

CR No.561 of 2013 (O&M)

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

**CR No.561 of 2013 (O&M)
Date of decision:30.06.2015**

Nasib Kaur

...Petitioner

Versus

Amarjit Kaur

...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

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

Mr. Arun Jain, Senior Advocate, with
Mr. Arnav Sood, Advocate, for the respondent.

Mr. Harsh Aggarwal, Advocate,
for the applicants in CM No.15070-CII of 2013.

Rakesh Kumar Jain, J.

The petitioner-tenant has been ordered to be evicted by both the Courts below on the ground of personal necessity of the respondent-landlady, from the tenanted premises bearing SCF No.10, Sector 20-D, Chandigarh, which is in her occupation on a rent of ₹1,000/- per month, excluding water and electricity charges.

Admittedly, the landlady had earlier filed a Rent Application No.151 of 1987 (hereinafter referred to as the “first petition”) for eviction of

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the petitioner and one Jagat Ram Tailor, under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the “Act”), *inter alia*, on the grounds of non-payment of arrears of rent, personal necessity for residence and occupation of her son who had completed his studies, employed as a Computer Programmer, lives in a rented premises consisting of one room with attached bathroom in House No.211, Sector 21-A, Chandigarh and subletting part of the demised premises to Jagat Ram Tailor. In that Rent Petition, issue no.8 was whether the landlady requires the demised premises for personal use and occupation? The said issue was decided against the landlady on the ground that she had sought ejectment of the tenant(s) from the shop-cum-flat, which is a non-residential building and as per the law, the landlady could not have sought ejectment of a tenant from a non-residential building on account of personal use of residence. The order of the Rent Controller dated 19.09.1990, dismissing the eviction petition, was upheld by the Appellate Authority vide its order dated 15.05.1995 and in the CR No.3983 of 1995, filed by the landlady, this Court passed the following order:-

“The petitioner landlord sought eviction of respondent No.1 tenant and respondent No.2, alleged sub-tenant. The Rent Controller dismissed the application. The order of the Rent Controller has been duly affirmed by the appellate authority. Hence, this petition.

Learned counsel for the petitioner confined himself only to the ground of bonafide need, relying upon judgment of the Hon'ble Supreme Court in Harbilas Rai Bansal Vs. State of Punjab and another, AIR 1996

SC 857. He submitted that in view of the said judgment, plea of bonafide need was also available to the petitioner and the same could not be rejected on the only ground that the premises were non-residential.

Learned counsel for respondent No.1-tenant points out that the pleading in support of plea for bonafide need was confined to residential requirement only and even if plea is available to the petitioner, he cannot seek eviction on the basis of material on record.

Learned counsel for the petitioner at this stage states that on account of subsequent developments and on account of judgment of the Hon'ble Supreme Court in Harbilas Rai Bansal (supra), which has been rendered after filing of this petition, the petitioner will file a fresh petition. It is for the petitioner to take such remedy as may be available under the law.

In view of the above, no furtherance is called for at this stage in exercise of revisional jurisdiction with the impugned order.

The petition is dismissed.”

The landlady then filed the present Rent Petition No.496 of 1996 (hereinafter referred to as the “second petition”) against the petitioner. This time, she did not implead Jagat Ram Tailor, the alleged sub-tenant. The eviction was sought on the ground of non-payment of arrears of rent from 01.04.2004 onwards and *bona fide* requirement of the demised premises both for her and her son. It is averred therein that her son, namely, Jatinder Singh is a postgraduate in Computer Programming and is in occupation of rented accommodation i.e. 2nd Floor of SCO No.53, Sector 26, Chandigarh and another premises i.e. 2nd Floor of Shop No.106, Phase

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3-B-II, Mohali. It was further averred that in the first petition, the ground of personal necessity for business purposes in a non-residential building was not available, therefore, personal requirement was pressed for residence and occupation of her son who was residing in a rented room in House No.211, Sector 21-D, Chandigarh, but now it is pleaded that the entire demised premises is required by the landlady for her and her son i.e. the 1st and 2nd floor for residence and the ground floor for business. The landlady also pleaded that she does not own or occupy any other commercial premises within the urban area of Chandigarh nor has vacated any such premises after the commencement of the Act.

