

CR Nos.6638, 7299, 6758 of 2013 & 3684 of 2014

[1]

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

(1) **CR No.6638 of 2013 (O&M)**
Date of decision:21.02.2015

M/s Industrial Trade Links and another ...Petitioners

Versus

Col. D.S.Ahujla and others ...Respondents

(2) **CR No.7299 of 2013**
Date of decision:21.02.2015

Vikasdeep ...Petitioner

Versus

Col. D.S.Ahujla and others ...Respondents

(3) **CR No.3684 of 2014 (O&M)**
Date of decision:21.02.2015

M/s Krishna Agencies and another ...Petitioners

Versus

Col. D.S.Ahujla and others ...Respondents

(4) **CR No.6758 of 2013 (O&M)**
Date of decision:21.02.2015

Shri Rajinder Kumar Mahajan and others ...Petitioners

Versus

Mrs. Neelam Chawla and another ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Divanshu Jain, Advocate,
for the petitioners.

CR Nos.6638, 7299, 6758 of 2013 & 3684 of 2014

[2]

Mr. Arun Jain, Senior Advocate, with
Mr. Arnav Sood, Advocate, for respondents no.1 & 2 in
CR Nos.6638 and 7299 of 2013.

Mr. K.L.Kohli, Advocate,
for the respondents in CR No.6758 of 2013.

Mr. J.S.Mehndiratta, Advocate,
for respondents No.1 and 2 in CR No.3684 of 2014.

Rakesh Kumar Jain, J.

A bunch of four revision petitions bearing CR Nos.6633, 7299, 6758 of 2013 and 3684 of 2014 is being disposed of by way of this common order as the question involved in all these cases is the same. However, for the sake of convenience, the facts are extracted from CR No.6633 of 2013.

The petitioners, who are the tenants in the demised premises, are aggrieved against the impugned order dated 25.07.2013, dismissing their application for amendment of the written statement to introduce preliminary objection no.6.

Before I proceed further, it would be relevant to refer to the proposed amendment sought to be taken in the written statement, by way of preliminary objection no.6, which read thus:-

“6. That the petition is not maintainable inasmuch as the petitioners are not the owners of Industrial Shed No.93, Industrial Area, Ram Darbar, Phase II, Chandigarh. The Industrial Shed No.93, Industrial Area, Ram Darbar, Phase II, Chandigarh is the ownership of M/s Friends International (Sole Proprietor Smt. Raj

Nanda), 122, Industrial Area, Phase-I, Chandigarh. Smt. Raj Nanda has not projected any bona fide necessity for getting the premises vacated. Instead the petitioners are mere attorneys and rather they have projected their own necessity to get the premises vacated from the respondents. It is respectfully submitted that the attorneys of an owner cannot maintain an ejectment petition for their own necessity. Only the owner is competent to get the premises vacated from a tenant on the ground of bona fide personal necessity. The petition is liable to be dismissed on this ground alone.”

Counsel for the petitioners has argued that they would not lead any evidence and all that has been prayed before this Court is that they may be allowed to take this objection in the written statement so that it could be raised at the time of final arguments.

According to the petitioners, during the pendency of the petition, it came to their notice that the respondents are not the owners of the demised premises rather it is owned by M/s Friends International through its sole proprietor Smt. Raj Nanda and the respondents are merely attorney holders, therefore, they are not entitled to take the plea of personal necessity because the plea of personal necessity is available only to the owner. In this regard, he has referred to the statement of PW2 Balwant Singh dated 19.08.2011, Clerk of the Estate Office, U.T., Chandigarh, lease deed and order of the Estate Officer, U.T., Chandigarh on the subject of

CR Nos.6638, 7299, 6758 of 2013 & 3684 of 2014

[4]

conversion of land use.

Counsel for the petitioners has also relied upon a decision of this Court in the case of **Smt. Ram Piari v. M/s. Delhi Fruit Company and others**, 1980 PLR 363 and a judgment of the Supreme Court in the case of **Sheela v. Firm Prahlad Rai Prem Prakash**, 2002(2) PLR 66 in this regard.

It is also submitted by him that delay is no ground for refusal of prayer for amendment and has relied upon a decision of this Court in the case of the Supreme Court in the case of **Andhra Bank v. ABN Amro Bank N.V. and others**, 2007(3) R.C.R. (Civil) 585.

It is also submitted that he cannot even argue this point at the time of final arguments if it is not allowed to be taken in the pleadings and has referred to a decision of this Court in the case of **Ram Narain Singh v. Gurinder Kaur**, 1997(2) PLR 1 and two judgments of the Supreme Court in the cases of **A.V.G.P. Chettiar and Sons v. T. Palaniswamy Gounder**, 2002(1) R.C.R. (Rent) 574 and **M/s. J.P. Builders and another v. A. Ramadas Rao and another**, 2011(1) R.C.R.(Civil) 604.

