

CR No. 4743 of 2013 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 4743 of 2013 (O&M)

Date of Decision: August 29, 2016

Babli & others

...Petitioners

Versus

Kumari Ruchi Bansal & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. O.P.Goyal, Senior Advocate with
Mr. Mukesh Verma, Advocate
for the petitioners.

Mr. Narender Hooda, Senior Advocate with
Mr. Sudhir Hooda, Advocate
for the respondents.

AUGUSTINE GEORGE MASIH, J.:

CM No.16827-CII of 2013

Exemption is granted from filing certified copies of Annexures
P-1 and P-6 and the same are taken on record, subject to all just exceptions.

Application stands disposed of.

CM No.20630-CII of 2013

Exemption is granted from filing certified copies of Annexures
R-1 and R-2 and the same are taken on record, subject to all just exceptions.

Application stands disposed of.

CM No.7290-CII of 2014

Exemption is granted from filing certified copies of Annexures
P-10 and P-15 and the same are taken on record, subject to all just

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exceptions.

Application stands disposed of.

CR No. 4743 of 2013

This revision petition has been preferred by the petitioners-tenants challenging the order dated 14.02.2011 passed by the Rent Controller, Rohtak, whereby, petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as '1973 Act') preferred by the respondents-landladies seeking eviction of the petitioners from Shop No.1500/17, measuring 19.70 square yards, situated at Main Jhajjar Road, Rohtak, with frontage of 8.5 feet, has been allowed on the ground of personal necessity, appeal against which preferred by the petitioners-tenants has been dismissed by the Appellate Authority, Rohtak, vide order dated 07.05.2013.

2. Briefly the facts of the case are that originally, mother of the respondents-landladies, Smt. Shakuntla was the owner of the demised premises i.e. Shop No.1500/17 as also two other Shops No.1499/17 and 1501/17. The demised shop was rented out to late Shri Ashok Kumar vide registered rent deed dated 06.11.1997 (Annexure PW-4/E) w.e.f. 01.11.1997 to 31.10.2002, for five years. Thereafter, a fresh lease agreement (Ex.PW-3/B) was entered into between Smt. Shakuntla Devi and Shri Ashok Kumar for another five years. Shri Ashok Kumar-tenant died in February, 2004 and after his death, his legal representatives who are the petitioners herein, inherited the tenancy. Smt. Shakuntla Devi gifted the shops to the respondents-landladies vide gift deed No.1030 dated 03.05.2005

(Ex.PW-3/A). On the basis of this gift deed, respondents become owners/landladies and the petitioners acknowledged them as such.

3. Petitioners stopped paying the rent of the demised premises and further the respondents-landladies, namely, Kumari Ruchi Bansal-respondent No.1 and Kumari Poonam Bansal-respondent No.2, who are well educated and both possessing the qualifications of M.A., M.Ed. and M.A., B.Ed. in music respectively, having no source of income, required the tenanted premises for starting a Music Coaching Centre. Since they did not have sufficient space for running a Music Coaching Centre, they sought eviction not only of the petitioners but also one Naresh Gupta from Shop No.1501/17 to start the Music Coaching Centre to earn livelihood and for surviving. During the pendency of the eviction petition, the other eviction petition preferred against Naresh Gupta was allowed and the appeal preferred by him stood dismissed and on the basis of the same, respondents took possession of the said shop on 04.06.2012, which has almost the same dimensions as that of the shop in possession of the petitioners i.e. 9 feet in breadth and 21 feet in depth. The respondents-landladies had approached the Court for eviction on the ground of non-payment of rent and on the ground of *bona fide* personal necessity/requirement.

4. As the petitioners tendered the arrears of rent in Court, the ground of non-payment of rent was not available to the respondents for eviction of the petitioners from the tenanted premises.