In support of her case, the landlady appeared herself as PW1, examined her son Jatinder Singh as PW2 and tendered lease deed as Ex.P1, whereas the petitioner-tenant examined one Baldev Singh as RW1 and tendered documents Ex.RX and Ex.R-1 to Ex.R-4.

The Rent Controller decided issue no.1 in favour of the landlady, ordered eviction on the ground of personal necessity, whereas the issue regarding non-payment of rent was decided against the landlady on the ground that the rent had been tendered and issue about maintaining the eviction petition was decided against the tenant.

The petitioner filed the statutory appeal before the Appellate Authority along with an application for additional evidence in which it was averred that since the Rent Controller has failed to apply the judgment of the Supreme Court in the case of **Rakesh Vij vs. Dr. Raminder Pal Singh Sethi and others**, 2005(2) R.C.R. (Rent) 354 on the ground that the

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allotment letter and conveyance deed are not available on record, therefore, copy of the allotment letter of the demised premises was sought to be placed on record on the ground that in case the landlady admits the said allotment letter, then it may be exhibited, otherwise the tenant may be allowed to lead evidence by summoning the record from the Estate Office, Chandigarh, to prove the allotment letter of the demised premises.

The Appellate Authority dismissed the application for additional evidence on 01.12.2012 observing that RW1, the only witness examined by the tenant, admitted in his cross-examination that in the demised premises the ground floor is meant for commercial purposes whereas the first and second floors are meant for residential purposes. It is further admitted that the first floor of the demised premises is being used by the tenant for residential purposes. It was, thus, held that as the landlady is claiming eviction from the demised premises on the ground of personal necessity for residence and business of her son, therefore, production of allotment letter of the demised premises on the file would not serve any purpose and hence, the application was dismissed and the appeal was also dismissed on the same day by a separate order.

Aggrieved against the order of eviction passed by both the Courts below, the petitioner has filed the present revision petition along with CM No.1892-CII of 2013, seeking permission to place on record the allotment letter and conveyance deed of the demised premises.

The landlady filed CM No.6830-CII of 2013 to place on record the reply to the application bearing CM No.1892-CII of 2013 which was

allowed by this Court on 21.03.2013. In reply to this application, it is averred that the tenant Nasib Kaur had not stepped into the witness box rather she has examined Baldev Singh S/o Tara Singh as her attorney, who had categorically admitted that “... *it is correct that the demised premises is a S.C.F. and the ground floor is meant for commercial purposes and 1st and 2nd floors are meant for residential purpose. The respondent is using ground floor for commercial purposes and using 1st and 2nd floors for residence purpose and 2nd floor is being used for keeping the clothes which were meant for drying purposes....*”. It is further averred that in view of the categoric admission of the attorney of the tenant, the application for placing on record additional evidence loses its significance. In this regard, the landlady has attached the plan Annexure R-2 showing design of the SCF while referring to Clause-12 of the allotment letter which provides that “*the site is classed as commercial and the building to be erected on it shall not be used for residential purpose unless otherwise specified in the plans supplied by the Government*”. It is further averred that the judgment of the Supreme Court in **Rakesh Vij's case (supra)** does not apply to the facts and circumstances of this case because there is a marked difference in the design of the SCF of Sector 22 and SCFs of other sectors including Sector-20, Chandigarh, to which present ejectment petition belongs to.

