

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R No. 5986 of 2008 (O&M)

Date of decision : May 20, 2016

Krishna Kumari and others,

..... Petitioners

v.

Kesar Singh (dead) through his LRs

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Arun Monga, Advocate and
Mr. Kanwal Goyal, Advocate
for the petitioners.

Mr. Arun Jain, Sr. Advocate with
Mr. Amit Jain, Advocate
for the respondent/s.

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 (Oral)

This petition has been filed against the judgment of the Appellate Authority dated 23.04.2008 reversing that of the Rent Controller dated 6.10.2007 and thereby dismissing the petition for eviction filed by the petitioners.

Brief facts are that the father of the petitioners, namely, Manohar Lal, filed the instant petition for eviction of the respondent by taking the plea that earlier he was doing the business of selling clothes by Pheri but due to ill health and old age he could not do the same any more

and wanted to do the business in his own shop. He further stated that he had four sons and one of his sons, namely, Ashok Kumar was unemployed and would assist him in the business and the shop was also required for his livelihood. He had averred that he did not own or possess any other shop in his name in the State of Haryana or elsewhere in India. After written statement was filed, Manohar Lal furnished his affidavit in examination-in-chief but died thereafter. His legal representatives were impleaded in his place and continued with the case. Ashok Kumar in his examination-in-chief stated that he also required the shop; that he was unemployed; and that neither he nor the other co-owners owned any other property in Haryana.

The Rent Controller having allowed the petition, the respondent carried the matter in appeal and primarily raised two grounds. First ground taken was that there was no issue of personal necessity which was struck and consequently the Rent Controller could not have given a finding thereon. The Appellate Authority held that even there was no specific issue yet since both the parties had given evidence, finding of the Rent Controller could not be set aside only on the ground that no specific issue was there. The second plea taken by the respondent was that in the petition also and even after the death of Manohar Lal, no plea had been taken (even by amendment) that Ashok Kumar did not own or had vacated any premises in the urban area concerned and, therefore, the petition had to be dismissed. This contention found favour with the Appellate Authority. The appeal having been allowed, the landlord/petitioners are before this Court.

Learned counsel for the petitioners has argued that the finding of the Rent Controller was well reasoned and justified and that the Appellate

Authority erred in upsetting the same.

Learned counsel for the respondents 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 premises by Ashok Kumar and/or non vacation of the premises by him having not been averred, the petition had to be dismissed.

In my opinion, the argument raised by the learned counsel for the respondents 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.” (Emphasis supplied).

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 present case, the respondent has admitted that three sons of Manohar Lal were all doing business in rented shops and that he did not know about Ashok Kumar. Had it been a case where the stand of the respondent was that in fact there was some other property either owned or had been vacated either by Manohar Lal or by Ashok Kumar, it would have been a different thing. As regards the decision in Ajit Singh's case (supra), the main issue involved therein was whether the personal need of a landlord could include that of any person dependent upon him, and 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.”

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. However, 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 firstly it was not the case of the respondent that either Manohar Lal or Ashok Kumar owned or had vacated any premises in the urban area concerned. Moreover, in his evidence Ashok Kumar had testified that neither he nor any of the LRs of Manohar Lal owned any other premises in the urban area concerned. 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 satisfied.

In view of what has been stated above, this petition is allowed and the judgment of the Appellate Authority dated 23.04.2008 is set aside.

May 20, 2016
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(AJAY TEWARI)
JUDGE