5. Petitioners objected to the petition for eviction by taking a preliminary objection that the petition deserves dismissal as the respondents

had not approached the Court with clean hands, as the material and true facts have been concealed. The petition was not maintainable as no cause of action to file the eviction petition was presented. On merits, a counter-claim was made that the respondents had fraudulently charged and taken the house-tax at the rate of ₹ 3,600/- per annum, whereas, it was assessed by the Municipal Committee, Rohtak, at the rate of ₹ 476/- per annum. A plea was also taken that the respondents-landladies had refused to accept the rent and therefore, a letter alongwith cheque amounting to ₹ 21,600/-, dated 31.08.2004 was sent to them through registered post on 03.09.2004 but the said letter was received back unserved after 10 days. The petitioners had never refused to pay the rent and rather, it is the respondents-landladies who have not accepted the rent with an intention to cook a ground for filing the eviction petition. It was further asserted that a concocted story has been made that the respondents want to open a Music Coaching Centre and they did not have any source of income. It was asserted that the respondents who are having much space in their premises on the ground floor and also on the first floor, therefore, there is no *bona fide* requirement/necessity on their part as they could run the Music Coaching Centre in the first floor where there is a big hall. On the basis of the pleadings, following issues were framed by the Rent Controller vide order dated 15.03.2007:-

- “1. Whether the respondents are in arrears of rent and are liable to be evicted on the said ground?OPP
2. Whether the petitioners require the premises for their personal *bona fide* necessity?OPP

3. Whether the respondents have created nuisance in the premises in dispute?OPP
4. Whether the petitioners have concealed the material facts from the Court, if so to what effect?OPR
5. Whether the petition is not maintainable in the present form?OPR
6. Relief.”

6. On the basis of the evidence led by the parties, the Rent Controller returned a finding in favour of the respondents that their requirement was *bona fide* and the personal necessity stood proved ordering eviction of the petitioners from the demised premises. The Appellate Authority affirmed the finding as recorded by the Rent Controller by holding that the respondents required the tenanted premises for their own *bona fide* use and occupation.

7. It is the contention of the learned Senior Counsel for the petitioners that the basic ingredients of Section 13 (3) (a) (i) of the 1973 Act which mandates the disclosure on the part of the landlord that he is not occupying another commercial building in the urban area concerned and had not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area, have not been pleaded. He contends that the ownership of the other two shops apart from the three which have been disclosed, has gravely prejudiced the petitioners' stand and has put them to a disadvantage. That apart, he contends that the respondents have not even disclosed the said fact in their examination-in-chief but the truth has come out only in the cross-examination qua the other two shops. On

this basis, he contends that the rent petition itself deserves to be dismissed as the respondents have not approached the Court with clean hands and have misled the Court. He further asserts that PW-4 Poonam Bansal has categorically admitted in her cross-examination that one shop under the stairs is in their possession and non-disclosure of the said fact in the pleadings is fatal to the claim of the respondents. In support of this contention, he places reliance upon the judgment of this Court in **Joginder Singh Sawhney Vs. Harbans Lal, 2003 (1) RCR (Rent) 528** and the Full Bench judgment of this Court in **Banke Ram Vs. Shrimati Sarasvati Devi, 1977 (1) RCR (Rent) 595**.

8. Learned Senior Counsel for the petitioners has also taken this Court through the pleadings and the evidence to support his assertion that the finding recorded by the Courts below with regard to the *bona fide* personal necessity/requirement of the respondents-landladies is not sustainable. He submits that in any case, vacant possession of shop No.1501/17 has been received from Naresh Kumar Gupta and therefore, the requirement stands fulfilled. He, on this basis, prays for allowing the present revision petition by setting aside the impugned orders passed by the Courts below and dismissing the eviction petition preferred by the respondents.

9. On the other hand, learned Senior Counsel for the respondents submits that the eviction petition clearly specifies the three shops which open in the Main Jhajjar Road, Rohtak, of which the respondents became owners vide gift deed No.1030 dated 03.05.2005. Prior thereto, they were

neither the landladies nor the owners of the demised premises as their mother Smt. Shakuntla was the owner and landlady. He asserts that no evidence has been brought on record by the petitioners to substantiate the contention that the respondents had any other source of income for sustaining themselves. Ample evidence has been brought on record which has not been disputed that respondents-landladies are well qualified for starting a Music Coaching Centre in the demised premises. There is sufficient evidence on record according to which the petitioners were well aware of the premises of which the respondents were owners and in possession which is apparent from the pleadings. The shop which is stated to be vacant i.e. Shop No.1453/17 is below the stair case which is in occupation of the respondents where goods are lying and it is not suitable to start a Music Coaching Centre. Moreover, it being under the stair case, it cannot be used for the purpose for which the demised premises is required by the respondents. Evidence has also come on record that this shop is a small shop and that too on the side lane from where there is entry to the first floor where the respondents are residing. As regards the vacated shop of Naresh Gupta, it has been explained that the said shop is not sufficient for the purpose for which both the shops were said to be got vacated. In any case, he contends that the tenant cannot dictate the terms to the landlord which is settled preposition of law nor can he conclude as to how much is the area required for the purpose and necessity which is sought to be achieved by the landlord. That apart, the demise premises is facing the main road and therefore, most suitable for the purpose of starting a Music

Coaching Centre.