It would also be relevant to mention here that one application bearing CM No.15070-CII-2013 has also been filed under Order 1 Rule 10 of the CPC by Sudesh Kumar and Ravinder Kumar, both sons of Jagat Ram to become a party, on the ground that Jagat Ram was in occupation of the

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portion of the demised premises since 1961, running a tailoring shop under the name and style of M/s Jagat Tailors till his death on 09.10.2011 and now the applicants are running the said business. It is averred therein that Hazura Singh, husband of the petitioner-tenant Nasib Kaur, who came into possession of the demised premises in the year 1960, gave portion of the demised premises to Jagat Ram in the year 1961, who started his tailoring shop under the name and style of M/s Jagat Ram Tailors, which was duly registered vide registration no.2371 dated 05.02.1963 in Form-F under Section 13 of the Punjab Shops & Commercial Establishment Act, 1958, and has been renewed from time to time. It is further averred that the Rent Application No.114/2 of 1978 titled as "Smt. Amarjit Kaur vs. Hazura Singh and another" was filed by the landlady for seeking their eviction on various grounds including subletting. The said ejectment petition was dismissed on 24.05.1980. Thereafter, the landlady filed another Rent Petition No.151 dated 02.06.1987 in which Jagat Ram was also included as respondent no.2 and ejectment was sought on the ground of subletting, but the said petition was also dismissed on 19.09.1990, appeal was dismissed on 15.05.1995 and the Civil Revision was dismissed by this Court on 05.07.2006. It is further averred that during the pendency of the Rent Petition No.151 of 1987, the petitioner-tenant herein along with her husband Hazura Singh tried to forcibly dispossess the applicant(s), as a result thereof, Jagat Ram filed Civil Suit No.244 of 1989 seeking permanent injunction for the portion in his occupation i.e. 3-½' x 8'. The said suit was withdrawn because the petitioner-tenant Nasib Kaur made a statement that she would not dispossess

Jagat Ram, otherwise than in due course of law. Jagat Ram had to file another Civil Suit No.166 of 1998 when his possession was threatened by Hazura Singh and his son Paramjit Singh. During the pendency of the said suit, Hazura Singh died and was replaced by his legal heirs. The said suit was decreed on 22.11.2008. During the pendency of the said suit, the petitioner-tenant Nasib Kaur filed Civil Suit No.170 dated 20.04.2001 for permanent injunction and mandatory injunction, directing Jagat Ram not to interfere in her peaceful possession and to remove his articles lying in the demised premises. The said suit was dismissed on 30.09.2005 and its appeal was dismissed on 25.08.2007. It is further averred that now the present ejectment application has been filed on 27.11.2006 without impleading Jagat Ram as a party and the applicant(s), being afraid that any order of ejectment taken against the petitioner-tenant may not be used against them for the purpose of their eviction though they have independent right in the demised premises and have prayed for their impleadment.

The landlady filed CM No.17959-CII of 2013 in order to place on record the reply to the application bearing CM No.15070-CII of 2013. Application is allowed and the reply is taken on record.

In the reply, the respondent-landlady has alleged that the applicants are neither necessary nor proper parties. It is averred that the vacant physical possession of the demised premises has already taken on 30.04.1980 and was let out to the present petitioner-tenant Nasib Kaur. The landlady was not a party to the Civil Suit No.170 filed by Nasib Kaur against Jagat Ram and has no knowledge about it. In nut shell, the presence

of the applicants in this litigation was challenged on the ground that they are neither necessary nor proper parties.

Learned counsel for the petitioner has submitted that the eviction petition deserves to be dismissed on the principle of *res judicata*. It is argued that the first petition was filed for use and occupation of the demised premises as a residence by the son of the respondent-landlady who has stated in her cross-examination while appearing as PW1 that there is no change in the family circumstances regarding the claim of personal requirement which were taken in the earlier petition as well as in the present petition. It is further argued that there was a specific issue no.8 in the first petition with regard to requirement of the demised premises for personal use and occupation and the said issue was decided against the respondent-landlady. In support of his submission, he has relied upon various judgments of this Court in the case of **Mehtab Singh Advocate vs. Shri Tilak Raj Arora and another**, 1988(1) PLR 269, **Ram Sarup Bhalla vs. Barkat Singh**, 1990(2) Rent Control Reporter 392 and **Sardari Lal Jain vs. Smt. Dhanwanti Devi**, 2002(2) Rent Control Reporter 296.

