

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

**Civil Revision No.98 of 2015 (O&M)
Date of Decision: January 08, 2015.**

Subhash Chander

.....PETITIONER(s).

VERSUS

Anshul Singla

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Nitish Garg, Advocate
for the petitioner (s).

Mr. Munish Kumar Garg, Advocate
for the caveator-respondent.

SURINDER GUPTA, J.

Revision petitioner was a tenant in a shop situated at Old Court Road, Jind. Respondent purchased this shop vide sale deed No.5573 dated 05.03.1988 and filed petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the Rent Act) seeking ejectment of the revision petitioner on the ground of non-payment of rent for the period from 01.10.2008 to 30.11.2008 and personal bona fide necessity for his business which at the time of filing of the petition he was carrying from his house i.e. House No.48/6 Gandhi Nagar, Jind.

The revision petitioner contested the plea of respondent with the plea that he has purchased the shop with a mala fide intention after the dismissal of the ejectment petition filed by previous owner Satbir Singh. He pleaded that respondent, Jasbir Singh, who had purchased the adjoining shop and Satbir Singh are associates and working together. Respondent is running his business of surgical goods in a shop situated in HUDA Market opposite D.R.D.A. Office, Jind.

The respondent reiterated his case, clarifying in the replication that he was doing business of surgical goods in a shop situated in HUDA Market, opposite D.R.D.A. Jind which was on rent with him and had been vacated on the request of landlord-owner of shop in June, 2008 i.e. 4/5 months before filing of this petition. Thereafter, no business of surgical goods was carried on by the respondent in that premises.

Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the petitioner is entitled for an order of eviction of the shop in dispute on the ground of non-payment of arrears of rent? OPP
- (2) Whether the petitioner requires the shop in dispute for his own occupation/business? OPP
- (3) Whether the petitioner is having bonafide personal necessity of shop in dispute for his own livelihood? OPP
- (4) Whether the petitioner has no locus standi and cause of action to file the present suit? OPR
- (5) Whether the respondent has already paid to the petitioner rent upto 04.03.2009 and respondent is not

in arrears of any rent? OPR

(6) Whether the petitioner has purchased the shop in dispute for bargaining purposes knowing about the respondent possessing the shop in dispute as tenant since a long period as alleged? OPR

(7) Relief.

Learned Rent Controller while recording findings on issues No. 2 and 3 held the personal bona fide necessity of the respondent-landlord as genuine and ordered the ejectment of the revision petitioner.

Not satisfied, the revision petitioner filed appeal before Appellate Authority, Jind, which was dismissed vide judgment dated 14.11.2014.

I have heard learned counsel for the parties and have perused the paper book with their assistance.

The first argument of learned counsel for the revision petitioner is that admittedly the respondent was carrying on business in a shop in HUDA Market opposite D.R.D.A. Jind. He has not disclosed this fact in the petition in violation of the provisions of Section 13 (3) (a) (i) of the Rent Act. He argues that this amounts to concealment of fact and the rent petition was required to be dismissed on this sole ground. He has relied upon the observations of a Co-ordinate Bench of this Court in case of *Baljit Kumar Sharma Vs. Ramesh Kumar Aggarwal and another 2013(1) R.C.R. (Rent) 260*, wherein such a concealment was held as attempt to deceive the Court. He has also relied upon the observations of the Full Bench of this Court in case of *Banke Ram Vs. Smt. Saraswati*

Devi 1977 RLR 417 and of a Single Bench in case of Jaspreet Takhar wife of Mr. Kultan Singh Nat, resident of House No.1230, Sector 18-C, Chandigarh Vs. Ghai Enterprises, Booth No.1, Sector 27, Chandigarh and others 2013 (1) PLR 765.

He further argued that the bona fide requirement of appellant is only a ploy to get the demised premises vacated. The shop was originally owned by Inder Mohan who sold the same to Satbir vide sale deed dated 24.01.2000. The adjoining shop was purchased by Jasbir Singh, partner of respondent-landlord in the business of surgical equipment. Satbir Singh sought ejectment of the respondent from the demised premises but failed and on 05.03.2008 sold the disputed shop to the respondent.

