

Civil Revision No.4263-2016

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

Civil Revision No.4263-2016

Date of Decision: 11.07.2016

Moti Lal and another

... Petitioner(s)

Versus

Raj Rani and another

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- | | |
|--|------------|
| 1) Whether Reporters of the local papers 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 |

Present: Mr. Pankaj Jain, Advocate,
for the petitioners.

Paramjeet Singh Dhaliwal, J.

Instant civil revision has been filed by the tenants impugning the judgment dated 24.04.2014 passed by learned Rent Controller, Samana and 10.05.2016 passed by learned Appellate Authority, Patiala whereby ejectment has been ordered under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act') on the grounds that the premises are *bona fide* required for personal use and occupation of the landlady as her son has grown up; that the demised shop has become unsafe and unfit and required re-

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construction from its foundation.

Facts:

In brief, the facts relevant for disposal of the revision are to the effect that the petitioners-tenants were inducted as tenants in the demised shop by Sh. Ashok Kumar, the then owner of the demised shop and they executed a rent note in favour of Sh. Ashok Kumar inasmuch as the tenancy had commenced from 1st July, 1988. The rate of rent was settled @ ₹11,500/- per annum which was payable half yearly in advance against receipt. It was agreed by the tenants that they will not make any addition or alteration and would not change the existing condition of the shop, besides that they would run the business within the demised shop. It was also agreed that they would not sublet the shop to any other person and to pay the house tax or any other local tax. The aforesaid Sh. Ashok Kumar had sold the demised shop along with some other property adjoining the demised shop to respondent Nos.1 and 2 vide different sale deeds. Respondent No.1 herein has been receiving the rent of the demised shop from the petitioners-tenants against receipt being landlady of the demised shop. The landlady sought eviction of the tenants on the ground that the present petitioners-tenants are not running any business in the demised shop, rather using the same as godown, therefore, the same is lying closed. The roof of the shop has become weaker and bent down in the middle. The plaster of the roof from inside of the shop has left its place at many places. The walls of the shop have

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also got weakened and cracks have developed in the walls. The demised shop has become unfit and unsafe and, therefore, requires reconstruction from its foundation after demolishing the same. It is also pleaded by the landlady that she has a joint family and grown up children which include a married son namely Gagan Mital, who along with respondent No.2 herein is running business in the shop, which is situated on the back side of the demised shop, under the name and style of M/s Roop Kitchens Collection. The said firm is a partnership concern consisting of the respondent No.1-landlady, her son Gagan Mittal besides respondent No.2 along with his wife Mrs. Neeru Mittal, as its partner. Since son of respondent No.1-landlady has grown up and they want to run separate business as such respondent No.1 is desirous of separating her son's business and for that purpose she requires demised shop for running business of her son independently after getting it separated from respondent No.2, therefore, the demised shop is required for fulfilling the *bona fide* necessity of respondent No.1-landlady.

Written Statement:

Upon notice, the tenants (petitioners herein) put in appearance and filed written statement taking preliminary objections of maintainability, concealment of facts. On merits, it was admitted that they were inducted as tenants by Ashok Kumar and house-tax and other taxes were paid by them. It was denied that the demised shop is lying vacant. It was further averred in the reply that the landlady has

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constructed a new shop at the back of the demised shop and she often keeps the drainage of the terrace water blocked intentionally which results into accumulation of water on terrace. The landlady also throws and stores waste utensils over the terrace merely with a purpose to cause damage to the roof of the shop in dispute. The landlady has another shop and the same is lying vacant. She can use the said shop for running the business of her son. Other averments in the petition have been denied.

Replication was filed wherein averments made in written statement were denied and that of the petition were reiterated. On the basis of pleadings of the parties, the Rent Controller framed the following issues:

- “1. Whether petitioner is entitled to ejectment of the respondents from the demised premises on the ground of personal bonafide necessity?OPP*
- 2. Whether the demised shop has become unfit and unsafe for human habitation?OPP*
- 3. Whether respondent has ceased to occupy the demised shop if so its effect?OPP*
- 4. Whether petitioner has not come to Court with clean hands?OPR*
- 5. Relief.”*

In order to substantiate her stand, the landlady got examined following five witnesses:

- (i) PW 1 Sh. S.K.Malhotra, Building Expert
- (ii) PW 2 Mohan Lal Mittal

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(iii) PW 3 Sudarshan Mittal

(iv) PW 4 Sudesh Kumar Garg

(v) PW 5 Gagan Mittal

On the other hand, the tenants got examined following sole witness:

(i) RW 1 Anil Kumar

The Rent Controller after considering the evidence led by the respective parties allowed the eviction petition filed by respondent No.1-landlady vide impugned judgment dated 24.04.2014 on the ground of personal necessity and physical condition of the demised shop.

Feeling aggrieved, the tenants preferred appeal before the Appellate Authority, Patiala which has been dismissed vide impugned order dated 10.05.2016. Hence, this civil revision.

I have heard learned counsel for the petitioners-tenants and perused the record.

Reasons for Decision:

In order to succeed under Section 13 of the Act, the landlady in this case is required to prove following ingredients:

- (i) that there is a relationship of landlord/landlady and tenant between the parties;
- (ii) that the demised shop is required for the *bona fide* personal necessity of the landlady for starting separate business of her son and
- (iii) that demised shop has become unsafe and unfit for human habitation and requires reconstruction which cannot be carried out without premises being vacated.