In reply, learned counsel for the respondent-landlady has submitted that the earlier decision in the first petition was not on facts rather it was a decision on law because the prayer made in the first petition was for seeking eviction of the petitioner-tenant for personal necessity of residence, which was rejected by the Courts below on the ground that such a prayer could not have been made by the landlady in respect of a non-residential building. In support of his submission, he has relied upon a decision of this

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Court in the case of **Surinder Gupta vs. Hukam Chand**, 2009(1) Rent Control Reporter 541.

I have heard learned counsel for the parties on the point of *res judicata* and perused the record.

The first petition was filed by the respondent-landlady for seeking eviction of the petitioner-tenant from the entire demised premises for the sake of residence of her son who was putting up in a rented premises consisting of one room along with attached bathroom at a monthly rent of ₹400/- being employed as a Computer Programmer and working in Sector 8C, Chandigarh. However, the said petition was dismissed, holding that the demised premises is a non-residential building which cannot be got vacated for the personal necessity of the respondent-landlady as residence. The second petition has been filed by the respondent-landlady for her and her son's personal requirement in which it is alleged that her son, a postgraduate in computer programming, is doing business of data processing and training of computer in rented accommodation i.e. 2nd floor of SCO No.53, Sector-26, Chandigarh and 2nd floor of Shop No.106, Phase 3-B-II, Mohali. Reference was also made to the averments of personal requirement made in the first petition but in the second petition, the demised premises was required for personal use and occupation of the landlady and her son for both residence and business inasmuch as the 1st and 2nd floor for the residence and the ground floor for the business purposes of her son. No finding has been recorded in the first petition that son of the petitioner was not occupying a residential accommodation in Sector 21-A, Chandigarh

because the Courts were consistently of the opinion that the plea of personal requirement of a non-residential building for residential purposes cannot be allowed. The respondent-landlady was also allowed to take up her remedy as available under the law when his revision petition arising out of the first petition was dismissed.

Insofar as the judgment relied upon by learned counsel for the petitioner in **Mehtab Singh Advocate's case (supra)** is concerned, in that case it was held that if the landlord withdraws first petition without liberty to file fresh petition, then *de hors* the applicability of the Code of Civil Procedure, 1908, to the proceedings before the Rent Controller, the general principles would apply to the effect that no man can be waxed twice for the same cause of action.

In **Ram Sarup Bhalla's case (supra)** also, a decision was taken by this Court that general principles of CPC including Order 23 Rule 1 are applicable to proceedings under Rent Act being based on justice, equity and good conscience because in the said case also, Ram Sarup Bhalla filed the ejectment petition, withdrew it without obtaining permission to file the second one despite the fact that the second petition was filed on the same cause of action.

In **Sardari Lal Jain's case (supra)** also, this Court had held that Order 23 Rule 1 of the CPC would be applicable to the proceedings under the Rent Act.

There is no quarrel with the proposition of law as laid down by this Court starting from the **Mehtab Singh Advocate's case (supra)**, but the

present case does not fall in the said category, rather in **Surinder Gupta's case (supra)**, relied upon by learned counsel for the respondent-landlady, it was held that if a tenant himself invited a second petition by his objection that earlier petition was pre-mature or not maintainable, he cannot be heard to contend that the second petition was not maintainable, rather it would a case of estoppel against the tenant.

In the case of **Anil Kumar and another vs. Jai Pal Puri through LRs.**, 2011(4) RCR(civil) 562, this Court had held that if the first petition filed by the landlord for eviction of the tenant from the shop, on the ground of his personal necessity and one son is dismissed and he has filed the fresh petition seeking eviction of tenant for his three unemployed sons to start business, then the dismissal of the first petition would not operate as a *res judicata* insofar as the second petition is concerned.

