

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

Civil Revision No.3648 of 2006 (O&M)

Date of Decision: 20.05.2016

Sweety and another

. . . Petitioners

Versus

Rakesh Kumar and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Pawan Kumar, Senior Advocate with
Mr. Abhimanyu Batra, Advocate
for the petitioners.

Mr. Vikas Singh, Advocate with
Mr. T.S. Sidhu, Advocate
for respondent Nos.1 and 2.

Mr. K.K. Saini, Advocate
for respondent No.3.

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

Ajay Tewari, J. (Oral)

This petition has been filed against the order of the Appellate
Authority reversing that of the Rent Controller and thereby dismissing the

petition filed by the petitioners-landlord for the eviction of the respondents on the ground of non-payment of rent, subletting and personal necessity.

Learned Senior Counsel has argued that the petitioners had alleged that the shop in dispute was required by the petitioner No.2 who is sister in law (*Bhabhi*) of the petitioner No.1 being the wife of his deceased brother and once the petitioner No.1 had appeared and testified to the *bona-fide* needs of the petitioner No.2. the Appellate Authority wrongly discarded this evidence. In this connection he has relied upon the decision of the Supreme Court of India in **Man Kaur (dead) by LRs Vs. Hartar Singh Sangha 2010 (10) SCC 512**, wherein their Lordships held as follows:-

“12. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

“(a)..... to (f)

(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 recognised exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close 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 learned Senior Counsel, the petitioner No.2 being young widow at that time and petitioner No.1 being her brother in law and duly constituted attorney, his evidence could not have been rejected. The second ground taken by the Appellate Authority was that it was not disclosed as to what business was to be started in the shop in dispute by the landlord. In this connection he has relied upon **Luxmi Devi Vs. Ravinder Kumar and other 2015 (2) RCR (Rent) 511**, wherein this Court has held as follows:-

"10. Regarding personal necessity of the landlord, it is not required for him to disclose the type/nature of business he is going to start in the demised premises after getting it vacated from the tenant. Then it is also not required from him to show his own premises. In the case in hand respondent No.1 herein/landlord as AW-1 has stated in clear words that he requires the demised shop to run his own business. Then it is settled law that landlord is best judge to see as to which accommodation is suitable and required from him as well as his family members for the purpose of residence or to start any work. Neither the Court nor the tenant can suggest him any alternative solution for ignoring his claim of his personal use and occupation qua demised premises. The only duty of the Court is to see as to whether the alleged personal necessity of the landlord qua the demised premises for his own use and occupation is the bona fide one or otherwise. In the case in hand, there is nothing on the file to say that the

*alleged requirement of respondent No.1 herein (landlord) is either mala fide or tainted with any ulterior motive. The sole statement of landlord that he requires the demised premises for his personal use and occupation is sufficient to prove his claim unless the same is rebutted by the tenant by bringing on record cogent and sufficient evidence to dislodge his claim. The learned Rent Controller has rightly applied the principle as laid down in case laws titled as **Smt. Kala Wati v. Ram Piari and others, 2005(1) R.C.R. (Rent) 666 : 2005(3) CCC 9 and P.Suryanarayana (D) by LRs v. K.S. Muddugowramma 2004 (1) RCR 395** to the present case by holding that the alleged personal necessity of the landlord qua the demised shop is justifiable one. Then in a latest authority of this Court **Narinder kumar Dureja v. Jugraj Singh Kang, 2014(1) RCR (Rent) 353**, it has been laid down that the landlord is best judge qua his need/requirement. In the case in hand, it has also not come on the record that respondent No.1 herein/landlord was having property other than demised shop within the municipal limit of Malerkotla at the time of filing of instant ejectment petition. The only protection which is granted under the Act in order to safeguard the interest of the tenant is that if the landlord does not occupy the premises which he has got vacated from the tenant within the prescribed period, then tenant can approach the learned Rent Controller for restoring his possession over the demised premises as per the provision of sub-Sections 4 and 4-A of Section 13 of the Act as the case may be”*

