

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

**C.M. NO.16072 CII OF 2014 &
CIVIL REVISION NO.5327 OF 2014
DATE OF DECISION: AUGUST 02, 2016**

Dharam Pal Jain and others

.....Petitioners

VERSUS

Nathu Ram and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. G. S. Gandhi, Advocate,
for the petitioners.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.16072 CII of 2014

In the present application, the petitioners pray for permission to produce on record copy of judgement dated 08.09.1981 passed by the Rent Controller, Narnaul and the assessment register for the year 2001-02 issued by the Municipal Council, Narnaul. However, the said prayer cannot be entertained in the light of the fact that a similar application for production of these very documents on record by way of additional evidence has been considered and dismissed vide order dated 22.04.2014 by the Appellate Authority, Narnaul.

The application is, therefore, dismissed as not maintainable, especially in the light of the fact that in the present revision petition the said order is also under challenge.

CIVIL REVISION NO.5327 OF 2014

Challenge in this revision petition is to the order dated 19.10.2010 passed by the Rent Controller, Narnaul, whereby the petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, preferred by the respondents, seeking ejectment of the petitioners from the demised premises stands allowed, appeals against which preferred by both the parties, have been dismissed by a common judgement dated 22.04.2014, by upholding the order passed by the Rent Controller, Narnaul.

It is the contention of learned counsel for the petitioners that the ground on which the ejectment of the petitioners has been ordered is the bonafide necessity of the respondent-landlords. Although it has been pleaded so in the ejectment petition and the said plea has also been responded to by the petitioners in their reply to the same but no issue has been framed by the Rent Controller in this regard. Because of non-framing of the issue, the petitioners have been put to disadvantage, which has caused prejudice to them and, therefore, the said ground could not have been taken into consideration by the Courts below and the argument of the respondent-landlords of bonafide necessity cannot be accepted. His further contention is that the requirement of the demised premises was that of Sh.Hari Shankar Sanghi, the original landlord, who had, during the pendency of the ejectment petition, expired and, therefore, the bonafide necessity having ceased, the ejectment of the petitioners could not have been ordered on this ground. That apart, he asserts that there are other residential properties owned by the respondent-landlords, which fact has not been disclosed in the pleadings and by producing their additional evidence before the Appellate Authority by way of copy of the assessment register for the year 2001-02

issued by the Municipal Council, Narnaul, petitioners wanted to establish that there were other residential properties of the respondent-landlords as well, which application has been wrongly rejected by the Appellate Authority. A plea has also been taken that the demised premises is not a residential property and is a commercial one and in support of this contention, the petitioners intended to produce copy of the judgement dated 08.09.1981 passed by the Rent Controller, Narnaul, where the demised premises has been held to be a commercial property and, thus, this document, which was sought to be produced on record by way of an application for additional evidence before the Appellate Authority, has been wrongly rejected, especially in the light of the fact that these documents have come to the knowledge of the petitioners after filing of the appeal against the judgement dated 19.10.2010 passed by the Rent Controller, Narnaul. He, thus, submits that the order dated 22.04.2014 passed by the Appellate Authority, rejecting the application for additional evidence under Order 41 Rule 27 read with Section 151 C.P.C. for production of additional evidence before the Appellate Court cannot sustain and deserves to be set-aside and by taking into consideration the judgement dated 08.09.1981 as also the assessment register for the year 2001-02 issued by the Municipal Council, Narnaul, the plea, as has been taken by the respondents with regard to their bonafide necessity for the purpose of residence and the findings in this regard returned by the Courts below, thus, cannot sustain and deserve to be set-aside. He, thus, prays that the present revision petition may be allowed and the petition for ejectment preferred by the respondent-landlords deserves to be dismissed.

I have considered the submissions made by learned counsel for

the petitioners and with his able assistance have gone through the impugned judgements and the pleadings brought on record.

Dealing first with the order dated 22.04.2014 passed by the Appellate Authority, rejecting the application of the petitioners for production of additional evidence in the Appellate Court, suffice it to say that no specific date has been mentioned as to when the petitioners came to know about the said documents and their existence. Firstly, as per the petitioners, the judgement dated 08.09.1981 relates to the demised premises and is in an earlier petition as preferred by the respondents for eviction, where a compromise was entered into before the Appellate Authority and the rent was enhanced. However, the said document cannot be of any use as there is no plea taken to the effect that the property in dispute was not a residential one but was a purely commercial property. Further, evidence can be led by the party to support and substantiate the pleadings and not which are alien. In the evidence which has come on record and as is apparent from the pleadings of the parties, one property is a shop and the other one is a Haveli. Haveli is numbered as 19 and the shop as 18, of which the respondents are admittedly owners and landlords and they intend to demolish the same to build a residential house for residing there.

