

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

CR No.791 of 2015

Date of decision : May 13, 2015

Ganesh Kumar

..... Petitioner

Versus

Inderjit

..... Respondent

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

1. To be referred to the Reporters or not? No / Yes
2. Whether the judgment should be reported in the Digest? No / Yes

Present : Mr. M.S. Viridi, Advocate,
for the petitioner.

Mr. Satbir Rathore, Advocate,
for the respondent.

GURMIT RAM, J.

1. This revision is preferred by the petitioner-Ganesh Kumar, who was tenant before the learned Rent Controller against the order dated 19.04.2012 passed by the learned Rent Controller, Mukerian vide which the petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short “the Act”) for the ejectment of the tenant from the demised shop was accepted and the judgment dated 01.11.2014 passed by the learned Appellate Authority, Hoshiarpur vide which the appeal preferred against the abovesaid order of the learned Rent Controller was dismissed.

2. The case of the respondent herein (landlord) before the learned

Rent Controller in brief was that petitioner herein is the tenant in the demised shop at a monthly rent of ₹300/-. There exists relationship of landlord and tenant between the parties qua the demised shop. Respondent herein (landlord) is unemployed having no source of income to support himself and his family members after the death of his father. Now he is in bona fide need and necessity of demised shop, since he is planning to start his own electrical business in the demised shop and hence was the instant petition.

3. Upon notice, respondent appeared and filed his reply taking preliminary objections that respondent herein (landlord) has not come to the Court with clean hands and this petition is not maintainable.

4. On merits, it was denied that the respondent herein (landlord) required the demised shop for starting his own electrical business in it. It was further his case that respondent herein (landlord) has no experience/knowledge of electrical business. Then it was also his plea that this petition has been filed with the ulterior motive for renting out the demised shop on higher rent. Rest of the averments were also denied by the petitioner herein (tenant).

5. The learned Rent Controller after hearing learned counsel for both the parties and going through the record as well accepted this petition whereby ordering the eviction of the petitioner herein (tenant) from the demised shop vide the impugned order dated 19.04.2012.

6. Then the petitioner herein (tenant) preferred an appeal against this order before the learned Appellate Authority, Hoshiarpur which was dismissed vide impugned judgment dated 01.11.2014 by the said authority.

7. Feeling aggrieved from abovesaid both the impugned order and

judgment passed by both the Courts below, the petitioner (tenant) has come up before this Court by way of instant revision petition.

8. Learned counsel for both the parties were heard. Record of both the Courts below was requisitioned and perused.

9. Learned counsel for the petitioner has contended that both the impugned order and judgment passed by both the Courts below are not tenable, the same being without proper appreciation of the pleadings of the parties as well as the law applicable to the facts of the case in hand. In this regard, it is his specific contention that ingredients as envisaged in Sub-Clause (b) & (c) of Section 13 (3)(a)(i) are not mentioned in this ejectment petition and as such it was liable to be rejected on this very legal point. Both the Courts below have failed to take judicious notice of the same while passing the impugned order as well as judgment and on this ground also, the same are not sustainable in the eyes of law.

10. In support of his above contention, the learned counsel for the petitioner has cited some case laws which are detailed as under:-

(i) ***Banke Ram vs. Shrimati Sarasvati Devi, 1977 (1) R.C.R. (Rent) 595.*** In this case law, the question which was referred to be answered before the Hon'ble Full Bench of this Court was:-

“...as to whether a landlord applying for the eviction of his tenant on the ground contained in sub paragraphs (b) and (c) of paragraph (i) of Section 13(3)(a) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called the Act), i.e., for his own use and occupation, has not to specifically plead in his application the contents of sub paragraph (b) and (c) aforesaid, which put a rider on the right of the landlord to get

the eviction of his tenant from the premises even for his own use unless he succeeds in proving that he was not in occupation of another residential building in the same urban area and that he had not vacated any such building after the commencement of the Act without any sufficient cause.”

After detailed discussion and also keeping in view the contention raised by both the parties, it was held that it is essential for a landlord to plead the ingredients of sub-clause (b) and (c) of the paragraph (i) of Section 13(3)(a) of the Act in the eviction petition and decision of the Division Bench as delivered in ***Krishan Lal Seth vs. Pritam Kumar, 1961 PLR 865*** does not lay down a good law.

(ii) ***Banwari Lal vs. Ram Parkash and another, 2009(2) R.C.R. (Rent) 160.*** In this case law, landlord failed to plead or prove the ingredients of Section 13 (3) of the Act. It was held that ingredients of Section 13(3) are mandatory in nature, though no specific performa is required to be given. It is always open to the party to plead ingredients of this section in any form given under the Act. Then it was also held that it is settled that landlord can always prove the said ingredients in evidence and if it is shown that no prejudice is caused to the tenant on account of non-pleading of any ingredients of said Section, then petition cannot be rejected.

(iii) ***Pritam Singh Bakshi vs. Mrs. Sukhdev Kaur and others, 2014(1) R.C.R. (Rent) 338.*** In this case, petitioner-landlord did not state that he was not in occupation of SCO No.3003-04, Sector 22-D, Chandigarh after the commencement of the Act and had not mentioned the sufficient cause for vacating the said premises as there was no mention of same either in the petition or in the replication. Thus the condition as provided under

sub-clause (b) and (c) of Section 13(3) (a) (i) had not been pleaded in accordance with the factual background. Further the petitioner did not specifically deny that the abovesaid SCOs were not in his possession or had not vacated the same after the commencement of the Act as pleaded by tenant in para No.4 of written statement. It was held that in the absence of same, the requirement as envisaged under the provisions of Act would not stand complied with.