As per the case of the respondent, he vacated the shop under tenancy with him, in which he was carrying on surgical equipment business with Jasbir Singh in June 2008 and filed the instant petition seeking ejectment of revision petitioner in November, 2008. This all reflects the plan of respondent in connivance with Jasbir Singh and Satbir Singh, who in fact are dealing in real estate business, to get this shop vacated, not for the personal bona fide need but for their greed.

He has further argued that the plea of the respondent that he had vacated the shop under tenancy with him, where he was carrying on surgical equipment business, was also not proved as the certificate of that business obtained by him was still intact and was not got cancelled. The

bona fide requirement for which the ejectment of revision petition has been sought is also not proved as the respondent has not examined any witness from the Indus Towers Limited to prove that he is in business of installing Towers of Airtel, Vodafone, Idea mobile phones and further that he is working as Liaisoning Agent of M/s Bharti Infra-Tel Limited, Mohali. The only purpose of getting the disputed shop transferred in his name was profit earning and bargaining and not the bona fide necessity. He has supported his contentions with the observations in cases ***Joginder Singh Sawhney Vs. Harbans Lal 2003(1) R.C.R. (Rent) 528; Shankar Lal Vs. Madan Lal & others 2011(1) R.C.R. (Rent) 139; Ravinder Sood and another Vs. Mohan Lal 2013(1) PLR 722; Inderjit Sharma Vs. Moti Lal 2009(2) R.C.R. (Rent) 553 and Smt. Harjit Grewal and others Vs. Dr. Vinod Kumar Batra and others 2010 (5) R.C.R. (Civil) 340.***

Learned counsel for the caveator-respondent has argued that the respondent was in need of the shop for his business purposes. He purchased this shop in March, 2008 and filed a petition seeking ejectment of the respondent in November, 2008. The mere fact that earlier landlord had also filed a petition seeking ejectment of the revision petitioner but was not successful, in no manner, effect the personal bona fide necessity of the respondent. The entire story put forth by learned counsel for the revision petitioner that one of his partners in surgical goods business, Jasbir Singh had purchased adjoining shop and his attempt to refer association of Satbir Singh with respondent, is irrelevant. This argument

of learned counsel for the revision petitioner that there was concealment of fact, is without any basis. At the time of filing of the petition, respondent was not occupying any premises. For the sake of clarification, he had referred in the replication that the premises earlier occupied by him as tenant was vacated. A person who purchased a shop for his personal bona fide need, is entitled to eject the tenant and get the possession of the same for the purpose, he has purchased it. The concurrent finding of the Rent Controller and Appellate Authority are based on detailed discussion of the facts and evidence on record and revision petitioner has no ground to assail the same.

The major stress of learned counsel for the revision petitioner is on the ground of concealment of facts by the respondent. In the petition, the respondent has specifically stated that he is not occupying any other shop in the urban area of Municipal Council, Jind in his name and has not vacated any such shop without sufficient cause in the area of Jind after the commencement of the Act. This is what a landlord is required to plead as per provisions of Section 13 (3) (a) (i) of the Rent Act, while seeking ejectment of a tenant from a tenanted premises for his personal bona fide need. The respondent has specifically pleaded in the petition that he had not vacated any shop without any reasonable cause. If he had vacated the shop, in which he was tenant, on the asking of landlord, the same cannot be termed as vacating a shop without any reasonable cause. The respondent was not occupying any

premises at the time of filing of the petition. At the first available opportunity, he had explained in the replication that the shop in which he was carrying on his business earlier, was vacated by him before filing of the petition. As such, there was no concealment of facts. The citation referred by learned counsel for the revision petitioner in case ***Baljit Kumar Sharma Vs. Ramesh Kumar Aggarwal and another (supra)*** is based on different set of facts and circumstances. In that case, the landlord had concealed the occupation of rooms in his possession and sought ejectment, pleading that he is in possession of only one room in the demised premises. The concealment was taken as in violation of provisions of Section 13(3)(a)(i)(b) of East Punjab Urban Rent Restriction Act, 1949.

In the similar manner, in case of ***Jaspreet Takhar Vs. Ghai Enterprises (supra)***, the landlord wanted ejectment of the tenant from the demised premises for establishing her own business in Pottery. There was evidence on record that she had a Studio in her house for manufacturing pottery items and in the absence of any clear evidence as to how the property in her possession was unsuitable for vending her wares and business, her petition was dismissed and no interference was made in revision.