10. As regards the plea of the learned Senior Counsel for the petitioners that the ingredients of Section 13 (3) (a) (i) of the 1973 Act have not been pleaded and therefore, the eviction petition requires to be rejected on this score alone is not sustainable in the light of the Full Bench judgment of this Court in *Banke Ram's* case (supra) where the Court has said that the landlord must make a specific plea about the ingredients as required under the statute, however, if these essentials do not take the tenant by surprise and both parties are aware of the respective stand and have led evidence in support thereof that would be taken to be the known pleading thereof of the ingredients and thus, would not be fatal. Another assertion which has been put forth by the learned Senior Counsel for the respondents-landladies is that no objection had been taken by the petitioners specifically in the written statement with regard to the said fact. Neither in the written statement nor has it been pressed before the Rent Controller or the Appellate Authority and the same cannot be now permitted to be taken at this belated stage. In support of this contention, he has placed reliance upon the judgments of this Court in Sat Parkash Chaudhary Vs. Kewal Krishan Malhotra, 2011 (2) RCR (Civil) 828, Gurbaj Singh Vs. Parshotam Singh & others, 2011 (4) RCR (Civil) 518, Dr. S.S. Mann Vs. A.K. Sharma, 2013 (4) RCR (Civil) 1054 and Ram Kishan Dass (deceased) through LRs. Vs. Parveen Gulati 2015 SCC OnLine P&H 1186.

11. I have heard the learned Senior Counsel for the parties and with their assistance, have gone through the impugned orders and the pleadings

on record.

12. The facts as have been narrated above are not in dispute. The first and foremost plea which has been taken by the learned Senior Counsel for the petitioners is that the respondents-landladies have failed to plead the ingredients of Section 13 (3) (a) (i) of the 1973 Act.

13. Section 13 (3) (a) (i) of the 1973 Act reads as follows:-

“13. Eviction of tenants:-

(1) XXXX XXXX XXXX

(2) XXXX XXXX XXXX

(3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession—

(a) in the case of a residential building, if, —

(i) he requires it for his own occupation, is not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area;”

14. The Hon'ble Supreme Court in Harbilas Rai Bansal Vs. State of Punjab, 1996(1) PLR 227, which was followed in a Division Bench judgment of this Court in Ved Parkash Gupta Vs. State of Haryana and others, 1997 (2) PLR 775 in respect of the provisions of the 1973 Act, has held that there is no restriction of eviction of a tenant from a non-residential building. This was on the ground that the amendment brought about for restricting Section 13 (3) (a) (i) only to residential building was unconstitutional. The net result is that a landlord under the 1973 Act can even seek eviction of a tenant from non-residential building on the ground

that he requires it for his own use as held by the Three Judge Bench of the Supreme Court in **Rakesh Vij Vs. Dr. Raminder Pal Singh Sethi, 2005 (8) SCC 504.**

15. The Full Bench of this Court in *Banke Ram's* case (supra), while dealing with the Section 13 (3) (a) (i) of East Punjab Urban Rest Restriction Act, 1949, which is paramateria to 1973 Act, in para 8 and 12 has held as follows:-

“8. It was contended by the learned counsel for the respondent that the decision in *Rajinder Singh Nanda's* case (AIR 1976 Punj 21) (supra) is based on the Full Bench decision of this Court in *Sant Ram Das's* case (AIR 1963 Punj 1) (FB) (supra) and that of the Supreme Court in *Attar Singh's* case (AIR 1967 SC 773) (supra) wherein it was not in controversy whether the ingredients of Sub-clauses (b) and (c) are required to be pleaded or not. It is true that in both these cases it was not specifically in controversy whether the ingredients of Sub-clauses (b) and (c) of Section 13 (3) (a) (i) are essential to be pleaded by the landlord or not, but it was clearly and expressly held therein that it was essential to prove the ingredients of Sub-clauses (b) and (c). Once it is so held, there is no escape from the proposition of law that these ingredients have to be pleaded before any evidence is led on the same. In *Krishan Lal Seth's* case (1961-63 Pun LR 865) (supra), the Division Bench while agreeing with the principle that any matter in controversy must find piece in the pleadings of the parties, however, came to the conclusion that ingredients of Sub-clauses (b) and (c) may not be pleaded because they are only

