

208 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.4909 of 2006(O&M)
Date of decision : 20.07.2016

Shri Chander Mohan and another Petitioners

versus

Shri Kripal Singh Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. A.S.Chadha , Advocate for the petitioners.

Mr. C.L.Sharma, Advocate for the respondent.

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 petition has been filed against the concurrent orders of the Court below ordering the eviction of the petitioners from shop No.3 on the ground of personal necessity of the landlord.

The landlord had pleaded that he required the shop in question for his younger son to start a confectionery and bakery business. In the written statement the petitioner -tenants had taken the plea that adjacent to the shop in question there were two more shops in the possession of one Darshan Lal against whom also he had initiated eviction proceedings. Further the landlord-respondent had three more shops on the first floor. Moreover under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 the requirement is that the landlord should not have in his possession any building in the urban area concerned and once he had

those shops on the first floor he could not maintain the petition for eviction.

No replication was filed and even in the examination in chief the respondent did not refer at all to the three shops on the first floor. It is also not disputed that during the pendency of the present petition the shops under the tenancy of Darshan Lal were got vacated. Both the Courts having accepted the petition, as mentioned above, the tenant is before this Court.

Learned counsel appearing on behalf of the petitioner-tenants has firstly argued on the plea of non-disclosure. He asserted that the respondent-landlord did not disclose about the fact that he had in his possession shops on the first floor. Developing this argument on a slight tangent learned counsel has argued that even if there is no absolute requirement of mandatory disclosure, yet where the landlord has other premises which as per him are not suitable then it is required of him that he should aver this fact also and give the reason why they are not suitable so that the tenant can lead positive evidence to the contrary. Learned counsel for the petitioner has further argued that there is no pleading that the son for whose benefit the shop was being sought did not possess or had not vacated any other building in the urban area concerned or that he was dependent upon his father.

Learned counsel for the respondent has argued that as regards the plea of non-disclosure the original judgment was of a Full Bench of this Court in **Banke Ram v. Smt.Saraswati Devi** reported as 1977(1) RCR(Rent) 595 but in para 12 of that judgment itself the Full Bench had recorded that even though the Act makes it mandatory for the respondent to disclose whether he has any other building in his possession or whether he has vacated any other building without sufficient cause, yet if this fact comes

during the evidence the same can be looked at. Para12 of the said judgment is reproduced here as under:-

“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.”

As per learned counsel subsequent judgments have laid down that the true test is the test of prejudice to the tenant. In the present case the tenant in his written statement had mentioned about these facts and by not filing a replication and not referring thereto in the examination-in-chief it has to be held that the pleading of the tenant was admitted and thus no prejudice was caused to him and the fact that the landlord had in his possession other premises was well in the knowledge of the Courts who had considered it.

Learned counsel for the respondent has further argued that the assertion that there was no pleading regarding the son of the petitioner not being in possession of any other building is a tangent to the argument of non-disclosure by the petitioner and, as argued above, this fact has been considered by the Courts below.

Before considering the respective contentions it has to be kept in mind that though the legislation governing landlord-tenant relationship may have remained almost stagnant over the last 65-75 years, yet by way of incremental shifts in the judicial process there is a great difference in approach to this litigation between the situation of half a century ago and today. On numerous occasions different Courts including the Supreme Court have pointed out that the landlord and tenant laws in India have in fact become anachronistic and need a re-look. At some places originally wide spread changes were made but later on they were watered down. What however has become irreversible is that now the cases of landlords are no longer viewed with an institutionalised suspicion and especially in cases of personal necessity Courts have started viewing eviction petitions with a degree of sympathy and it has been laid down that such a petition would be viewed with a presumption that the requirement is bona fide as opposed to the position 45 years ago when the prevailing sentiment was that the landlord had to prove the ingredients of personal necessity with a much higher degree of proof.

Looked at from this stand point what emerges is that all the facts of the present case were before the Rent Controller by way of the uncontroverted pleading of the petitioner-tenant himself and after consideration of all the facts not only the Rent Controller but also the

Appellate Authority were convinced that the requirement of the respondent-landlord was bona fide and not a mere whim or desire and that in the event of vacation the shop would be used by the son of the respondent notwithstanding the fact that other premises had become available to him pursuant to the previous petition (which had been filed for the requirement of the elder son of the respondent). Learned counsel for the petitioners has not been able to persuade me that the findings of the Courts below are perverse or vitiated.

Learned counsel for the petitioners has then argued that after the eviction of Darshan Lal both the sons of the respondent had jointly started the business of general merchandise and, therefore, his necessity had receded. Learned counsel has further argued that the son had not proved any diploma or his capacity to start business in bakery. The next argument of learned counsel is that being a residential premises it could not have been converted into a commercial premises without the sanction of the Rent Controller and a residential building can only be got vacated for residential purpose and not for commercial purpose.

Learned counsel for the respondent has argued that even if the younger son of the respondent had joined the business of his elder brother it would still not obviate his requirement of another premises to do his independent business. Further the argument that it was not pleaded that the son was dependent on the father is also not correct because it was specifically pleaded that the son was unemployed and both the Courts have held that the petitioner did not even deny this fact. As regards the assertion that the premises were residential, the petitioner who is himself using them for non-residential purpose, cannot be heard to raise this argument.

I find myself in agreement with the arguments of learned counsel for the respondent. Both the Courts have considered these facts also and have concurrently held that the need of the respondent is bona fide. I see no reason to take a different view.

Consequently the revision is dismissed.

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

**(AJAY TEWARI)
JUDGE**

**July 20, 2016
sunita**