In case of ***Banke Ram Vs. Smt. Saraswati Devi (supra)***, Full Bench of this Court has observed that it is essential for a landlord to plead the ingredients of Sub clauses (b) and (c) of paragraph (i) of

Section 13(3) (a) of the East Punjab Urban Rent Restriction Act, 1949 in his eviction application which are similar to the provisions of Section 13 (3)(a) (i) of the Rent Act. However, the Full Bench was very conscious of the implication of these observations and has clarified while answering the reference as follows:-

“12. 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 application. Similar considerations came 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.

13. This Court, the other High Courts and the Supreme Court have had the occasion to make pronouncements one way or the other in cases where the evidence was led by the parties in the absence of requisite pleadings. Those decisions will serve as guides in eviction proceedings under the Act.”

While applying the ratio of judgment of the observations of Hon'ble Full Bench, I find that the same are not helpful to the appellant in any manner because there is specific pleading of respondent-landlord that he had not vacated any premises without sufficient cause after the commencement of the Rent Act. If the tenant has vacated the rented

premises on the asking of the landlord, the same cannot be termed as vacating the premises without any sufficient cause. The petition filed by the respondent-landlord, as such, was not hit by the provisions of Section 13(3)(a) (i) of the Rent Act and the arguments of learned counsel for the appellant to this effect are rejected.

I have also perused the citations in cases *Joginder Singh Sawhney Vs. Harbans Lal; Shankar Lal Vs. Madan Lal & others; Ravinder Sood and another Vs. Mohan Lal; Inderjit Sharma Vs. Moti Lal* and *Smt. Harjit Grewal and others Vs. Dr. Vinod Kumar Batra and others (supra)*, which are on different set of facts and circumstances having no applicability to the facts and circumstances of the present case, as such require no detailed discussion.

The landlord purchased the demised shop to shift his business activities which he is carrying from his residence to this shop. Learned counsel for the revision petitioner has tried to make out that one Jasbir Singh, an associate of respondent-landlord has purchased the adjoining shop and Satbir Singh, who had sold the shop in question to the respondent-landlord was also his associate. The above argument has been addressed to develop an argument of connivance between the three to get the shop vacated. The above argument has no basis, if Satbir Singh or Jasbir Singh was an associate/partner of respondent-landlord in some business, still the personal bona fide necessity of the landlord is to be seen and evaluated from his point of view. The respondent-landlord

while appearing as PW2 has categorically stated that he is working as agent/dealer or franchise of Indus Towers Limited, New Delhi and also as a liasioning agent of Bharti Infra-Tel, Mohali. He wants to store the electric fitting goods and other assessories by getting Licence of VAT from Sale Tax Authority, Jind, which is not allotted to a person who runs a business from his residence. Presently he is carrying on his business from his residence i.e. 48/6 Gandhi Nagar, Jind.

The argument of learned counsel for the revision petitioner that the witness from Bharti Infra-Tel or Indus Towers limited to prove the above plea of the respondent were not called, as such, plea of respondent that he is carrying above business is not proved, is without merits.

In the absence of evidence to the contrary, there is no reason to discard the testimony of respondent-landlord regarding requirement of this premises for business purposes. The statement of respondent-landlord that the wants to shift his business activities from his residence to the premises of the disputed shop cannot be doubted and he was not required to call the witness from Bharti Infra-Tel Limited or Indus Towers Limited to prove that he is carrying the business as alleged by him.

Respondent-landlord while appearing as PW2 has stated that he was introduced to vendor Satbir Singh by Jasbir his friend. This fact that Satbir had earlier filed an ejectment petition against the revision petitioner but lost, has no impact on the personal bona fide need of the

demised premises projected by the respondent-landlord. It is human tendency and usually seen that the owner of a premises which is with tenant, when fails to eject the tenant and loose his case, he either tries to find other accommodation/shop or dispose of such property for beneficial utilisation of sale proceed he gets. The fact that Satbir had sold the shop in question to the respondent-landlord who acquired it for his personal bona fide necessity, reflects no mala fide or a reason to doubt the plea put forth by the respondent-landlord.

Learned Rent Controller as well as Appellate Authority have properly evaluated the pleadings and evidence of the parties and have committed no error of law and fact while reaching the conclusion that the shop in dispute is required for the personal bona fide necessity of the respondent-landlord.

This revision petition has no merits. Dismissed.

January 08, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE