportunity to the tenant to make the payment, the order of eviction on non-payment of rent cannot be sustained. The law is too well established to be reopened for a consideration in favour of the landlord under the circumstances.

6. As regards the issue of sub-lease, there is a clause under the lease deed itself that provides for the user of the premises for the petroleum outlet and authorizes the lessee to run the same through licensees without any further concurrence of the landlord. The landlord's contention was that after the property was taken over by the Union and granted in lease to the Bharat Petroleum, Bharat Petroleum, in turn, made a sub-lease in favour of respondents 4 and 5 their character of possession being dealers of products on behalf of Bharat Petroleum. The two courts below took a serious view of the fact that there was no evidence offered on behalf of the tenant. The learned counsel's submissions before me was that when there is a lease deed which provided for a right of lessee to grant a licence, the position of respondents 4 and 5 must be taken to be only in such capacity. If it was a case of respondents 4 and 5 having been granted a licence in the year 1964 and they continued as such, I would have had no difficulty in accepting the arguments and making an assumption that the original licencees continued. If we are confronting a situation of the landlord's assertions that respondents 4

and 5 had been inducted as sub-lessees by Bharat Petroleum, who was not the original lessee of the landlord, then the position of respondents 4 and 5 ought to be explained through some evidence and it could not have been merely a matter of assumption. The courts below were justified in drawing an adverse assessment of the fact that no evidence was given either by respondents 4 and 5 or by the Petroleum Corporation itself to explain that they were not actually in legal possession, but they were running the same on behalf of Bharat Petroleum. If the documentary evidence and pleadings could themselves be sufficient proof, then there would be even no need for a trial. Only admitted situations would require no evidence during the time of trial. When the landlord was not admitting the possession of respondents 4 and 5 as under any lawful transaction and would characterize them as sub-lessees of Bharat Petroleum, in the absence of proof through requisite documents for establishing the character of such possession, I cannot find that the decisions rendered by the courts below were off-the-mark. I, therefore, decline to make any interference in favour of the landlord in that regard.

7. As regards the plea of the landlord for personal necessity, the counsel for the petitioner would rely on the decision of the Supreme Court in **Kedar Nath Agarwal (dead) Versus Dhanraji Devi (dead) by LRs-2004(8) SCC 76** that held that in a

situation where landlady was not examining herself in the witness-box and the need of the members of the family had not been pleaded but the landlady had died, the requirement of the legal heirs could not be inferred. The decision had not directly considered the effect of other decisions of the Supreme Court itself but it had in the same year considered the effect of death of a landlord during the pendency of the proceedings in the appellate court in **Shakuntala Bai and others Versus Narayan Dass and others-2004(5) SCC 772**. The court took note of earlier rulings of the Supreme Court in **Phool Rani Versus Naubat Rai Ahluwalia-1973 RCR (Rent) 364(SC)** and still an earlier decision in **Shantilal Thakordas Versus Chimanlal Maganlal Telwala-1976(4) SCC 417** that held that the requirement of a landlord cannot be doubted nor would the order of eviction to be rendered nugatory by the fact that the landlord died subsequent to the decision. The Supreme Court in **Shakuntala Bai** (supra) had to reconcile yet another judgment of the Supreme Court in **P.V. Papanna Versus K. Padmanabhaiah-1994(2) SCC 316** that struck a different chord of reasoning to hold that the requirements of landlord would require to be established till the date when the premises were vacated. The Supreme Court held in **Shakuntala Bai** (supra) that **P.V. Papanna** (supra) could not be taken to be laying down any law and the observations that event which took place subsequent to the filing of the petition could be taken into

consideration for the purpose of adjudication till a decree was made by the final court was more than in the nature of obiter and does not represent the correct legal position. The Supreme Court was holding that in **P.V. Papanna** (supra), its own decisions in **Phool Rani** (supra) and **Shantilal Thakordas** (supra) were not considered.

8. The law relating to the subsequent events as relevant was a new dent made in civil jurisprudence through the rent control proceedings. It will be too wide a proposition to state that the subsequent event regarding the requirement of a legal representative would be wholly irrelevant. There has to be some evidence that the requirement which was established by the landlord at the time when eviction order was passed would still be shown as obtaining in favour of a legal representative who is impleaded. In this case, no evidence has been given but I am at least convinced that the person, who was impleaded as a party on the application filed by the tenant, came with a definite assertion that he, as a grandson of the original landlord, had a similar requirement for his own personal need for establishing his clinic and he had no other property within the urban area. The proper procedure in all cases where a legal representative is added and he pleads for a position that he is also a member of the family, it would be appropriate that the court calls for some evidence. It will be too risky for a court to merely act on a reply given on an application for impleadment. This becomes all the more

important in cases where the original pleadings contained by the landlord makes no reference of the requirements for the entire family but pleads it for his or her own immediate personal needs only. In such situations, the ideal thing would be for a court to secure enough materials to ground its own reasonings. I am merely stating what is appropriate but there was adequate case law to support the view that the appellate court took at the time when it referred in its judgment to earlier rulings to hold that if the requirements had been established and the landlord was alive at the time when the order of eviction was passed, the requirements of the legal representative cannot be put at issue. The law is not any longer same and the subsequent event is surely relevant, but in this case, I am not prepared to upset the finding rendered by the appellate court only because there was a statement available for the court and it should have been possible for even the tenant who had not offered any evidence even before the trial Court to put the reply of the legal representatives to test by seeking for permission of the court to cross-examine him on the assertions made at the appellate court. Under normal circumstances, it is the landlord who takes upon himself the burden of establishing the necessity and the tenant may not volunteer evidence, if there was no evidence by the landlord. In this case, however, there was an order of eviction already passed. The Rent Controller had also found that the need had been proved.

A person who was coming on record on the application filed by the tenant made an assertion in his reply that his need continued and the court acted on the same. In such instances, I would not think, it would be appropriate for me to modify the finding at the stage of revision. I confirm the finding in that regard.

9. At the time of closing, the learned counsel for the respondent says that the damages for use and occupation had been assessed by this court but modified through an interim order passed by the Supreme Court that 50% of the amount determined as mesne profit would be paid. According to the counsel, the payment has been paid upto January, 2015. The amount of mesne profits that will be payable upto the date of eviction shall abide by the ultimate decision of the Supreme Court.

10. The order of eviction passed by the courts below would, therefore, require to be confirmed and accordingly, confirmed. The civil revisions are dismissed.

11. Time for eviction 3 months.

(K.KANNAN)
JUDGE

22.04.2015
sanjeev