

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

**C.M. NO.22814 CII OF 2016 &
CIVIL REVISION NO.7527 OF 2016
DATE OF DECISION: NOVEMBER 11, 2016**

Baljinder Singh

.....Petitioner

VERSUS

Gurmukh Singh and another

....Respondents

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

Present: Mr. S. S. Dinarpur, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this revision petition is to the order dated 28.07.2015 passed by the Rent Controller, Chandigarh, whereby petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (as applicable to the Union Territory, Chandigarh) (for short, “the 1949 Act”) for ejectment of the petitioner preferred by the respondent-landlords has been allowed, appeal against which preferred by the petitioner has been dismissed by the Appellate Authority, Chandigarh, on 20.08.2016.

It is the contention of learned counsel for the petitioner that the petition itself was not maintainable and deserves to be dismissed as the essential ingredients, which are required to be pleaded under Section 13 of the 1949 Act, had not been pleaded. He contends that it has not specifically

been pleaded that he owns and possesses other shops and also that Shop Nos.2 and 3 were lying vacant, which has resulted in causing prejudice to the petitioner. He contends that apart from that shop Nos.2 and 3, which were lying vacant, have been given on rent during the pendency of the petition, which clearly depicts that there is no bonafide necessity of the landlord and had it been so he could have utilized these two shops for the purpose of starting the business of Parminder Singh, respondent No.2, who is son of Gurmukh Singh, respondent No.1, the landlord. He asserts that respondent No.1 had depicted the personal necessity of respondent No.2, which has been, in the light of these facts, proved to be not bonafide and therefore, the present revision petition deserves to be allowed by setting-aside the impugned orders.

I have considered the submissions made by learned counsel for the petitioner and with his assistance have gone through the pleadings, impugned orders and the evidence, which has been referred to by him.

The first contention, which has been raised by counsel for the petitioner is that necessary ingredients of Section 13(3)(a) of the 1949 Act have not been pleaded. A perusal of the order passed by the Appellate Authority would show that in Para 8 of the eviction petition, it has specifically been pleaded that the respondents are not occupying any other non-residential building in the urban area of Chandigarh and have not vacated any such commercial building without sufficient cause after the commencement of the 1949 Act. It has come in evidence that respondent No.1 is the owner of four shops bearing Nos.1,2,3 and 4 in Village Buterla. It has further been stated by him that Shop Nos.2,3 and 4 are on rent whereas Shop No.1 is in possession of his son, Avtar Singh, who is running

the business of *Karyana* and flour mill.

The contention of counsel for the petitioner that Shop Nos.2 and 3 were lying vacant, which fact has been admitted by the landlord in his cross-examination, has been found to be not correct as what has been stated by the landlord in his cross-examination is that “it is incorrect to suggest that shop No.3 in village Buterla was vacant before filing of the present suit.” Similar is the position with regard to Shop No.2. In view of this situation, the contention of counsel for the petitioner that Shop Nos.2 and 3 were lying vacant at the time of filing of the eviction petition, which fact has not been disclosed by the respondent-landlords in the eviction petition, is found to be incorrect. It cannot, thus, be said that provisions under of Section 13(3)(a) of the 1949 Act have not been complied with as it is the settled proposition of law by now, especially in case titled as M/s Bhatia Cloth House Vs. Dr.Raj Kumar Gupta and another, 2008 (4) RCR (Civil) 250, according to which an ambiguity in the pleadings regarding ingredients set down in Section 13(3)(a) of the 1949 Act, if made good in evidence, amounts to sufficient compliance of the statutory provisions. It, therefore, cannot be stated that there has been either misstatement on the part of the respondent-landlord or that they had approached this court with unclean hands, as has been asserted by counsel for the petitioner.

As regards the contention of counsel for the petitioner that the respondents have not been able to prove the bonafide necessity with regard to the demised premises, suffice it to say that it is a specific case of the respondent-landlords that Shop No.4 is most suitable for running the business of departmental store as it is near the house and behind the said shop there is a godown, which can be utilized for the purpose of storing the

goods for the said departmental store. As a matter of fact, the petitioner himself, in his cross-examination, admitted that there is a godown behind Shop No.4 and that the demised shop is situated on the main road. Thus, this would be beneficial to the business in question, which is being intended to be started. Evidence has also come on record that Parminder Singh, respondent No.2 son of Gurmukh Singh, respondent No.1, has been helping his brother Avtar Singh in running the business in Shop No.1 but now respondent No.1 wanted that his son should start his own independent business and had so asserted in the pleadings and in evidence. Even the son of respondent No.1 i.e. respondent No.2 had appeared in the witness box and supported the pleadings. In the cross-examination of these two witnesses, nothing could be extorted which would dent the veracity of the pleadings or the evidence led by the respondents. In any case, the settled proposition of law is that the pleading of the landlord qua bonafide need should not be seen with doubt by the Court and the presumption of bonafide is attached thereto. Once the presumption is that the landlord needs the demised premises for a bonafide purpose, it is for the tenant to rebut the same and prove the malafide on the part of the respondent-landlord.

So far as selection of a particular demised premises, out of the other tenanted premises, of which he is the landlord, suffice it to say that the landlord is the best judge of his need as to which would be the portion or premises most suitable for his requirements, on which the Courts should refrain to impose its opinion, unless the bonafides of such assertions have been dented by the tenant on the basis of pleadings or the evidence.

The orders, as passed by the Courts below, being based on proper appreciation of the pleadings, evidence and law, no interference in

the same are called for by this Court in exercise of its revisional jurisdiction.

The revision petition, therefore, stands dismissed.

Since the main appeal stands dismissed, C.M. No.22814 CII of 2016 for staying the operation of the impugned orders is also dismissed.

**November 11, 2016
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**(AUGUSTINE GEORGE MASIH)
JUDGE**

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