

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

Civil Revision No. 43 of 2016(O&M)

Date of decision : 08.01.2016

Janta Transport Through its partner Petitioner

versus

Amarjeet Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Arun Jain, Sr.Advocate with
Mr.Abhishek Dhull, Advocate
for the petitioner.

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 revision has been filed against concurrent judgments of the Courts below ordering eviction of the petitioner from the premises in dispute.

The respondent had filed a petition for eviction on the ground that he required the demises premises to settle his 21 year old son who wanted to open a Gym in the premises. This contention having been accepted by both the Courts the petitioner-tenant is before this Court.

Learned senior counsel has raised two arguments. His

first argument is that the landlord-respondent did not disclose that he possessed numerous other properties and this is fatal to his claim. A perusal of the judgments of the Courts below reveal that the Courts have taken into consideration the fact that the properties were originally owned by the father of the landlord and he had nine other brothers and sisters and, therefore, the authorities held that even though some of them may be lying vacant it could not be said that they were in the possession of the landlord. Learned senior counsel has argued that it is well settled that the possession of one co-sharer is the possession of all the co-sharers and, therefore, it was incumbent upon the authorities to have held that the respondent was in possession of those vacant properties and his non-disclosure disentitles him from relief. In this context he has relied upon **Mrs.Jaspreet Takhar v Ghai Enterprises and others** reported as 2013(1) PLR 765 and **Ravinder Sood and another v. Mohan Lal** reported as 2013(1) PLR 722. In the case of Mrs. Jaspreet Takhar(supra) this Court observed as follows:-

“I agree with the contention of the tenant that the landlord was guilty of serious suppression of material fact. As a measure of essential pleading mandated through the express provision, which I have referred to above as regards the existence or otherwise of any other building, cannot be allowed to be merely a matter elicited in the cross examination. If the land-lady was admitting the existence of yet another building in the cross-examination, it is another way of stating that she was forced to admit the same although there was no

pleading regarding the same. The argument made by the learned Senior Counsel that the other property in her possession was for her professional requirement as an Architect, which cannot be used for running shop, is more the explanation of a counsel than the explanation for the party. I have gone through the evidence and there is no statement anywhere uttered by her that the property in her possession under a demise cannot be put to use for her Pottery business as well. If the petitioner had specifically made reference to the existence of a shop and was pleading that the property in her occupation held under demise was not suitable for Pottery business then it would not become possible for the tenant to join issues on such aspect and brought specific evidence. The absence of pleading by the petitioner cannot be a matter of advantage for the landlord and she cannot hope the Court to make a conjecture that a premise that is available with her for carrying on a profession cannot be used by her for carrying on the newly intended commercial proposition.....”

In Ravinder Sood's case(supra) this Court observed as follows:-

“All that the landlord requiring an ejectment of residential building could be required to show in his pleading is that he is not occupying “any residential building” in the urban areas concerned and he has not vacated said building without sufficient cause after the commencement of the Act besides showing that the building is required for his own occupation. The consideration of whether the landlord is occupying another residential building is seen from the context of whether such another building is sufficient for his own

requirement. A mere possession of another building may not disentitle a landlord to seek for ejectment for his bona fide requirement. The typical example could be that yet another building, which is available may be inadequate. In this case that is precisely the point which is sought to be made that the building which he was in occupation of at door No.53 was not sufficient and that he had in possession only one room and a kitchen. As pointed out by the learned Senior Counsel appearing on behalf of the tenant, rough sketch filed by the landlord himself proves that at the first floor apart from a room adjoining the kitchen, there is yet another room adjoining the stair case. If we must contend with the fact that the family consisting about 9 or 10 persons could not be accommodated in two rooms, then it would require to be shown that the property in the ground floor and the second floor were not in his occupation but they were in occupation of his brothers. That his brothers were in occupation of the remaining portion of the building was brought for the first time only in evidence and that was not even set out in the pleading.....”

The distinguishing factor in both these cases was that the landlord was himself owner of the premises. In the present case what can be seen is that the respondent-landlord is exclusive owner only of the demised premises while the other properties are owned by his other family members. In the circumstances it is quite possible that even if one premises is lying vacant the other brothers and sisters may not be agree that one of the family should have excessive user and rather may pressurise that the premises

should be let on rent so that all of them can get the proportionate share of the rent. In the circumstances I hold that the fact that the respondent did not disclose that he along with his other family members was in possession of other properties is not fatal to his case.

The second argument raised by learned senior counsel for the petitioner is that there was no pleading by the respondent in his petition that his son, for whose benefit the personal necessity was claimed, was not possessed of any other property in the urban area and for this he has relied upon **Manmohan Lal v. Shanti Parkash Jain** reported as 2014(2) RCR(Rent) 222 where this Court held as follows:-

*“ It may be pointedly mentioned that in terms of the statutory requirement, landlord was not only to plead such facts about himself but was also to plead such facts qua his son Surinder Vir Jain as well for whose need as well, he had set up a case of personal necessity. It is a conceded fact that there is complete black out in the petition that Surinder Vir Jain son of the petitioner was not in possession of any other non-residential premises and had not vacated any such premises in the town of Nabha after coming into force of the Act. Reference may be made to authority **Ajit Singh Vs. Jit Ram and another 2008(2) RCR (Rent) 328 (SC)** wherein it was held that when personal necessity, inter alia, of son had also been pleaded as a ground for eviction of the tenant, such pleadings in compliance with statutory requirements regarding non-possession of any other residential premises as also non-vacation*

of such premises within the town concerned, were mandatory. This fault of the petitioner-landlord in non-compliance with the statutory requirements in terms of Section 13(3)(a)(i) of the Act is fatal for the case of the landlord.”

In that case it was found by this Court that Shanti Parkash Jain and his son owned 7 or 8 properties in Nabha. The son had long lived in Chandigarh and had retired from there and had also taken a service thereafter. It was in these circumstances that this Court observed that the non-disclosure of the other properties by the son of the landlord would disentitle him from relief. In the present case there is not even a whisper by the petitioner that the 21 year old son of the landlord-respondent possessed any other property in the urban area. In these circumstances the omission to plead that his son did not own or possess or had vacated any other property in the urban area would not be fatal to the case of the petitioner.

In the circumstances the petition is dismissed.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

January 08, 2016

sunita

(AJAY TEWARI)
JUDGE