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Relationship of landlady and tenant between the parties:

The tenants admitted the execution of rent deed/note in favour of Sh. Ashok Kumar and execution of sale deed of the demised shop by Sh. Ashok Kumar in favour of respondent No.1 and respondent No.2-Harish Kumar Mittal. After execution of the sale deeds in favour of respondent Nos.1 and 2 herein, the petitioners-tenants have been paying the rent to respondent No.1. In view of the admission of the tenants, there is no manner of doubt that there exists relationship of landlady and tenants between respondent No.1 and petitioners herein, therefore, both the courts below have rightly recorded concurrent findings on this point.

Bona fide Personal Necessity on the part of landlady

Learned counsel for the petitioners-tenants has raised a contention that landlady did not step into the witness-box to substantiate her version, rather her husband-Sudarshan Mittal and her son-Gagan Mittal appeared as PW 3 and PW 5, respectively. However, there is a categorical evidence that PW 5 Gagan Mittal, son of landlady has grown up and the landlady intends to start new and separate business for him. When a child grows up, it is the earnest desire of parents that their son do the business at his own so that he may establish his business during their life-time with their support, if any required. The only contention on behalf of the petitioners is that PW 3 Sudharshan Mittal, husband of respondent No.1-landlady is not competent witness and his evidence

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cannot be taken into consideration, he is only general power of attorney. Originally, the petition was filed by the landlady herself and she is doing all the works.

I need not narrate much as the matter is no more *res integra*.

The Hon'ble Supreme Court in ***Man Kaur (Dead) by LRs vs. Hartar Singh Sangha*** 2010 (4) SCC (Civil) 239 has held as under:

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

(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 attorney holder, necessarily the attorney*

holder alone can give evidence in 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 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

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affairs of a son/daughter living abroad.”

PW 3 Sudharshan Mittal, (general power of attorney), being the husband of respondent No.1-landlady and head of the family knows the needs of the family. The Hindu law holds unique features with reference to family institution and joint family system. The family has numerous members. Even though individuality exists, the cohesive structure of family comes into fore with reference to the decision which are required to be taken by the family in various legal and other matters. In such circumstances, head of the family holds decision making power. The head of family, who is commonly known as *karta*, does stand in a fiduciary relationship with the rest of the members of the family. The head of family is understood to be the sole representative of the family structure when it concerns any legal or even social matter. In view of this position of Hindu law, presumption is raised that under the guidance of PW 3 Sudharshan Mittal, all the affairs are completely managed, transacted and looked after and such evidence can be accepted in view of law laid down in ***Man Kaur (Dead) (supra)***. It cannot be said that PW 3 Sudharshan Mittal was not a competent witness. The categorical evidence led by the landlady clearly states that the demised shop is required for establishing the separate business of her son-Gagan Mittal (PW 5). As such, it is established on record that the landlady requires the demised shop for her personal *bona fide* necessity and both the courts below have rightly recorded concurrent findings in

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this regard.

Demised shop has become unsafe and unfit:

As per the provisions of the Act, a landlord/landlady can seek recovery of possession against the tenant, if the demised shop/premises has become unsafe and unfit for human habitation and is required for *bona fide* necessity of the landlord/landlady. In order to substantiate her claim, the landlady got examined PW 1 S.K.Malhotra, building expert, who submitted the detailed report Ex.P-1 and gave the opinion that condition of the shop was found to be deteriorated, roof top of the shop was having sagging, floor of the shop is mostly damp and walls of the shop have leakage, seepage, cracks and damages. It has also been opined by the building expert that the shop has become weak and damaged and dilapidated, therefore, is unfit and unsafe for habitation. Not only this, the expert has made reference to the photographs Ex.P-45, Ex.P-67, Ex.P-23 to Ex.P-25, Ex.P-26 to Ex.P-29, Ex.P-31 and Ex.P-3 to P-18 which have been admitted by the tenants and there is no dispute regarding the same. It is pertinent to mention here that to rebut the evidence of building expert, the tenants have not brought any evidence on record. There is only a bald statement of tenant-petitioner No.2 herein. There is nothing on record to prove the version of tenants that the landlady has herself caused damage to the demised shop. The physical condition of the demised shop, as enumerated above, clearly supports the case of the landlady and it is duly proved that the demised

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shop is unsafe and unfit for human habitation and it needs re-construction. The Rent Controller after considering the evidence of power of attorney i.e. husband of the landlady and expert opinion has rightly come to the conclusion that the demised shop is unsafe and unfit for human habitation and consequently ordered eviction of the tenants which has been affirmed by learned Appellate Authority. The case law *Lekh Ram vs. Muni Lal* 2001 (1) R.C.R. (Rent) 168, *Man Kaur (Dead) (supra)*, *Babu Ram vs. Walaiti Ram and another* 1987 (2) Rent LR 140, *Kewal Chand Jain and anr. vs. Jiwan Kumar Kaushal* 1989 (2) R.C.R. (Rent) 215, *Balbir Singh and Ors. vs. Bodh Ram (dead) through his legal representatives* 1991 (2) R.C.R. (Rent) 320, *Gurdial Singh and another vs. S. Avtar Singh and Ors.* 2009 AIR (Punjab) 164, cited by learned counsel for the petitioners are not applicable to the facts and circumstances of the present case, rather case law *Man Kaur (Dead) (supra)* is against the petitioners.

Conclusion:

In view of the above discussion, this Court is of the opinion that the landlady has succeeded in proving all the essential ingredients before learned Rent Controller and learned Appellate Authority and, therefore, the tenants have been rightly directed to vacate the demised shop.

Learned counsel for the petitioners has failed to point out

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any illegality or perversity in the impugned orders.

Dismissed in limine.

11.07.2016
parveen kumar

(Paramjeet Singh Dhaliwal)
Judge