

CR No.3469 of 2003
CR No.571 of 2009 (O&M)

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

(1) **CR No.3469 of 2003**
Date of decision:09.03.2015

Raghubir Singh ...Petitioner

Versus

Parvesh Kumar ...Respondent

(2) **CR No.571 of 2009 (O&M)**
Date of decision:09.03.2015

Parvesh Kumar ...Petitioner

Versus

Raghubir Singh ...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Mandeep Kaushik and
Mr. Akshay Kumar Goel, Advocates,
for the petitioner in CR No.571 of 2009.

Mr. Akshay Bhan, Senior Advocate, with
Mr. Santosh Sharma, Advocate, for the petitioner
in CR No.3469 of 2003.

Mr. G.S.Bhatia, Advocate,
for the respondent in CR No.571 of 2009.

Rakesh Kumar Jain, J.

This order shall dispose of two petitions bearing CR Nos.3469 of 2003 (here-in-after referred to as the “first petition”) and CR No.571 of 2009 (here-in-after referred to as the “second petition”) as both are inter-connected.

Initially, the landlord filed a Rent Application No.6 of 27.07.1999 under Section 13 of the East Punjab Urban Rent Restriction Act,

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1949 (here-in-after referred to as the “Act”) seeking eviction of the tenant from the demised premises, i.e. shop no.46, situated in front of the Bus Stand, Kharar, on the ground of non-payment of arrears of rent, cease to occupy, sub-letting and the building having become unsafe and unfit for human habitation. That petition was dismissed by the Rent Controller on 19.04.2002 and the appeal filed by the landlord was dismissed by the Appellate Authority on 08.04.2003. The landlord, thus, filed the first petition which was admitted on 25.05.2004.

Lateron, the landlord filed the second petition bearing RT No.1/12.08.2003 seeking eviction of the tenant on the ground of non-payment of arrears of rent, cease to occupy and *bona fide* necessity to settle his 23 years old matriculate handicapped son who is having defect in his left eye and left leg. That eviction petition has been allowed by the Rent Controller on 07.03.2008 only on the ground of personal necessity and the Appellate Authority dismissed the appeal of the tenant on 07.01.2009. During the pendency of the appeal before the Appellate Authority, the tenant had also filed an application for additional evidence which was dismissed by the Appellate Authority on 18.12.2008.

Counsel for the tenant has argued that the son of the landlord had appeared as the Special Power of Attorney of his father who could not have deposed about personal necessity of the landlord and has relied upon a decision of the Supreme Court in the case of **Man Kaur (Dead) by LRs. v. Hartar Singh Sangha**, 2010(10) SCC 512.

It is also submitted that the application for additional evidence

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has been wrongly dismissed by the Appellate Authority though there is an evasive reply by the landlord about the averments made in para 4 of the application in which it is alleged that the landlord is the owner of two other shops no.PH-181 and PH-182. It is also submitted that it is not pleaded that his son also does not occupy any other shop within the urban area concerned.

On the other hand, counsel for the landlord has submitted that the application for ejectment is filed by the landlord not only for his *bona fide* need but also for the purpose of settling his unemployed matriculate handicapped son who has though appeared in the witness box as PW1, tendered his affidavit in his examination-in-chief as Ex.PW1/A and has been cross-examined by the tenant.

It is also submitted that he had appeared as Special Power of Attorney of his father and has specifically averred in the affidavit that he is well conversant with the facts of the petition and requires the demised premises for starting his own business and he is neither occupying nor vacated any such shop in the urban area concerned without any sufficient cause after the commencement of the Act. It is also submitted that there is no cross-examination of PW1 on this issue by the tenant. It is also submitted that application for additional evidence has rightly been dismissed because the tenant came to know about another alleged shop owned by the landlord on 27.03.2008 and the application was filed on 16.12.2008 without disclosing that why the application was filed after such a long time.

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It is further argued that the entries in the assessment register would not prove ownership or possession of a party over any property. It is also submitted that in para 4 of the reply filed by the landlord to the application for additional evidence, it is specifically mentioned by the landlord that he does not occupy any other shop, as alleged. The judgment relied upon by learned counsel for the tenant in **Man Kaur's case (supra)** is also allegedly not applicable to the facts and circumstances of the present case because it is argued that the son of an old and infirm parent can manage the affairs of the family and falls within the exceptions.

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

No doubt that the landlord himself had not appeared in the witness box in support of his case that the demised premises is required for the *bona fide* requirement of his son but the son of the landlord, namely, Gurmeet Singh, had appeared as PW1 for himself and as Special Power of Attorney of his father and has stated that his father is an old man and he is well conversant with the facts of the petition. The said shop was required by him for his personal use. He is matriculate, handicapped, having defect in his left eye and left leg and it is difficult for him to do other business except for running a shop. He has categorically averred that he required the shop for his own occupation and is neither occupying nor vacated any such shop in the urban area of Municipal Council, Kharar without any sufficient cause after the commencement of the Act.

In **Man Kaur's case (supra)**, the Supreme Court has

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summarized as to who should give evidence in regard to matters involving personal knowledge. The observations made by the Supreme Court are as under:-

- “(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.
- (b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.
- (c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.
- (d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an

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attorney holder, necessarily the attorney holder alone can give evidence in or with regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

- (e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.
- (f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.
- (g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the

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affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.”

As per clause (g) of the aforesaid guidelines, the exception have been carved out for the requirement to appear as his own witness in case the affairs are managed by the member of the family even with reference to *bona fide* necessity and the son also figures in that category.

In the present case also, PW1 has categorically stated that his father is an old person and is doing nothing. He is well conversant with the facts of the case which means that he is managing the affairs of the family, therefore, the argument raised by counsel for the tenant that the landlord should have entered into the witness box as his own witness instead appearing through his Special Power of Attorney to prove his *bona fide* necessity would not be of any consequence because the *bona fide* necessity is also not only of the landlord but also of his son, as pleaded in the petition and also in the affidavit Ex.PW1/A, tendered in examination-in-chief of the son of the landlord, who has categorically alleged that there is no other shop

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in his occupation nor has vacated any such shop in the urban area concerned without any sufficient cause after the commencement of the Act.

Insofar as the dismissal of the application for additional evidence is concerned, the Appellate Authority had found that the assessment register of the Municipal Committee is not a cogent evidence about the ownership or possession of a person. It has been repeatedly held that this type of evidence is not sufficient to prove relationship of landlord and tenant between the parties.

Moreover, it has been held by the Appellate Authority that no reason has been given by the tenant for filing the application after such a great delay of 7 months even after possessing the alleged knowledge and the landlord has categorically denied to be either in possession or vacating any other shop in the urban area concerned and also that no such question was put to him during the cross-examination. Thus, I do not find any error in the order of the Appellate Authority in dismissing the application filed by the tenant for additional evidence.

No other point has been raised.

In view of the aforesaid discussion, the second petition bearing CR No.571 of 2009 is found to be without any merit and hence, the same is hereby dismissed.

Consequently, the first petition bearing CR No.3469 of 2003 has become infructuous and the same is hereby dismissed as such.

March 09, 2015
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(Rakesh Kumar Jain)
Judge