He further submitted that the Rent Controller can allow amendment of the pleadings even at the stage of arguments and has referred to the decisions of this Court in the cases of **Gurnam Singh v. Roshan Lal**, 2009(1) R.C.R. (Civil) 61 and **Harbans Lal v. Dev Raj and others**, 2003 (1) R.C.R. (Civil) 222 and a judgment of the Supreme Court in the case of **Rajesh Kumar Aggarwal and others v. K.K.Modi and others**, 2006(2) R.C.R. (Civil) 577.

CR Nos.6638, 7299, 6758 of 2013 & 3684 of 2014

[5]

On the other hand, learned counsel for the respondents have argued that once the relationship of landlord and tenant is admitted, it is not open for the tenant to deny the relationship and the amendment in this regard cannot be allowed. In this regard, they have relied upon a judgment of the Supreme Court in the case of **Transmarine Corporation and others v. Zensar Technologies Limited and others**, (2009) 10 Supreme Court Cases 750 and a Full Bench judgment of this Court in the case of **Ajay Kashyap v. Smt. Mohini Nijhawan**, 2004(2) R.C.R. (Civil) 204 to contend that the landlord is not required to be owner of the premises let out to the tenant.

I have heard learned counsel for the parties and perused the record with their able assistance.

Counsel for the petitioners has categorically admitted the relationship of landlord and tenant between the parties, rather the case sought to be set up by the petitioners is that the plea of *bona fide* necessity is not available to the respondents being not the owners but the attorneys.

The question thus involved would be as to “whether an attorney of the owner, who is acting on his behalf as the landlord, is entitled to seek eviction of the tenant on the ground of his personal necessity”?

It is now well settled that the landlord is not required to be owner of the property but the question is whether a person, who is not the owner but permitted to act as a landlord, can ask for vacation of the demised premises for his own personal necessity or it would be the necessity of the owner himself. This view has already been expressed by this Court in **Smt.**

CR Nos.6638, 7299, 6758 of 2013 & 3684 of 2014

[6]

Ram Piari's case (supra). However, in **Sheela's case (supra)**, the Supreme Court was dealing with Clause (f) of Section 12 of the M.P. Accommodation Control Act, 1961, in which it is categorically provided that the landlord has to be the owner of the non-residential premises which is required by him for the *bona fide* need of his children.

Insofar as the judgment in **Transmarine Corporation and others' case (supra)** is concerned, it would not be applicable to the facts and circumstances of the present case as it has come in the evidence that the respondents are not the actual owners of the property in dispute which belongs to M/s Friends International, being a Sole Proprietorship firm of Smt. Raj Nanda and the respondents are only her General Power of Attorney holders. It has also been clarified in the statement of PW2 Balwant Singh, the Clerk of the Estate Office, U.T., Chandigarh, who has said in so many words that the property till date stands in the name of M/s Friends International, there is a General Power of Attorney of Smt. Raj Nanda in favour of Shri Amrik Singh Sekhon and the respondents are also attorneys of Smt. Raj Nanda. Any admission against the documentary evidence can always be explained because at that time the petitioners were not aware about the ownership of the respondents and it has been disclosed in the evidence, therefore, the application filed by the petitioners to insert preliminary objection no.6 in the written statement without any further right to lead any evidence on that point and only because of the reason that the petitioners are afraid that lateron they may not be allowed to raise this point during the course of hearing if it is not so taken in the pleadings by them,

CR Nos.6638, 7299, 6758 of 2013 & 3684 of 2014

[7]

should have been allowed.

The judgment relied upon by learned counsel for the respondents in **Ajay Kashyap's case (supra)** is not at all applicable in this case because in that case, the issue involved was as to whether the relationship between an allottee of dwelling unit allotted by the Chandigarh Housing Board and his tenant inducted by him is governed by the provisions of the East Punjab Urban Rent restriction Act, 1949 (here-in-after referred to as the “Act”) and it was decided that the said allottee would be the landlord of the tenant and as such the provisions of the Act would be applicable to the dwelling units allotted by the Chandigarh Housing Board to the allottees.

Thus, in view of the aforesaid discussion, I am of the considered opinion that the impugned order is patently erroneous and the petitioners are entitled to insert preliminary objection no.6 in the written statement, as prayed, but they would not be allowed to lead any kind of evidence as they themselves have made a statement before this Court in this regard.

Resultantly, all the four revision petitions are hereby allowed and the impugned order(s) are set aside.

February 21 , 2015
vinod*

(Rakesh Kumar Jain)
Judge

Note: Whether this judgment should be reported in the Digest? Yes / No