In the present case as well, the first petition was also filed by the respondent-landlady only for the residential purposes of her son who was putting up in a rented accommodation in Chandigarh while working in some computer agency. At that time, she did not ask for the demised premises for the purpose of business and residence both, therefore, the petition was dismissed on the ground that a non-residential building cannot be allowed to be vacated for residential purposes, but in the second petition, the respondent-landlady has asked vacation of the demised premises not only for her son but for herself also in order to occupy 1st and 2nd floor for the purpose of residence and the ground floor for the purpose of business of her son. Merely the fact, that while appearing as PW1, she had stated in her

cross-examination that there is no change in the family circumstances while filing the second petition and it would not improve the case of the petitioner because her statement was contrary to the pleadings because change of circumstances was there as she wanted the demised premises not only for her residence on the 1st and 2nd floors but also for the business of her son on the ground floor, which was conspicuous by its absence in the first petition.

Accordingly, the argument raised by learned counsel for the petitioner in regard to *res judicata* is hereby rejected.

Now the question comes as to whether the demised premises is a non-residential building or a combination of residence-cum-commercial?

The petitioner had filed an application for additional evidence before the lower Appellate Authority in which it was averred that the Rent Controller had not applied the decision of the Supreme Court in **Rakesh Vij's case (supra)** on the ground that the allotment letter/conveyance deed was not on the Court file. She, thus, sought to place on record the allotment letter of the demised premises and alleged that it was an admitted document. The said application was dismissed on 01.12.2012 by the Appellate Authority on the ground that the only witness examined by the petitioner-tenant, namely, RW1 Baldev Singh has admitted in his cross-examination that “... *it is correct that the demised premises is a S.C.F. and the ground floor is meant for commercial purposes and 1st and 2nd floors are meant for residential purpose. The respondent is using ground floor for commercial purposes and using 1st and 2nd floors for residence purpose and 2nd floor is being used for keeping the clothes which were meant for drying*

purposes....”.

The petitioner has again filed an application for additional evidence before this Court and attached allotment letter as Annexure A-7 and conveyance deed of the demised premises as Annexure A-8..

While replying the said application, the respondent-landlady has attached statement of RW1 Baldev Singh as Annexure R-1 and the design of the SCF in Sector 20, Chandigarh, provided by the government, as Annexure R-2.

I have considered the arguments raised by learned counsel for the parties on the said application.

The documents Annexures A-7 and A-8 (allotment letter of the demised premises and its conveyance deed) are the public documents, the authenticity of which has not been denied in the reply by the respondent-landlady except alleging that they are not required and has rather relied upon the statement of RW1 Baldev Singh where he has admitted that the demised premises is being used for dual purposes of business and residence both and a design of all the SCFs in Sector-20, Chandigarh.

Keeping in view the issue involved in this case, the application filed by the petitioner for additional evidence is allowed and the documents Annexure A-7, A-8 and Annexure R-2 are taken on record and are being considered in evidence for the purpose of taking a decision on merits as to whether the demised premises is being used for business and residence both even if it is termed as a commercial site in Annexures A-7 and A-8 and could be got vacated by the respondent-landlady for the dual purposes of

business and residence?

Learned counsel for the petitioner has submitted that in the allotment letter (A-7), the demised premises has been referred to as a commercial site and it has been specifically mentioned that the site shall not be used for the purpose other than for which it has been sold and in the conveyance deed (A-8), the sale of site was sanctioned for the purpose of shop-cum-flat and for using the same exclusively for general trade. In support of his submission, he has referred to the judgment of the Supreme Court in the case of **Shabir Ahmad vs. Sham Lal**, 2002(1) Rent Control Reporter 306 to contend that shop-cum-flats in Chandigarh are non-residential buildings, which cannot be got vacated by the landlord for residential purposes.

