

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

**Civil Revision No.6173 of 2016 (O&M)
Date of Decision:November 07, 2016.**

Vinod Kumar

.....PETITIONER(s).

VERSUS

Aruna Jain and another

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Pawan Kumar, Senior Advocate with
Mr. Rozer Kumar, Advocate
for the petitioner (s).

Mr. Ajay Jain, Advocate
for caveator/respondent No.1.

SURINDER GUPTA, J.

This is revision against the concurrent orders/judgments by learned Rent Controller, Hansi and learned Appellate Authority, Hisar allowing the petition filed by respondent No.1-landlord under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (later referred to as the 'Haryana Rent Act') seeking eviction of the revision petitioner from the demised shop bearing No.19-D/11 situated in Gali Naion Wali, Hansi District Hisar.

2. Respondent No.1-landlord sought the ejectment of petitioner from the demised shop on the ground of personal bonafide necessity which was described in para 2 (A) as follows:-

“That the petitioner has five shops in a row situated at

Gali Naio Wali, Hansi, which bears House Tax units Nos.19-A/11 to 19-E/11 as per the assessment register of M.C. Hansi. Shop No.19-A/11 was occupied by Pawan as tenant under the petitioner, which has been got vacated by the petitioner from the said tenant for the necessity of her son out of Court. Shop No.19-B/11 is occupied by Firm; Sajjan Kumar Kailash Chnad as tenant under the petitioner. Shop No.19-C/11 is occupied by Sh. Subash Chand son of Sh. Suraj Bhan as tenant under the petitioner. Shop No.19-D/11 is under the exclusive possession of respondent No.2 as sub-tenant. Shop No.19-E/11 is under the occupation of the only son of petitioner, who is dealing in the labour job of goldsmith and silver ornaments. The size of that shop is 9' 1½" x 9' ½", as shown and depicted in the attached site plan. The son of the petitioner wants to expand his business and existing space with him is insufficient for his business. The son of petitioner wants to built up a big show room at a space of 9' ½"x34-10" by getting all the tenants ejected (sic from the tenanted premises) occupied by them, referred above, by filing petition of ejectment against them, inter alia, on the ground of bona-fide need. The shop in dispute is required by the petitioner for the need of her son to expand the business. The need of the petitioner is a bona-fide need for her son. The petitioner is not occupying any other shop except mentioned above in the urban area concerned and has also not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area."

3. Respondent No.1-landlord has also averred in the ejectment petition that revision petitioner had parted with exclusive possession of the demised shop and sublet the same to respondent No.2, who is in exclusive

possession of this shop. It was also pleaded that revision petitioner-tenant is in arrears of rent since 01.01.2008.

4. The revision petition contested the plea of respondent No.1-landlord inter-alia pleading that in shop No.19-A/11, Pawan Kumar is tenant and 19-B/11, 19-C/11 are occupied by Sajjan Kumar, Kailash Chand and Subhash Chand sons of Suraj Bhan as tenant. It was denied that they have vacated the aforesaid shop. Regarding the demised shop, he alleged that the same is in possession of revision petitioner and not in possession of respondent No.2. It is revision petitioner, who is carrying on Maniyari Shop and General Store in the shop in dispute. Respondent No.2 is real son of revision petitioner, who is carrying on business in another shop. He denied the requirement of the shop in dispute for the personal bona fide necessity of the respondent-landlord as projected in the petition. While contesting the plea of the respondent No.1-landlord, the revision petitioner has pleaded in para 2(A) as follows:-

“..... The shop-in-dispute is very small shop and is located in a small and narrow street whereas shop occupied by son of the petitioner is located on a very wide road. Even otherwise, Hansi is a very small city having a very limited business, where only small petty shops are running and no big showroom is economically viable in Hansi. Further that small business of Hansi City has shifted in out area of Hansi and the business is very less in the congested areas of old city and the shop-in-dispute is situated in highly congested areas of old city. It is specifically incorrect that the petitioner is not having any other shop, as alleged. It is also specifically incorrect that the petitioner has not got vacated any shop, as alleged. The petitioner got vacated the shop no.19-A/11 from

various persons again and again during last about 10 years.”

5. As the due rent was paid, the plea of respondent No.1-landlord seeking ejectment of tenant on the ground of non-payment of rent became infructuous. This plea of respondent No.1-landlord that the shop in dispute has been sublet was also discarded, however, their plea that the demised shop is required for their personal bonafide necessity, was allowed.

6. Not satisfied, revision petitioner filed appeal before the Appellate Authority and respondent No.1-landlord filed cross-objections challenging the findings of learned Rent Controller denying the ejectment of revision petitioner on the ground of subletting of the demised shop by him in favour of respondent No.2. The Appellate Authority upheld the bonafide need of respondent No.1-landlord but dismissed the cross-objections filed by her.

