

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 03.08.2017****CR No.1442 of 2016 (O&M)**

Kamla Rani & others

...Petitioners

Vs.

Anil Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. O.P.Hoshiarpuri, Advocate,
for the petitioners.Mr. Sandeep Khunger, Advocate,
for the respondent.**RAJIV NARAIN RAINA, J. (ORAL)**

The petitioners - tenant have been evicted through rent proceedings under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 on ground of personal necessity demonstrated by the respondent landlord. Both courts are against the tenants. They have approached this court assailing the orders praying that they may be set aside with tenancy to continue.

The previous rounds of litigation between the landlord and original tenant i.e. the father of the petitioners in the years 2003, 2006 & 2008 have rightly not prevailed upon the Rent Controller and the Appellate Authority to record a finding in the fourth and current round that the ground of eviction successfully established by evidence upholding plea of landlord's bona fide need to make a "Try Room" by extending his tailoring and

clothing business in the demised premises as he needs to expand his traditional business. Not to detain any further, the three previous cases have no bearing on the fate of the present case since in none of those was personal necessity pleaded as a ground of eviction except to state that the 2003 and 2006 petitions were filed when the landlord father of the present petitioners was alive and running his business of clothing and tailoring. The father had died when the petition was brought in 2008 by the heirs, where Mr. Hoshiarpuri, appearing for the petitioners – tenant contends that the version of the Try Room was not the pleaded case. Ejectment then was sought in the old rent petition on the ground of non-payment of rent and change of user by the tenants, the petitioners, shifting from clothing to artificial jewelry. He met with no success in those litigations.

Presently, both the Rent Controller and the Appellate Authority are in concurrence that a case of eviction is made out against the petitioners and have proceeded to allow the rent petition against the tenant, the petitioners in this revision ordering their eviction from the tenanted shop.

Much is made of by Mr. Hoshiparpuri on the cross-examination of the landlord where he deposed in the witness box on 05.05.2014 while appearing as his own witness that he had wanted to make a Try Room ever since 7 years ago but yet the plea was not taken.

It is argued that when the landlord justified his personal need stating that he had already dreamed of making a Try Room since 7 years ago in case he has possession of the tenanted shop, then it should have been taken as a ground in the petition filed on 18.12.2008. It is therefore an afterthought. If we calculate 7 years backwards from 05.05.2014, we go

back to May, 2008, which is only about ½ year off the mark short of 7 years when the respondents brought an unsuccessful eviction petition against the petitioners. This is not a discrepancy that I think should enure in favour of the tenant since testimonies and depositions of witnesses cannot be tested with mathematical exactitude but in the context of the substantial questions asked during the course of cross-examination. Even assuming that there is a minor discrepancy, the entire suit of the landlord cannot be discarded or testimony disbelieved on such a myopic view taken in the course of arguments. In fact, this was not the core issue in a case where bona fide need and personal necessity was pressed for eviction which appears to be a very genuine reason of wanting to make a Try Room for a tailoring business. A Try Room is central to any modern tailoring system as it affords privacy to customers, both men and women customers and their children. In any case, it is for the landlord to organize his business and not for the tenant to advise him how he should go about carrying on his business. The need for expansion of business to accommodate an essential facility of a Try Room in a modern market can be regarded as changed circumstances sufficient to maintain the petition on the date it was filed. The life of a business has a tendency to change and grow by the day in the best of times.

Mr. Khunger appearing for the landlord draws the attention of this Court to the cross-examination of RW-3 Amit Kumar son of Tilak Raj conducted on 27.01.2015, where he stated as under:

“...It is correct that 2/3 customers jointly cannot stand for measurements. On the counter the applicant has kept clothes/pieces of pents and shirts, which are sold to customers for stitching purpose. People come to purchase clothes for

stitching purpose. On rare occasion customer stands on the road waiting for their call for measurement. It is correct that arms of a person cannot be stretched on both sides in the vacant place shown as yellow. It is correct that it is necessary to stretch the arms while taking measurement. It is correct that there is no try room with the applicant either in the shop in question or upstairs. There are about 15 to 20 reputed tailor master in the main bazaar the present shop is situated in the main bazaar. The applicant is No.1 tailor master. It is not that much necessary for provisions of try room in the shop in question. ...It is correct that try room cannot be constructed in the shop in question because of paucity of space. Only cutting work can be done on the counters and no tailoring was done on the counters. It is further correct that workers are sitting in the upper floor to do the labour work of stitching the clothes. The stairs to the height of 3 feet are made of iron. Ladies and old persons cannot go upstairs. It is wrong to suggest that try rooms are available with most of the tailor master.”

In these circumstances and in the face of the admissions of the tenant in the testimony, I would find that this is not a case warranting interference. Consequently, the petition is dismissed.

As a result, the petitioners shall hand over the peaceful and vacant possession of the shop in dispute to the respondent – landlord on or before 31.03.2018. The petitioners would file an undertaking before the Rent Controller to this effect and pay up-to-date rent. In case, there are any arrears, they would clear the same before they vacate the premises.

However, it will always be open to the petitioners – tenant to bring to the notice of this Court in the present disposed of matter by an application presented after they vacate the premises showing that the ground on which eviction order was passed has been breached, that is to say, in case

a Try Room is not made in the demised premises as part of the tailoring and clothing business of landlord.

03.08.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>