

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

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Civil Revision No.7257 of 2016 (O&M)

Date of Decision: November 03, 2016

Jugal Kishore Ahuja

...Petitioner

Versus

Surinder Kaur

...Respondent

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

Present: Mr. Aditya Jain, Advocate  
for the petitioner.

Mr. Ranjit Saini, Advocate,  
for the caveator-respondent.

**AUGUSTINE GEORGE MASIH, J. (ORAL)**

Notice of motion.

2. Mr. Ranjit Saini, Advocate, accepts notice on behalf of the caveator-respondent.

3. Caveat discharged.

4. Petitioner has approached this Court challenging the order of ejectment dated 30.03.2015 passed by the Rent Controller, Faridabad, whereby petition under Section 13 of the Haryana Urban (Control of Rent and Eviction), Act, 1973 (hereinafter referred to as 'Rent Act'), has been allowed of the respondent-landlady, who has sought eviction of the shop in question on the grounds of arrears of rent, subletting and personal necessity. The sole ground which has been accepted by the Courts below is personal necessity of the respondent-landlady. Challenge has also been posed to the order dated 23.09.2016 passed by the Appellate Authority, Faridabad, whereby the petitioner's appeal against the order of the Rent Controller, Faridabad, has been dismissed.

5. It is the contention of learned counsel for the petitioner that the basic provisions as contained under Section 13 of the Rent Act have not been complied with which mandate the disclosure of the fact that the respondent-landlady did not own or possess any other non-residential/residential property except for the one which was in possession of the petitioner and that the said property has not been got evicted or rented after coming into force of the Rent Act. In support of this contention, counsel has placed reliance upon Full Bench judgment of this Court passed in case titled as *Banke Ram Versus Shrimati Sarasvati Devi, 1977(1) R.C.R. (Rent) 595*, and Single Bench judgments of this Court in *Manmohan Lal Versus Shanti Parkash Jain, 2014(5) R.C.R. (Civil) 667*, *Shankar Lal Versus Madan Lal and others, 2011(1) R.C.R. (Rent) 139* and *Pritam Singh Bakshi Versus Mrs. Sukhdev Kaur and others 2014(1) PLR 674*. That apart, counsel contends that the petitioner having moved an application for additional evidence, wherein he has projected that after the eviction of one of the tenants in the same building namely Shri Ramesh Nagpal, the same has been given on rent to one Shree Chand Ladda @ Joli Ladda after eviction of Shri Ramesh Nagpal and now again, the said premises have been rented to Shri Ramesh Nagpal. He, therefore, contends that the orders passed by the authorities below cannot sustain and deserve to be set aside.

6. Counsel for the caveator-respondent has submitted that except for the two shops which have been referred to in the examination-in-chief out of which one is with the son of the respondent and the other with the petitioner-tenant, there is no other shop in the building. The reference which

has been made by the counsel for the petitioner with regard to the eviction and again giving on rent of a premises to Shri Ramesh Nagpal is actually a godown and not a shop. There is no non-residential property which is in possession of the respondent and she is not owner of any other non-residential property except these. He contends that in the examination-in-chief, the details with regard to the property owned by her and that there are only two shops in the building out of which one is in possession of the son of the respondent and the other is in possession of the petitioner has been specifically mentioned. Similar position existed in the cross-examination.

7. Counsel for the petitioner has emphasised on the basis of the cross-examination of the respondent that she had preferred about 20 petitions for eviction on the grounds of personal necessity and arrears of rent. This position is clarified by the counsel for the caveator-respondent by asserting with reference to the order passed by the Rent Controller, that seven petitions were filed against the petitioner, details whereof have been mentioned in para 4 of the said order which were all filed against the petitioner which were all consolidated and were disposed of by a common order dated 23.12.2013 by the Rent Controller, Faridabad. The other petitions for eviction were either preferred against the tenants of the godown for eviction or recovery of rent of the godown which is by nature not a shop and thus, cannot be compared to the demised premises.

8. These assertions of the counsel for the parties clearly depict, especially with reference to the site plan Exhibit P-1 that there are only two shops which are owned by the respondent. Thus, it is clear that there has not

been any non-disclosure on the part of the respondent.

9. The judgments on which reliance has been placed by the counsel for the petitioner would not be of much help rather in the light of the observations made by the Full Bench in *Banke Ram's case (supra)* on which reliance has been placed by the counsel for the petitioner would not fully support his submission rather would go against him. It has been 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.*

*13. This Court, the other High Courts and the Supreme Court have had the occasion to make pronouncements one way or the other in cases where the evidence was led by parties in the absence of requisite pleadings. Those decisions will serve as guides in eviction proceedings under the Act.”*

9A. This Court in CR No.4773 of 2015 titled as *Babli and others Versus Kumari Ruchi Bansal and another*, decided on 29.08.2016, while dealing with the judgment in *Banke Ram's case (supra)*, had culled out the law with reference to Section 13 of the Rent Act in paras 16 and 17 thereof, which read as follows:-

*“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”.

10. In view of the above legal position, the pleadings and the evidence brought on record have to be seen to ascertain whether the basic ingredients of Section 13(3) of the Rent Act have been fulfilled. It is not in dispute that in the eviction petition, there is no mention with regard to the disclosure that the landlady did not own or possess any other non-residential/residential property except for the one which was in possession of the petitioner and had not been got evicted or rented after coming into force of the Rent Act but in the examination-in-chief, there are specific averments to this effect and the petitioner has cross-examined the respondent on this aspect but without any success as he has not been able to

solicit any information which would be of such a nature rendering the mandate of the provisions as contained in Section 13 of the Rent Act being not complied with. Thus, the contention of the counsel for the petitioner that the provisions of Section 13 of the Rent Act have not been complied with by the respondent-landlady, cannot be accepted and is hereby rejected.

11. The other judgment on which reliance has been placed by the counsel for the petitioner i.e. *Shankar Lal's case (supra)*, the said judgment is distinguishable on facts as in the said case, the landlord not only failed to plead but to prove that his son, for whom eviction was being sought, was not occupying any other building and has not vacated any building. He had neither pleaded nor stated so that he owned another two shops. In the case of *Pritam Singh Bakshi (supra)*, eviction was sought on the ground of personal necessity. There again, the landlord had not stated that he was not in occupation of SCO No.303-304, Sector 22-D, Chandigarh, after the commencement of the Act and had not mentioned the sufficient cause for vacating the said premises either in the petition or in the replication. Thus, this judgment is also distinguishable on facts. In the case of *Manmohan Lal (supra)*, there was neither any pleading nor any evidence in the examination-in-chief that the landlord was not in possession of other residential premises and had not vacated any such premises within the town concerned. This judgment will also not be applicable to the facts and circumstances of the present case and thus, no benefit can be claimed by the petitioner qua these judgments referred to above.

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

13. In the light of the dismissal of the petition, the application for stay i.e. CM No.22083-CII of 2016, stands disposed of as infructuous.

**November 03, 2016**  
*Puneet*

**(AUGUSTINE GEORGE MASIH)**  
**JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No