statutory conditions and the tenant is expected to have knowledge of the same and will not be taken by surprise. There can be no doubt that the conditions laid down in Sub-clauses (b) and (c) are statutory conditions inasmuch as they are provided by the statute, but to fulfil those conditions, the landlord must lead evidence to prove the facts constituting those conditions. Under Sub-clause (b) the landlord is required to prove that he is not occupying any other residential building in the urban area concerned. Under Sub-clause (c), it is incumbent on the landlord to bring on the record that such a building had not been vacated by him without sufficient cause. If the landlord is to satisfy those essential conditions, he must lay foundation regarding the same in his pleading so that the tenant-respondent is in a position to rebut the same and proper issues are also framed. It is difficult to visualise how a tenant will not be taken by surprise if there is no pleading in this regard. It may be a different matter if the statutory conditions are in relation to questions of law, but in case of statutory conditions pertaining to questions of fact, the landlord must make specific averments, otherwise, prejudice is very likely to ensue to the opposite party.

- 9. XXXX XXXX XXXX
- 10. XXXX XXXX XXXX
- 11. XXXX XXXX XXXX

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) and (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, tout the decisions of the High Courts or the Supreme Court, in this regard, cannot 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 applications. 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.

16. No doubt, the Full Bench judgment of this Court in *Banke Ram's* case (supra) has held that it is imperative to the landlord to

specifically plead all the ingredients as required under the statute that he is not occupying another residential/non-residential building and has not vacated such a building without sufficient cause but this was for the reason that the tenant was not taken by surprise if there is no pleading in this regard. The specific averments were required to be made by the landlord so that no prejudice is ensued to the tenant.

17. In Banwari Lal Vs. Ram Parkash & another, 2009 (2) R.C.R.. (Rent) 160, it has been held that a landlord can always plead the ingredients of Section 13 (3) of the Act in evidence and if it is shown that no prejudice is caused to the tenant on account of non-pleading of the ingredients of the said Section, then petition cannot be rejected. The strict preposition of pleading of the ingredients in ejectment petition has been diluted to a larger extent and that too based upon the principle of no prejudice to any of the parties because of non-pleading/disclosure of the said fact. It may not be out of way to mention here that there is no form given under the 1973 Act and therefore, it is always open to the parties to plead the ingredients of Section 13 (3). The only guiding principle is that there should not be a prejudice caused to the tenant because of non-pleading of the ingredients by the landlord. Therefore, each case would be dependent not only upon the pleadings but the evidence led by the parties with obviously governing principle being the tenant having been taken by surprise and the prejudice, if any, likely to ensue to the tenant.

18. The legal position having been culled out above, the pleadings and the evidence brought on record will have to be considered to deal with

the plea raised by the counsel for the petitioners with regard to the basic ingredients of Section 13 (3) (a) (i) of the 1973 Act, having not been incorporated in the pleadings. The pleadings would show that the ownership with regard to the three shops i.e. 1499/17, 1500/17 and 1501/17 have been pleaded and it has also been pleaded that two shops i.e. 1499/17 and 1500/17 are in possession of the tenants and 1501/17 is in possession of one Naresh Kumar Gupta as a trespasser. Except for these three shops and the residence above these shops, no mention has been made of any other shop being on the ground floor. Another requirement as per Section 13 of the 1973 Act is that the respondents do not occupy any other non-residential building in the urban area concerned and has not vacated such building without sufficient cause after commencement of the 1973 Act in the said urban area has not been pleaded. Admittedly, these pleadings are missing in the petition, which has been preferred by the respondents, which they had filed under Section 13 of the 1973 Act, for ejectment of the petitioners.

