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

Civil Revision No.1230 of 2012(O&M)

Date of decision: 24.04.2017

Hardayal

...Petitioner

Versus

Ramesh Kumar Goyal

...Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Mayank Mathur, Advocate for the petitioner.

Mr. Varun Garg, Advocate for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The petitioner-landlord is aggrieved against the order dated 11.1.2012 passed by the Appellate Authority, Patiala whereby eviction order dated 8.10.2011 passed by the Rent Controller, Patiala has been set aside on the ground that the petitioner has not pleaded that he is not occupying any such building in the area concerned. Resultantly, it has been held that essential ingredients under the provisions of the East Punjab Rent Restriction Act, 1949 (hereinafter referred to as “the Act”) have not been complied with and therefore, eviction of the tenant as ordered by the Rent Controller, Patiala has been set aside by accepting the appeal.

The relevant observations of the Appellate Authority reads as under:-

“13. Now, it has to be seen as to whether the aforesaid requirement of law has been complied in the instant case, or not? It is significant to note that there is no plea in the eviction petition to the effect that the petitioner is not

occupying in the urban area concerned for the purpose of his business any other such building. Furthermore, there is a plea to the effect that the petitioner has not vacated any such premises, but the same is not inconsonance with the requirement of law. The petitioner has put forth a plea to the effect that he has not vacated any other building and premises within the municipal area immediately before filing present petition, without any reasonable cause or excuse. However, the requirement of such clause (c) is to the effect that such premises should not have been vacated without any sufficient cause, after the commencement of the Act, in the urban area concerned. The plea put forth by the petitioner cannot be termed to indicate that he has not vacated any such premises after the commencement of the Act. Even to this very effect is the deposition of the petitioner, while appearing in the witness box. In these circumstances, the essential ingredients of sub clause (b) and(c) do not stand fulfilled in the instant case and consequently it cannot be held that the petitioner can successfully seek the eviction of the respondent on the ground that the premises in dispute are required by him for his own use and occupation. In these circumstances, the finding of the learned Rent Controller on issues no.1 and 2 are liable to be reversed and the same are recorded against the petitioner and in favour of the respondent.

14. For the aforesaid reasons, finding sufficient merit in the appeal, the same stands accepted and the petition under Section 13 of the Act instituted by the petitioner against the respondent stands dismissed leaving the parties to bear their own costs. Memo of costs be prepared. Records of the trial Court be sent back and appeal file be consigned to record room.”

The Appellate Authority, Patiala has noticed the judgment of the Full Bench in **Banke Ram Vs. Shrimati Saraswati Devi 1977(1) R.C.R. (Rent) 595** wherein it was held that the Court is to give full

consideration to the contentions raised by the respective parties and it is not to be understood that under no such circumstances in the absence of pleadings, the evidence regarding the ingredients envisaged in sub-clauses, (b) and (c) can be looked into. The Relevant observations reads 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, but 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.”

The observations made in **Banke Ram's case (supra)** have been considered in **Raj Kumar Vs. Budha Mal 2010(4) PLR 773** wherein it was held that if the parties are fully aware about the ingredients of Sub Section (b) and (c) and have led evidence on the issue, then petition cannot be thrown out merely because the ingredients have not been pleaded.

In the present case, the landlord had been examined who appeared as PW-1 and especially in the cross-examination a suggestion was put to him that he has huge property which was denied. Similarly during statement of PW-4 Sunder Lal, a suggestion had been put to him that the landlord was having other shops with him which he had denied. It was also denied that the requirement of shop in question was for his use and occupation. All these aspects have not been noticed and taken into consideration as such by the Appellate Authority, Patiala which is final court of fact. Accordingly, this Court is of the opinion that a procedural infirmity as such has been committed in reversing the order of the Rent Controller, Patiala. The Appellate Authority, Patiala should have thrashed out the issue on merits keeping in view the evidence on record and the stand taken by the parties since admittedly in the written statement, the plea had been taken that mandatory ingredients have not been pleaded.

Counsel for the respondent could not show any such evidence that has come on record that the landlord has any other property in the urban area of Patiala which would disentitle him on the ground that he had concealed the facts and that he is not entitled for relief.

In such circumstances, this Court is of the opinion that the reversal of the order dated 8.10.2011 passed by Rent Controller, Patiala was not justified and the Appellate Authority needs to go into the issue afresh. Accordingly, order dated 11.1.2012 passed by the Appellate Authority, Patiala is set aside. The Appellate Authority, Patiala is directed to decide the matter afresh within a period of three months from the date of receipt of certified copy of this order.

The present revision petition is disposed of accordingly.

April 24, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No