Thus, in the absence of specific pleadings with regard to factum that the demised premises is wholly for commercial purpose and is being used for the same, the application has rightly been rejected by the Appellate Authority as the same does not fulfill the mandate of the statute. Similar is the position with regard to the assessment register of the Municipal Council, Narnaul, where it is not specifically pleaded that the respondents have other residential properties as well. What has been stated in the pleadings is that

they have various other properties in Narnaul. Nothing has come on record which would indicate that the petitioners had no incline or knowledge about the other residential buildings owned by the respondents. These are with regard to the merits of the documents but the basic requirement of the statute, as mandated under Order 41 Rule 27 for production of additional evidence, having not been fulfilled, the application as moved by the petitioners before the Appellate Authority has rightly been dismissed as only vague averments have been made therein and it has not been disclosed as to when these documents came to their knowledge.

The requirement of the statute is that the party seeking to produce additional evidence has to establish that despite the exercise of due diligence, neither the evidence was within the knowledge nor could the same be produced at the time when the proceedings were pending before the trial Court. The Appellate Authority has rightly dismissed the application for production of additional evidence vide order dated 22.04.2014.

The second plea of the petitioners that no issue has been framed by the Courts below on the question of bonafide necessity of the respondent-landlord because of which prejudice has been caused to the petitioners also cannot be accepted as there are specific pleadings in this regard in Para 6 (G) of the ejectment petition to the effect that the petitioners want to raise a new construction for residential purpose by removing the old one, which is their bonafide necessity. The stand of the petitioners with regard to bonafide necessity is that the respondents have a well established business at Hyderabad and they are residing there and, thus, there is no possibility of their coming to Narnaul and staying there.

However, this plea has not been established. The petitioners, in their written

statement, have also pleaded that the premises in question is neither required by them for their bonafide necessity nor the respondents wanted to reside in Narnaul.

That apart, the evidence, which has been led by the respondent-landlords as also the petitioners, it is apparent that both the parties were aware of the plea having been taken, which was being pressed by the respondent-landlords and accordingly the petitioners were defending the same with equal vehemence and have produce evidence in support of their pleadings. By asserting that the respondents have well established business in Hyderabad and they are residing there since long, the evidence which has been led by the respondent-landlords, has been discussed by the Courts below where it is not only the personal necessity of deceased Hari Shankar Sanghi, the original landlord, has been mentioned but the personal necessity of other family members is also mentioned, which fact is clear from Para 5 of affidavit, Ex.PW2/A (examination-in-chief), where it is stated that earlier the respondent-landlords had been residing in Hyderabad but now they want to reside at their parental place at Narnaul alongwith their families. This evidence has also been supported by Harnam Singh, who was examined as PW1. Further, as is apparent from the pleadings, it is not only respondent Hari Singh Sanghi, who had sought ejectment and pleaded the said aspect but the words used in the ejectment petition are that the petitioners want to reside in Narnaul and for that purpose want to raise a new construction for residential purpose by removing the old one. Thus, the findings recorded by the Courts below that it is not merely the bonafide personal necessity of late Hari Singh Sanghi alone but the other family members as well, including the other respondents, cannot be faulted with nor can it be said that the plea of

bonafide necessity has lost its significance or has been rendered infructuous.

No evidence has come on record, which would establish that the respondent-landlords are in physical possession of any other residential properties in Narnaul.

It may be added here that the tenant cannot dictate the terms to the landlord as to in which residential house they should reside, especially when nothing has come on record, which would indicate that the respondent-landlords are in possession of any other residential property. Merely because landlords are owners of other properties would not debar them from seeking ejectment of the tenants, especially when they are not in possession of any other sufficient residential accommodation/premises, which fulfills their requirement.

In view of the above discussion, finding no merit in the present revision petition, the same stands dismissed.

**August 02, 2016
khurmi**

**(AUGUSTINE GEORGE MASIH)
JUDGE**

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