7. I have heard learned counsel for the parties and have perused the paper book with their assistance.

8. Learned counsel for the revision petitioner has argued that respondent No.1-landlord owns five shops in a row, out of which one shop No.19-E/11 is in possession of her son. The shop bearing No.19-A/11 was in possession of Pawan Kumar and has been got vacated before filing of the petition. The shop bearing No.19-C/11 has also been vacated by tenant Subash Chand and ejectment proceedings against tenant in shop No.19-B/11 are pending. He has referred to the observations in para 34 of judgment by Appellate Authority, which state that the petitioner has already got vacated one shop but this fact was not mentioned in the petition which resulted in

concealment of fact. He has further argued that the shop is required for the

personal bona fide necessity of son of respondent No.1-landlord, as such, it was incumbent upon respondent No.1-landlord to plead and prove that her son is not in possession or has vacated any such building after the commencement of the Haryana Rent Act. He has relied on the observations of Hon'ble Supreme Court in case of ***Ajit Singh & Anr. Vs. Jit Ram & Anr. 2008(9) SCC 699***; of this Court in cases of ***Banke Ram Vs. Shrimati Sarasvati Devi 1977(1) R.C.R. (Rent) 595*** and ***Shankar Lal Vs. Madan Lal & others 2011(1) R.C.R. (Rent) 139***.

9. Learned counsel for respondent No.1-landlord has argued that five shops in a row owned by the respondent No.1-landlord are small shops of size 5'6"x 9'9", 5'7 ½"x 9'9", 5'11"x 9'9", 6'4½"x 9'9" and 9'1½" x 9'9". Total front of the shop including the width of the wall comes around 33'34' and width 9'9". The Courts below have found the need of the respondent-landlord to open a showroom as valid and genuine and learned counsel for the revision petitioner-tenant has not been able to point out any infirmity in the concurrent judgments of the Rent Controller and Appellate Authority to this effect. Regarding the pleadings as required under Section 13 (3)(a) (i) of the Haryana Rent Act, he has argued that admittedly respondent No.1-landlord, is not possessing any shop in the area and there is no evidence or pleading that she had vacated any shop, as such, the contention raised by learned counsel for the revision petitioner-tenant has no merits. While appearing as PW2, respondent No.1-landlord has categorically stated that she do not possess any other shop except the shops in dispute in Hansi and after 1949, she has not vacated any shop. She has further stated in her cross-examination that even her children do not own or possess any other shop or

plot. Sunil Kumar, son of respondent No.1-landlord appeared as PW1 and has also denied that he possesses any other property or has concealed this fact from the Court. A Coordinate Bench of this Court while dealing with similar averments raised by the tenant in case of ***Janta Transport Though its partner Vs. Amarjeet Singh and others Civil Revision No.43 of 2016 decided on 08.01.2016***, has observed as follows:-

“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 noncompliance 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.”

10. In case of *Ajit Singh & Anr. Vs. Jit Ram and Anr. (supra)*, ejectment of the tenant was sought on the ground of bona fide requirement of son of the landlord, subletting and non-payment of rent. The Rent Controller discarded the plea of landlord that the shop was required for personal bona fide necessity of the landlord but allowed the ejectment on the ground of subletting. Tenant filed the appeal before the Appellate Authority and landlord filed cross-objections. Appellate Authority while allowing cross-objections of the landlord, allowed the ejectment of the tenant on ground of personal necessity of the landlord. In the revision petition, High Court set aside the order of the Appellate Authority on the ground that landlord has failed to prove the ingredients of Section 13(3)(a)(ii) of East Punjab Urban Rent Restriction Act, 1949 (later referred to as the 'Punjab Rent Act'), which are akin to provisions contained in Section 13 (3)(a)(i) of Haryana Rent Act. Apex Court upheld the findings of the Appellate Authority and set aside the judgment passed by the High Court.

11. What is required under Section 13(3)(a)(i) of the Haryana Rent Act is to prove that the landlord is not occupying or has vacated any such

building without sufficient cause in the said area after commencement of

1949 Act. The landlord as well as her son appeared in this case as witness and stated that they do not possess or have vacated any such shop and there is no evidence produced by revision petitioner that respondent No.1-landlord or her son possessed or have vacated any other shop. The observations in case of *Ajit Singh & Anr. Vs. Jit Ram and Anr. (supra)*, are not applicable to the facts and circumstances of the present case.

11. In case of *Banke Ram Vs. Shrimati Sarasvati Devi (supra)*, three Judges Bench of this Court has observed that in the absence of pleadings of the necessary ingredients, as per Section 13(3) of Punjab Rent Act, the landlord is not debarred from proving the ingredients by leading evidence. In case of *Shankar Lal Vs. Madan Lal & others (supra)*, there was concealment of fact which weighed before this Court while dismissing the ejectment application. The principle of law has already been settled by this Court, as such, the observations in cases of *Banke Ram Vs. Shrimati Sarasvati Devi (supra)* and *Shankar Lal Vs. Madan Lal & others (supra)* have no relevance in this case. The landlord/respondents have proved the ingredients of Section 13(3)(a)(i) and (b) of Haryana Rent Act and order of Rent Controller and Appellate Authority suffer from no legal infirmity on this score.

12. Learned counsel for the revision petitioner has further pointed out that Hansi is a very small place and contention of landlord that her son wants to expand his jewellery business by making showroom of all the five shops is neither bone fide nor genuine but is a ploy to get the shop in question vacated.

13. I find no weight in the above arguments of learned counsel for

the revision petitioner. A person may think of expanding his business and the size of the town cannot be any impediment. A jeweller does not get the customers only from his town but also from surrounding villages and if he is credible, he will get the customers from nearby towns and cities. Even otherwise, it is for the landlord to select, choose and decide as to what type of business he/she has to carry on and the tenant has no role to suggest as to whether the landlord should do that business or not.

14. As a sequel of my above discussion, this revision petition has no merits and is dismissed.

November 07, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No