The learned counsel for the respondents has relied upon

Radhey Shyam Vs. Raj Kumar 2010 (6) RCR (Civil) 1031, wherein a

Single Bench of this Court has held as follows:-

“5. *It is now well settled that a power of attorney is competent to depose only about the facts about which he has personal knowledge. He cannot depose about the facts which are exclusively in the knowledge of the party for whom he is examined in the Court. Normal rule is that whatever a person can do himself he can do through his agent but for certain functions which may be personal in nature or otherwise, did not admit such a delegation. It is only when the party is ill, old or incapable of attending the court personally, then he may be represented by his attorney to make a statement on his or her behalf. It has been held by this Court in **Kaushalya Devi v. Bhupinder Kumar @ Bhupinder Saini, 2001(2) Civil Court Cases 222**, that a power of attorney cannot bring the true facts on the record. Only a party itself can make correct and true facts. It is well settled that if the power of attorney renders some acts in pursuance of power of attorney, he may depose for the principal in respect of such acts but he cannot depose for the principal for the acts done by the principal and not by him. He also cannot depose for the principal in respect of the matters for which the principal is entitled to be cross-examined. He is competent to depose in respect of the matters except the matters which are required to be done personally by the principal.*

6. *As the petitioner was to prove his personal necessity, so in all fairness, he was required to step into the witness box himself. He was to be cross-examined by the respondent regarding the facts to be deposed by him for proving his personal necessity. For proving such a ground, the statement of the attorney cannot be substituted as the statement of the party himself. Rent Controller and the Appellate Authority relied upon the evidence produced by the respondent for proving that the petitioner is already carrying on his*

business at Delhi. That evidence consisted of the records of the Income Tax Authorities. The income tax returns of the petitioner were proved which showed that he had been doing business in the name of Ganesh Electronics, Tilak Bazar, Hisar. The petitioner did not step into the witness box to deny these income tax returns. So, full reliance is placed thereon. On account of his non-appearance in the witness box, the respondent has been denied the valuable right of cross-examining him regarding carrying on his business. At that place. In the circumstances of the present case, the statement of the power of attorney is to be treated as statement of the witness and not the statement of the party himself.”

In my opinion, this judgment would not be applicable for the simple reason that it was passed prior to the judgment of the Supreme Court in **Man Kaur's** case (supra) and, in any case the judgment of Supreme Court overrides that of this Court.

Another matter which needs to be addressed, is an order dated 25.09.2008, passed by this Court. The said order reads as follow:-

**“CM No.874-CII of 2008 in
CR No.3648 of 2006**

Applicants-petitioners filed ejectment application under Section 13 of East Punjab Urban Rent Restriction Act against the respondents-tenants. Respondents tendered rent at the rate of Rs.2180/- per month of the demised premises with effect from April 1, 1996 to July 30, 2004. Rent Controller while deciding the ejectment application assessed the rent of the demised premises at the rate of Rs.1000/- per month. It was at variance with the interim rent tendered and the rent finally assessed. Learned Rent Controller did not pass any order to refund the excess rent tendered by the

respondents-tenants. Since respondents-tenants paid the rent in excess, they filed a civil suit for recovery of Rs.36,000/- before the Civil Court, Kharar.

By filing the present application, applicant-petitioners landlord have urged that till the disposal of the present revision, no judgment should be passed by the Civil Court because the matter can be decided in the present revision petition. There is a moot point as to whether respondents-tenants could file a suit for recovery or not particularly when provision of refund of the rent has been provided in the Act itself.

In view of above, trial Court is directed not to pronounce the final judgment in civil suit titled 'Ravinder Kumar and another Versus Davinder Singh and another' till further orders.'

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Revision petition was admitted by this Court on July 11, 2006. It was ordered that it shall be heard within one year.

In view of this, revision petition be notified for actual hearing on 21.01.2009."

Learned Senior Counsel appearing on behalf of the petitioners has pointed out that since July 30, 2004, the respondent has not paid any amount to the petitioners. As per him, since the petitioner is not pressing the ground regarding the rate of rent, yet, any amount that may have been over paid by the respondents would have to be set off against the amount which is due to the petitioners from 1st of August, 2004 till today.

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Learned counsel for the respondents states that he is not in position to admit or deny the factual assertion made that no rent has been paid after 30.07.2004, but on the facts and assertions made, any amount which is allegedly over paid by the respondents, would have to be set off against any rent due @ Rs.1000/- per month.

No other point has been raised.

In these circumstances, the revision petition is allowed, the judgment and order of the Appellate Authority is set aside and that of the Rent Controller is upheld.

[AJAY TEWARI]
JUDGE

20.05.2016
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