19. A plea has been taken that no specific objection has been raised by the petitioners in the written statement, which has been filed but this contention cannot be accepted as preliminary objection No.3 has been taken with regard to the maintainability of the eviction petition in the present form as it has not been filed in the format prescribed by law and is deserving summary dismissal. To shuffle out the mandate of the Full Bench judgment in *Banke Ram's* case (supra), the respondents could have taken refuge in the evidence in the form of an affidavit, which has been filed in examination-in-chief but unfortunately, in the affidavits which have been filed by both the

respondents, who are the petitioners in the eviction petition, there is no mention of this mandated provisions of the statute, therefore, they cannot take the benefit in any form as neither in the pleadings nor in the evidence which have been led by them as there is no reference with regard to the two other shops being available i.e. shop No.1453 which is below the stair case and admittedly, occupied by the respondents, where they have kept their goods and shop No.1452, which has been given on rent to one Sudarshan Kumar. These facts have come out only in the cross-examination of Poonam Bansal (AW-1). Although, an effort has been made to explain that the shop No.1453, which is below the stair case, is not suitable for running the Music Coaching Centre. Non-disclosure of these shops, one of which is in possession of the respondents-landladies is fatal and the eviction petition on this ground alone deserves dismissal.

20. The mandatory nature of pleadings with regard to the essential ingredients as required under Section 13 (3) (a) has been highlighted and stress laid thereon by the Supreme Court in **Ajit Singh & another Vs. Jit Ram & another, 2008 (4) R.C.R. (Civil) 390**, where, the Supreme Court held that a landlord is entitled to evict the tenant from non-residential premises qua use of his son for business, however, in such a case, it would be mandatory for the son to plead and prove that he was not occupying any other such building and has not vacated such building without sufficient cause. The Hon'ble Supreme Court for coming to that conclusion, had relied upon the judgment of the Supreme Court in *Joginder Singh Sawney's* case (supra), where it has been held that the landlord had failed to plead the

basic ingredients of Section 13 (3) (a) (i) of the 1973 Act, which required making averments in the eviction petition that he was not occupying another residential/non-residential building in the concerned urban area and has not vacated such residential/non-residential building.

21. It may be added here that during the pendency of the eviction petition, shop No.1501/17 which was in possession of Shri Naresh Kumar Gupta, stands evicted, which is of almost the same dimensions as the demised premises in the present case and therefore, it cannot be said that the respondents do not have a premises available for starting the Music Coaching Centre. It has nowhere been pleaded or proved that the respondents required two shops for their personal use and occupation or they had required these two shops for starting their Music Coaching Centre.

22. The judgment in *Sat Parkash Chaudhary's* case (supra), on which reliance has been placed by the learned senior counsel for the respondents would not be applicable to the case in hand for the simple reason that it was not a case where the essential ingredients were not at all pleaded as mandated under the statute but was a case where the landlord has failed to plead that he was not occupying any other premises in the area at the time when the eviction petition was filed, the petitioner was not the owner of the premises and the evidence has come on record to this effect.

23. In *Gurbaj Singh's* case (supra), the Court had held that the plea should have been specifically taken in the written statement and since the same is not taken, the same could not be taken at a later stage. Present is not such a case as preliminary objection No.3 has been taken in the written

statement which has been filed, where a specific objection has been taken that the petition is not maintainable in the present form as it has not been filed as per the requirements of law and in any case, there is no evidence apart from the absence of the pleadings indicating that the respondents were owners in possession of any other non-residential shop in the urban estate of Rohtak, which factually is incorrect as they were owners of two other shops which they had failed to disclose, out of which one was in their vacant possession. They were mandated to disclose the said fact which they had failed to plead, thus, violating the mandatory provisions as contained in Section 13 (3) (a)(i) of the 1973 Act, rendering the ejectment petition liable to be dismissed.

24. In *Dr. S.S. Mann's* case (supra), the landlord although had not disclosed the factum and the ingredients as required under the statute but in the evidence which was led, the lacunae stood filled. Similar was the position in the case of *Ram Kishan Dass's* case (supra).

25. In view of the above, none of the judgments which have been relied upon, will be applicable to the facts and circumstances of the present case on which reliance has been placed by the Senior Counsel for the respondents.

26. The present revision petition is thus, allowed. The impugned order dated 14.02.2011 passed by the Rent Controller, Rohtak and order dated 07.05.2013 passed by the Appellate Authority, Rohtak, are hereby set aside and the eviction petition preferred by the respondents is hereby dismissed.

CR No. 4743 of 2013 (O&M)

CM No.16828-CII of 2013 and
CM No.20631-CII of 2013

In view of the order passed in the main revision petition, no order is required to be passed in these applications for stay and vacation of stay as the same have been rendered infructuous.

Disposed of as such.

August 29, 2016
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No