

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No. 1336 of 2004 (O&M)

Date of decision: 03.05.2016.

Dildar Singh and another

..... Petitioners

versus

Banarasi Dass and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Gurinder Singh, Advocate
for the petitioners.

Mr. R.S.Manhas, Advocate
for respondent No. 1.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J.(Oral)

This petition has been filed against the concurrent orders of the Courts below dismissing the petition for ejectment filed by the petitioners.

The case set up by both the petitioners was that they and their third brother-respondent No.2 need the demised shop to set up a business. Both the Courts below noticed that the petitioners had retired from service and were living in Noida/Delhi and they were well settled and consequently the likelihood that they want to come back to start a business was slim and thus, held that their need was not bona fide.

Learned counsel for the petitioners has argued that approach of the Courts below was highly pedantic and they erred in coming to the conclusion that it was for the landlord to prove his bona fide need beyond a reasonable doubt whereas the law is that in a petition for eviction on the ground of bona

bona fide necessity, there is an essential presumption in favour of the landlord which has to be rebutted by the tenant. Learned counsel has further argued that in this case both the petitioners appeared and testified about their bona fide need and the findings given by both the Courts below are highly speculative.

Learned counsel for respondent No. 1 has defended the orders of Courts below. He has pointed out that in the circumstances of the case and what has been brought in evidence, the Courts below were justified in coming to the conclusion that need of the petitioners was not genuine.

In my opinion, the argument of learned counsel for the petitioners must prevail. It has to be borne in mind that there are seven main grounds for eviction under the East Punjab Urban Rent Restriction Act and the same are:-

- 1) Non-payment of rent;
- 2) Subletting;
- 3) Change of user;
- 4) Material impairment;
- 5) Nuisance;
- 6) Ceasure to occupy;
- 7) Personal necessity and
- 8) Building having become unfit and unsafe.

The first six are all issues of facts which exist on the date of filing of the petition i.e. to say whether on the date of filing of the petition the tenant is in arrears of rent or has sublet the premises or so on. The grounds of personal necessity and the building having become unfit and unsafe are essentially speculative grounds because even with the best of intentions nobody can prove as a fact what he is going to do in the future or when a building will collapse. It

is for this reason that the Act provides for a protection to the tenant to the effect that in case a landlord has got the premises evicted on the ground of personal necessity but does not occupy the same or sublets it out to somebody else, the original tenant can seek repossession. In fact in a slightly different context in **“Baldev Singh Bajwa v. Monish Saini” 2005 (2) RCR (Rent) 470**, the Supreme Court has held as under:-

“The relevant provisions with which were concerned in the present appeals, on the submissions made by the learned counsel appearing for respective parties are Section 13-B, and 19 (2-B) which are reproduced below along with the statement of Object and Reasons of introductions of new provisions:-
(3) Where an owner recovers possession of a building under this section, he or she shall not transfer it through sale or any other means or let it out before the expiry of a period of five years from the date of taking possession of the said building, failing which, the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the said building and the Controller shall make an order accordingly.
“Section 19 (2-B) The owner, who is a Non-resident Indian and who having evicted a tenant from a residential building or a scheduled building and/or non-residential building in pursuance of an order made under Section 13-B, does not occupy it for a continuous period of three months from the date of such eviction, or lets out the whole or any part of such building from which the tenant was evicted to any person, other than the tenant in contravention of the provisions of sub-section (3) of section 13-B, shall be punishable with imprisonment for a term, which may extend to six months or with fine which may be extended to one thousand rupees or both.”

It is in this context that the whole issue of standard of proof required by the landlord/tenant has to be viewed. Whereas in case of eviction falling under the first six conditions, it would be incumbent upon the landlord to prove on facts that the subletting or material impairment etc. has been effected, in the case of personal necessity, the averment that the landlord requires the premises for future personal use, can never be proved. In the present case, both the petitioners have appeared in the witness box and have stated that having retired, they want to start a business in their native place. The

mere fact that they are settled elsewhere, cannot by law give rise to conclusion that they would never want to come back to their native place. Reference may be made in this connection to the judgment in case reported as “*M/s British Motor Car Company Pvt. Ltd. vs. Sewak Sabha Charitable Trust (Regd.)*” 2003 (2) RCR (Rent) 606 and “*Dr. S.S.Mann vs. A.K.Sharma*” 2013 (4) RCR (Civil) 1054.

In these circumstances, I hold that the petitioners had been able to prove their bona fide necessity. Consequently, the orders passed by both the Courts below are set-aside and the petition stands allowed. The respondent No. 1 is directed to vacate the premises forthwith.

MAY 3, 2016

Shalini/Harish

**(AJAY TEWARI)
JUDGE**