On the other hand, learned counsel for the respondent-landlady has submitted that the judgment relied upon by learned counsel for the petitioner in **Shabir Ahmad's case (supra)** is not applicable to the facts and circumstances of the present case as it pertains to SCF of Sector-22, Chandigarh, whereas the demised premises is in Sector-20, Chandigarh. It is further argued that it is specifically mentioned in Clause 12 of the allotment letter (A-7) that *“the site is classed as commercial and the building to be erected on it shall not be used for residential purpose unless otherwise specified in the plans supplied by the Government”*. While referring to the design (R-2) supplied by the Government for construction of the SCF in Sectors 20, 15-C, 21, 27 and 18-D, it is submitted that the construction on the 1st floor of the SCF comprised of 4 rooms, 2 kitchens, 2

baths and 2 toilets and on the 2nd floor, there are 2 terraces, 2 barsatis, 2 low terraces and one water tank. He further submitted that in **Shabir Ahmad's case (supra)**, the dispute was regarding SCF No.14, Sector-22D, Chandigarh, which was also classified as commercial. However, in para 13 of the judgment, the Supreme Court had observed that *“this clause places the position beyond any doubt. It puts an embargo on the use of the building for residential purpose unless the plan supplied by the Government specified it as a residential building. Clause 6 directs that the building shall have to be constructed in accordance with the design which will be supplied by the Government after the building plans have been sanctioned. We have also perused the plan of the first floor (Annexure P-5). The design of the plan does not provide for bed-rooms etc. We find no provision for bathroom and no provision for kitchen, on the contrary a room is shown as ‘office’. There is nothing in the plan which indicates that a residential accommodation is specified therein”*, whereas in the present case, Clause 13 of the allotment letter (A-7) provides that the building on the site shall have to be completed within a period of two years from the date of auction in accordance with the plans supplied by Government and the plan that has been supplied by the Government of the demised premises is already taken on record as Annexure R-2, which was allegedly not deliberately appended by the petitioner because the said plan would have disclosed to the Court the nature of construction on the 1st and 2nd floors of the SCF.

With this background and the existing position of the demised premises, the statement made by RW1 Baldev Singh in his cross-

examination becomes most relevant in which he has admitted that the ground floor of the demised premises is meant for commercial purposes and 1st and 2nd floors for residential purposes. The petitioner has been using the ground floor for commercial purpose, 1st floor for residential purpose and 2nd floor for keeping the clothes for drying because the petitioner is a dry-cleaner. As per the site plan (R-2), supplied by the Government, there are rooms, kitchens, bathrooms and toilets on the 1st floor which are meant for residence and are also being used for residence by the petitioner, as admitted by RW1, and 2nd floor being a Barsati is being used by the petitioner for the purpose of drying the clothes after their dry-cleaning.

Now the question comes as to whether the parties would be governed by the definition of “non-residential building” as provided in Section 2(d) of the Act or Section 2(d) of the East Punjab Urban Rent Restriction (Chandigarh Amendment) Act, 1982 (hereinafter referred to as the “Amendment Act of 1982”). Section 2(d) of the Act defines “non-residential building” as a building being used solely for the purpose of business or trade. Section 2(g) of the Act defines “residential building” as a building which is not a non-residential building. The definition of “non-residential building” under Section 2(d) of the Act was substituted by the Amendment Act of 1982, applicable to the Union Territory of Chandigarh, wherein “non-residential building” under Section 2(d) is defined as (i) a building being used solely for the purpose of business or trade; and (ii) a building let under a single tenancy for use for the purpose of business or trade and also for the purpose of residence.

It is submitted by learned counsel for the respondent-landlady that the present case is covered by Section 2(d)(ii) of the Amendment Act of 1982 as the demised premises is being used both for residence and business but still it is termed as a “non-residential building” and for that matter, the petition filed by the respondent-landlady for seeking eviction of the petitioner for the dual purposes of residence and business in regard to a non-residential building is maintainable. In this regard, he has relied upon a judgment of the Supreme Court in **Rakesh Vij's case (supra)**, a judgment of this Court in the cases of **Surinder Kumar v. Rattan Lal**, 2009(4) RCR (Civil) 30 and order dated 13.12.2012 passed by this Court in Civil Revision No.7276 of 2012 titled as “**Smt. Sarabjit Kaur v. Air Marshal (Retd.) K.D. Singh.**”

I have heard learned counsel for the parties in this regard.

