

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R No. 3283 of 2016 (O&M)

Date of decision : June 03, 2016

Krishan Dev (deceased) through LRs

..... Petitioner

v.

Ashok Kumar,

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Sanjiv Sharma, Sr. Advocate with
Mr. Shekhar Verma, Advocate
for the petitioners.

Mr. Vishal Munjal, Advocate
for the respondent.

- 1. Whether Reporters of Local Newspapers 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

This revision petition has been filed against the concurrent orders of the Courts below allowing the petition for eviction filed by the respondent-landlord and thereby evicting the petitioners from the demised premises.

Brief facts are that the shop in dispute belonged to Sansari Lal who inducted Krishan Dev as tenant on a monthly rent of ₹ 80/- w.e.f 1.12.2001. Thereafter, Sansari Lal executed a Will in favour of his nephew i.e the respondent and also appointed him as general power of attorney and

after the death of original owner, the respondent started managing the demised the premises. The respondent filed the instant petition for eviction of the original tenant-Krishan Dev, since deceased, now represented through his LRs on the grounds of non-payment of rent as well as bona fide personal necessity. The plea taken was that the respondent wanted to settle his unemployed son in the business of departmental store in the demised premises, as the same business being run by the respondent in an adjoining small shop was not sufficient for the entire family.

The tenant denied the fact with regard to execution of any Will in favour of the respondent by Sansari Lal before his death since Sansari Lal had five sons and a daughter who, after his death, succeeded to his estate.

The Rent Controller came to the conclusion that the respondent had successfully proved the Will in his favour by the original owner and held that the tenant cannot challenge the Will. As regards personal necessity, the Rent Controller on the basis of depositions of the respondent as well as his son that the shop was required for the son for his settlement, as well as the fact that the tenant did not lead any evidence to rebut this evidence, decided the issue in favour of the respondent. The appeal filed by the tenant having been dismissed, the LRs of the original tenant are before this Court.

Counsel for the petitioners has argued that the respondent did not plead the ingredients of Section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 with regard to his son. He has relied upon the decision of the Hon'ble Supreme Court in Ajit Singh v. Jit Ram, 2008(4) RCR (Civil) 390, wherein it was held as follows :-

“11. From the aforesaid decision of this Court, it is therefore, clear that this Court has laid down authoritatively that a non-residential premises, if required by a son for user by him would cover the requirement of words used in the Section, i.e. "for his own use" in reference to a landlord. Therefore, if "his own use" has been interpreted by this Court in the above-said manner, then the requirements as laid down in [Section 13\(3\)\(a\)\(ii\)\(b\)](#) and (c) of the Act has to be interpreted in the same manner to hold that (a) the son of the landlord has to plead in the eviction petition that, (b) he is not occupying in the urban area concerned for the purpose of his business any other such building or rented land as the case may be; and (c) he has not vacated such a building or rented land without sufficient cause after the commencement of the [Rent Act](#), in the urban area concerned.”

Learned counsel for the respondent has, however, argued on the basis of the decision of the Hon'ble Supreme Court in [Ajit Singh v. Jit Ram](#), 2008(4) RCR (Civil) 390 and the decision of this Court in [Manmohan Lal v. Shanti Parkash Jain](#), 2014(5) RCR (Civil) 667, that the fact regarding non ownership of any other premises by the respondent or his son and/or non vacation of the premises by him having been averred, the petition had to be dismissed.

In my opinion, the argument raised by the learned counsel for the petitioners is not entirely correct. A Full Bench of this Court in [Banke Ram v. Sarasvati Devi](#), 1977(1) RCR (Rent) 595, it was held as follows :-

“ 12. In the present case, we are concerned only with the question as a principle of law as to whether it is essential to plead in an eviction application the ingredients of sub-clauses (b) & (c) and not the question that if in a particular case these ingredients are not pleaded, but the parties have led evidence with regard to them, what will be the effect ? In any given case, where facts have not been averred in the pleading, a number of questions can arise as to whether proper evidence has been adduced by the landlord regarding those facts which do not find place in the pleadings and secondly whether such evidence will be admissible or not and lastly, whether the

tenant was taken by surprise or not and had led evidence with full knowledge of the requisite contentions raised by the landlord and whether the tenant has in those circumstances been prejudiced or not. The Court would be required to give full consideration to the contentions raised by the respective parties and the facts and circumstances of each case before giving its decision in favour of the landlord or the tenant, but the decisions of the High Courts or the Supreme Court, in this regard, can not be of any avail to detract from the validity of the proposition that it is necessary for the landlord to make averments regarding the ingredients of sub-clauses (b) and (c). 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 applicants. Similar considerations come 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.”

Thus, the Full Bench had itself recognized that even though the conditions attached to Section 13 of the Act had to be specifically averred, yet if that matter came up in the evidence the same could be looked into. Subsequent judgments have also taken the view that the test of material concealment has now been overshadowed by the test of prejudice to the tenant.

In the case of Manmohan Lal v. Shanti Parkash Jain, (supra), this Court relied upon the decision in Ajit Singh's case (supra), to hold the same. In Dr. SS Mann v. AK Sharma, 2013(4) RCR (Civil) 1054, it was held as follows :-

“7. After hearing learned counsel for the parties and perusing the paper book, this Court is of the opinion that present petition is devoid of any merit and deserves to be dismissed. As is evident from the facts stated above, as well as from the admitted position amongst the parties that the landlord himself does not own any other property

in his name and in fact it is his wife who owns the property, it cannot be said that there was any concealment of fact by landlord.

“8. It is cardinal principle of law that technicalities are handmaids of justice and they should not be hindrance in imparting substantial justice. In the present case, it has not been shown by learned Counsel for the tenant as to how any prejudice has been caused to him by non-pleading of the ingredients as referred by him in his arguments. No doubt, the pleading of all the ingredients are necessary for any person to seek relief, but at the same time if the party leads positive evidence to prove a certain ingredient, although not pleaded then the Court cannot throw him away on mere technicalities, if it is otherwise proved that no prejudice has been caused to him. I find support from *2008(2) RCR(Rent) 281 M/s Bhatia Cloth House v. Dr. Raj Kumar Gupta* and *2011(2) RCR(Rent) 349 Gurbaj Singh v. Parshotam Singh & Ors.*”

From a reading of all these judgments in conjunction what has emerged in the present case is that the respondent specifically stated that he required the shop in a bona fide manner for personal necessity for setting his son Saurab and in support of his version, he examined his son who specifically supported the version given by his father. No evidence in rebuttal was produced by the tenant who simply denied the version. Thus, the tests laid down in Banke Ram's case (supra) and in Dr. SS Mann's case (supra), read with the decision of the Hon'ble Supreme Court in Ajit Singh's case (supra) have been testified. Consequently, finding no merit in this petition, the same is dismissed.

June 03, 2016
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(AJAY TEWARI)
JUDGE