

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

C.R. No. 1730 of 2014
Date of decision: 19.04.2017

Raj Rani and another

....Petitioner(s)

Versus

Rajinder Sharma

...Respondent(s)

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

Present: Mr. K.R. Dhawan, Advocate,
for the petitioners.

G.S.SANDHAWALIA, J. (Oral)

The landlord challenges the order passed by the Appellate Authority dated 29.10.2013 whereby, the appeal of the respondent-tenant has been allowed and ejectment ordered by the Rent Controller on 12.08.2011 on the ground of bona fide requirement has been set aside. The reasoning which prevailed with the Appellate Authority to reverse the findings are that the petitioners, who are mother and son, did not care to step into the witness box to subject themselves to cross examination regarding their personal requirement and resultantly, it was held that the bona fide requirement is not met out.

Counsel for the petitioner has vehemently submitted that the attorney as such had appeared and he could depose as such regarding the facts.

A perusal of the paper book would go on to show that the petition was filed for ejectment from the part of the premises which are situated in Ludhiana and was instituted through Special Power of Attorney namely Rajesh Aggarwal. It is not disputed that though petitioner no. 1 was

72 years of age but the fact remains that her son was also a party and he also did not choose to appear to substantiate the ground of bona fide requirement. The respondent-tenant had appeared as his own witness and stood by the stand that the requirement was not bona fide in nature. The Rent Controller failed to notice that the landlady had not appeared and neither her son had appeared and only on the statement of the attorney as such allowed the eviction on the ground that the landlord is the best judge and his necessity seems to be bona fide. As noticed, the said findings have been reversed by the Appellate Authority as the bona fide aspect can only be best explained by the landlady herself. The principles have been discussed by the Apex Court in ***Man Kaur (dead) by LRs vs. Hartar Singh Sangha, 2010 (10) SCC 512***. Exceptions have also been laid out whereby, close relatives like husband-wife can appear for each other and their statements are to be accepted. The bona fide need of the landlord has been held that to be one of personal knowledge. The principles in *Man Kaur's case (supra)* read as under:-

“12. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney

holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and

willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."

In the present case, the attorney was only one Rajesh Aggarwal, allegedly a relative. The tenant was denied the right as such to cross examine the landlady and her son and to find out whether there was any such bona fide requirement for shifting from Hoshiarpur and whether the son was employed and well settled in Hoshiarpur alongwith his family members. Similarly also, whether the landlady bonafidely in the evening of her life was wanting to shift from her well settlement establishment from Hoshiarpur to Ludhiana was also to be taken into consideration. Resultantly, the findings which have been recorded by the Appellate Authority are based on sound principles and would not as such require any interference.

Accordingly, the present revision petition is dismissed in limine.

19.04.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No