In **Shabir Ahmad's case (supra)**, the tenant was occupying the 1st floor of the SCF No.14, Sector 22D, Chandigarh. The landlord filed the eviction petition on the ground of *bona fide* requirement for residential purposes. The eviction petition was contested, *inter alia*, on the ground that the demised premises was a non-residential building which cannot be sought to be evicted on the ground of residence. The Rent Controller found that the demised premises is a part of the residential building and passed the order of eviction. The lower Appellate Authority dismissed the appeal and the High Court also dismissed the revision petition. The Apex Court, while referring to the allotment letter and deed of conveyance of SCF No.14, Sector 22D, Chandigarh, in which it was recorded as commercial property at the time of

allotment of the site itself and as per Clause 18 of the allotment letter, the building to be erected on it was not to be used for the residential purpose unless otherwise specified in the plans supplied by the Government. After a detailed appreciation of both the documents of allotment and conveyance including the plan of the 1st floor which was produced as Annexure P-5 in that case in which there was no provision for bedroom, bathroom and kitchen etc., rather there was a room shown as office, an opinion was formed that the plan supplied by the Government for the purpose of erection of building on the alleged site virtually negate the residential accommodation.

Now the question is as to whether this judgment is applicable to the facts and circumstances of the present case?

No doubt that the allotment letter (A-7) and the conveyance deed (A-8) in the present case show that SCF No.10, Sector 20-D, Chandigarh was allotted as a commercial site which could have been used only for general trade but at the same time, it was specifically provided in Annexure A-7 that though the site has been classified as commercial and the building to be erected on it shall not be used for residential purpose unless otherwise specified in the plans supplied by the Government and that the building to be erected on the site has to be strictly in accordance with the plans supplied by the Government. Annexure R-2 (site plan) of the similar buildings in Sector-20, Chandigarh, produced on record by the respondent and not denied by the petitioner, provides accommodation on the 1st floor of bedrooms, kitchen and toilets. There is nothing like office space on the 1st

floor and on the 2nd floor, building plan provides for Barsati etc. This document, coupled with the admission of RW1 Baldev Singh that the ground floor of the demised premises is being used by the petitioner for business purpose, 1st floor for residence and 2nd floor for drying the clothes, itself shows that the demised premises is altogether different from the construction plan of the Chandigarh Administration in respect of SCF in Sector-22, Chandigarh.

Thus, there is no hesitation for me to hold that the ground floor of the demised premises is commercial and 1st and 2nd floors are residential. No evidence has been led by the petitioner that the entire demised premises is in occupation of some another tenant. Thus, it is a case where the entire demised premises is in occupation of a single tenant which is being used by the petitioner for commercial and residential purposes and in view thereof, the definition of “non-residential building” provided in Section 2(d)(ii) of the Amendment Act of 1982 would directly apply to the facts and circumstances of the present case which says that the building would be still called as a “non-residential building” if it is let out under a single tenancy for the dual purposes of business and residence and for that matter, the respondent-landlady has filed the eviction petition to seek eviction of the petitioner-tenant from the demised premises on the ground of personal necessity and in this regard, the judgments in **Rakesh Vij's case (supra)**, **Surinder Kumar's case (supra)** and **Smt. Sarabjit Kaur's case (supra)** are applicable.

Counsel for the petitioner has also argued that in the first

petition, the averments have been made by the respondent-landlady that she does not own or occupy any other commercial premises within the urban area of Chandigarh and wanted to shift to Chandigarh along with her son, whereas in the second petition though she has mentioned that she has not owned or occupied or vacated any other premises in the urban area of Chandigarh after the commencement of the Act, but no such averment has been made in regard to her son who also requires the demised premises. In support of his submission, he has relied upon a decision of **Ajit Singh & Anr. vs. Jit Ram & Anr.**, 2008(2) Rent Control Reporter 328.