11. Now it is required to appreciate the pleadings of both the parties as well as the evidence led by them in this context before the learned Rent Controller.

Para No.3 of the petition is found to be relevant for the abovesaid purpose which is as under:-

“That the petitioner is in the bonafide need and necessity of the demised shop for starting his own business. The petitioner is un-employed having no source of income to feed himself and his family members after the death of his father. The petitioner is planning to start and run his own electrical business in the demised shop. He has no other shop in Mukerian to start his business”.

12. In reply to this para, the reply as given by the tenant in his written statement is reproduced as under:-

“That para No.3 of the petition is wrong and incorrect. The petitioner is having sufficient sources of income from other means and he has got no liability. It is further submitted that the petitioner is having no knowledge or experience of electrical business and the present petition is filed with the

ulterior motive just to vacate the shop in dispute on wrong and false grounds with the motive to rent out the same on higher rate of rent. The respondent is regularly paying the rent to the petitioner”.

13. From the abovesaid pleadings of both the parties, it is found that it is not a case in which the entire ingredients as envisaged under Section 13(3)(a)(i) of the Act are missing. The only fact which is not pleaded is that landlord has not vacated any commercial premises after the commencement of the Rent Act within the Municipal limit concerned without any sufficient cause.

14. Now it is required to discuss the evidence of both the parties in brief in order to find out as to whether any prejudice had been caused to the petitioner herein (tenant) due to non-pleading of the abvoesaid fact in the petition or not.

15. Respondent-Ganesh Kumar (tenant) as RW-1 in his affidavit Ex.RW1/A reiterated his stand as taken by him in his written statement. Further he also examined one Pardeep Soni, Deputy Manager of Capital Local Area Bank, Branch Mukerian as RW-2 to show that respondent herein (landlord) is employed with the said bank as a Peon. Then he also tendered in the statement of his counsel certified copy of the assessment register of the year 2011-12 Ex.RZ of the concerned Municipality to prove the fact that grandfather of the present respondent (landlord) was having five shops and one plot within the Municipal limits of Mukerian. Hence it cannot be said that any prejudice had been caused to the present petitioner (tenant) for not incorporating the ingredient of Sub-Clause (c) of the abovesaid Section 13(3)(a)(i) of the Act.

16. Then RW-2, Pardeep Soni, in his cross-examination has admitted that petitioner-Inderjit Singh is working as a Peon on contract basis in their bank, which is not on permanent basis. So far as the copy of assessment register Ex.RZ is concerned, it cannot be read into evidence for the reason that it was not duly proved as per the Law of the Evidence. Then it has also come in the cross-examination of PW-4 Ruldu Ram that father of the respondent herein (landlord) were four brothers. So if his grandfather is having five shops within the Municipal limits of Mukerian, then that also does not make any difference because in that eventuality only 1¼ shop is to come to the share of father of the present respondent (landlord). If he is working with newspaper as agent and with the abvoesaid Bank, then that also has no effect on the merits of the case because every person on this earth is to do some work to earn his livelihood in order to save himself from starvation. The alleged employment of respondent herein (landlord) is purely on contractual basis and same cannot be held to be a ground to dislodge his claim of bona fide need qua demised shop.

17. Then PW-1 Karanjit Singh, PW-2 Amrik Singh and PW-4 Ruldu Ram supported the version of respondent herein (landlord) that he required the demised shop for his bona fide need to run his electrical business in it. Then PW-2 Amrik Singh also stated that he is running the electrical goods shop at G.T. Road, Bhangala and that the respondent herein (landlord) had worked in his said shop for two years. So, his statement also proves the fact that the respondent herein (landlord) has got sufficient experience to run any shop of electrical business.

18. Then as above discussed, in Banwari Lal's case cited (supra), it has been held that if no prejudice has been caused to the tenant due to non-

pleading of the ingredients as envisaged under the provisions of Section 13(3)(a)(i) of the Act, then the petition cannot be rejected. In the case in hand also, as abovesaid no prejudice has been caused to the petitioner herein (tenant) due to the non-pleading of ingredient as provided under sub-clause (c) of abovesaid Section 13(3)(a)(i) of the Act. Then Pritam Singh Bakshi's case cited (supra) is also on different footing and as such it has also no bearing on the facts of the case in hand. The facts of this case law are already discussed in Para No.10 of this judgment and hence there is no need to discuss the same herein again in order to avoid repetition. Then in the case in hand, the tenant did not take any plea in his written statement that the respondent herein (landlord) had vacated any shop without any sufficient cause after commencement of the Rent Act within the Municipal limit of Mukerian.

19. Then the principle laid down by this Court in ***Iqbal Singh and others vs. Sunil Arora and another, 2013 (2) R.C.R. (Rent) 301***, and ***Director Archaeology and Museums, Haryana vs. Kura Mal and others, 2014(1) R.C.R. (Rent) 465*** is that the landlord is the best judge of his / her need and he/she knows much better about the portion of demised premises to be vacated if he/she considers the existing accommodation insufficient and his/her need is for more commodious accommodation.

20. In the light of the abovesaid discussion, this revision petition stands dismissed being merit less and disposed of accordingly.

Trial Court record along with copy of this judgment be sent back to the Court concerned immediately.

May 13, 2015

Gaurav Sorot

**(GURMIT RAM)
JUDGE**