In reply, learned counsel for the respondent-landlady has submitted that the said judgment is not applicable to the present case because in that case, the son was admittedly owner of the shop and was also the landlord on the basis of a family partition. He has further relied upon a judgment of this Court in the case of **Gurbaj Singh vs. Parshotam Singh and others**, 2011(2) RCR (Rent) 349 in which it has been held that non-pleading of such ingredients would not be fatal to warrant dismissal of the eviction petition as the son of the landlord appeared in the witness box and deposed that he does not own or possess another non-residential premises. In this case also, while appearing as PW2, son of the respondent had stated that he does not own any property in his name or in the name of his wife and son except for the agricultural land in Patiala. However, PW2 has averred that he is paying ₹34,013/- per month for the rented accommodation of SCO No.53, Sector-26, Chandigarh and ₹12,650/- per month for the 2nd floor of Shop No.106, Phase 3-B-II, Mohali, whereas the respondent-landlady is

getting ₹1,000/- as rent from the petitioner-tenant. In this regard, learned counsel for the petitioner has relied upon a judgment of this Court in the case of **Smt. Lajwanti vs. Sukh Lal**, 1987(1) Rent Control Reporter 124, in which it has been held that if the landlord himself paying higher rent than that getting from his tenant, then payment of higher rent is a ground to seek eviction of the tenant. Similar view has been taken by this Court in the case of **Sukhdev Singh thru. his legal representatives vs. M/s. Sethi Gun Metal Store**, 2006(2) Rent Control Reporter 688, wherein the landlord was running the business in a tenanted accommodation and was paying rent at the rate of ₹400/- per month with 20% increase after every three years, whereas the shop let out by him to the tenant was fetching only ₹60/- per month.

After hearing learned counsel for the parties and perusing the available record on this point, I am of the considered opinion that there is no legal impediment in the petition filed by the respondent-landlady as all the ingredients of the provision of Section 13(3)(a)(i) of the Act has been duly complied with and the respondent is paying about ₹47,000/- as rent as against receipt of only ₹1,000/- as rent of the demised premises which can be used by both the respondent and her son for her residence and commercial purposes.

In the end, insofar as the application filed by the heirs of Jagat Ram Tailor for their impleadment as parties in this revision petition is concerned, the respondent has alleged that the possession was taken from Jagat Ram on 30.04.1980 when a statement was made by her advocate Shri

SPS Bhullar in RA Case No.114/2 of 1980 titled as “Smt. Amarjit Kaur vs. Hazura Singh and others”, but counsel appearing on behalf of the predecessor-in-interest of the applicants stated that the possession has not been delivered. However, in any case, the said rent petition was dismissed in view of the statement made by learned counsel for the petitioner (respondent herein).

Now the question would be if the possession was allegedly taken by the respondent on 30.04.1980 and the Rent Petition No.114/2 of 1980 was dismissed on 24.05.1980, then why the respondent-landlady impleaded predecessor-in-interest of the applicants, namely, Jagat Ram Tailor as respondent no.2 in the first petition and sought eviction of the petitioner on the ground of subletting. It would, thus, clearly mean that the predecessor-in-interest of the applicants was in possession even after 30.04.1980 and there is no evidence that any eviction order was passed against the respondent when the predecessor-in-interest of the applicants was a party to the lis. Accordingly, the application filed by the heirs of Jagat Ram Tailor is allowed and they are impleaded as party in this revision petition.

Since the applicants themselves have admitted that they have been inducted as tenant(s) by Hazura Singh, husband of the petitioner-tenant, and not by the respondent-landlady, therefore, they would sink and swim with the petitioner because they were enjoying possession of the demised premises not with the consent of the respondent-landlady but by an illegal design of the petitioner who was not supposed to let out any portion

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of the demised premises to anybody else without permission of the respondent-landlady.

Accordingly, while dismissing the revision petition filed by the petitioner-tenant, it is made clear that since the applicants have also been impleaded as a party to this revision petition, therefore, this order of eviction would also be applicable upon them and they would also vacate the demised premises within a period of 2 months from today along with the petitioner-tenant.

No costs.

June 30, 2015
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(**Rakesh Kumar Jain**)
Judge