

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No. 1630 of 2017 (O & M)

Date of decision: 24.03.2017

Arun Kumar

....Petitioner(s)

Versus

Gurcharan Singh

...Respondent(s)

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

Present: Mr. Sandeep Arora, Advocate,
for the petitioner.

Mr. Amit Babbar, Advocate,
for the caveator-respondent.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed against the concurrent findings recorded by the Rent Controller on 26.07.2016 and directing ejectment on the ground of bona fide requirement for the two sons of the respondent. The Appellate Authority has upheld that order on 11.01.2017.

On 10.03.2017, the following order was passed:-

“The ejectment has been done by both the Courts below on the ground that the property is required for the sons of the landlord. Counsel has tried to demonstrate that on an earlier occasion some property has been sold by the landlord and, therefore, bona fide requirement is not made out. However, it is not disputed that the sale took place in 2006 whereas the petition was filed in the year 2010. The requirement of the landlord can keep on changing with times and therefore the said argument can not be given much weight.

Faced with the situation, counsel submits that he needs some time to take instructions as to whether the petitioner is willing to file an affidavit to vacate the

premises by 31.12.2017. Counsel for the caveator-respondent has no objection if such an arrangement is made out.

Adjourned to 24.03.2017.”

Mr. Sandeep Arora, Advocate has now submitted that the tenant is not willing to seek time to vacate the premises. Resultantly, the matter is being decided on merits.

The claim for bona fide requirement is on account of the two sons Sukhpreet Singh and Gurpreet Singh from the shop in question which was rented out in the year 2000 at ₹550/- and which was increased to ₹650./-. Necessary averments were made that the landlord or his sons did not have any other property in the urban area of Amritsar. The stand of the respondent was that though they were married but they were dependent upon applicant for their residence and business. The defence of the tenant was that the landlord had constructed two shops and changed the nature and converted them into one. The elder son was carrying on the business of cloth in the shop which was removed by constructing a wall. He had sold his own House No. 97 keeping his residence at another house. There were lot of properties whereby the sons could be adjusted. One shop had been sold on 17.04.2006 to one Narinder Singh Bhatia, which is adjacent to other shop on the opposite side.

The landlord examined himself as AW-4 and one of his sons Gurpreet Singh as AW-5 whereas, the tenant examined as many as 10 witnesses. The issue of the non-payment of rent w.e.f. 01.04.2010 was decided against the landlord on account of the tender. Regarding the bona fide requirement, the statements of the landlord and his son were taken into

consideration. Various material was brought on record to show that Gurpreet Singh was a partner in Dream County & Homes & Villas LLP and, therefore, the defence was that his son was doing independent business and the need was not bona fide. The Rent Controller noticed that the ejectment petition was filed on 13.08.2010 and the Company was incorporated only on 13.06.2013. Resultantly, because he had started doing some business, it could not be said that he had to sit idle and wait for the decision of the proceedings. Similarly, the shop which was allegedly sold was in the year 2006 and, therefore, if the landlord was in need of some money and sold part of his property, it would not be a ground to disbelieve his bona fide requirement. The ownership as such of other properties in the area, which were alleged to have been concealed, were also examined and it was held that merely because two shops had been merged in one shop, could not as such deny the benefit to the landlord. The landlord was running cloth business in one of the shops in question. Accordingly, reliance was placed upon the judgments of the Apex Court in ***Sarla Ahuja vs. United India Insurance Co. Ltd., 1998 (8) SCC 119; Maganlal vs. Nana Saheb, 2009 (1) RCR (Rent) 16; Dattatraya Laxman Kamble vs. Abdul Rasul Moulali Kotkunde and another, 1999 (1) RCR (Rent) 508*** while ordering eviction.

The Appellate Court also examined record in detail and examined both the site plans Exs.A-1 and R-5 to come to a conclusion that they were identical. The shop in possession of the respondent had been shown red in colour and was a corner shop whereas rest of the premises were in possession of the petitioner. The site plan filed by the respondent did not depict the possession of any shop at the spot of Sukhpreet Singh, one of the sons. The old record which had been relied upon was of the year

1989 and, thus, could not be taken into context, especially since the tenancy itself was of a subsequent period of the year 2000. No material had been brought on record to show that the sons owned any independent property and resultantly, merely because a shop had been sold in the year 2006 to one Narinder Singh to meet some needs would not as such weaken the case of the landlord. Merely because there were two electricity connections with different sub divisions of the Electricity Department did not lead to the fact that there was ownership of more shops and mere violation of the electricity rules as such would not be a ground to come to a conclusion that there was ownership of more than one shop which had been already mentioned in the pleadings. Similarly, appellant being a partner with Dream County & Homes & Villas LLP on a subsequent date would not as such debar the landlord for seeking the eviction, which was the conclusion arrived at by the Appellate Authority which is a well settled principle. It is to be noticed that the eviction petition was filed in the year 2010. It is not expected that the son would sit idle and not do any other business and would wait for the result of the proceedings which has taken six years at the initial stage itself. It is settled principle that the date of institution is to be seen and merely because during the pendency, his son had started doing business, would not as such be a ground to deny the benefit of the need which was the requirement at that point of time and which can still be utilized as such and can be put into motion.

The Supreme Court while dilating on the issue of bona fide requirement of the landlord in *Sarla Ahuja's case (supra)* held that the requirement of landlord for occupation of the tenanted premises must be bona fide and the Rent Controller shall not proceed on the assumption that

requirement is not bona fide. The principle that tenant is not to dictate terms to the landlord as to how the property could be utilized and how the landlord had to adjust himself was kept in mind. Thereafter, in ***Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta 1999(3) SCR 1260***, it was held that the bona fide and genuine need of the landlord is to be taken into account and that the Court would not put its own wisdom upon the choice of the landlord and a practical approach was to be kept in mind. The requirement should be sincere and honest and not a mere pretense. If the facts showed that the answer was in positive, the need was to be considered bona fide.

Relevant observations read as under:-

“12. Chambers 20th Century Dictionary defines bonafide to mean 'in good faith : genuine'. The word 'genuine' means 'natural; not spurious; real: pure: sincere'. In Law Dictionary, Mozley and Whitley define bonafide to mean 'good faith, without fraud or deceit'. Thus the term bonafide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contra-distinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bonafides would be capable of successfully withstanding the test of objective

determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.”

Accordingly, it was held that the landlord could not be asked to shift to a different house and locality whereas the tenant would continue to

live in the tenanted premises and if the landlord wished to live in comfort of his house, the law could not expect him to live in a smaller premises while protecting the tenant's occupancy.

Similarly, Hon'ble Apex Court in ***Joginder Pal Vs. Naval Kishore Behal 2002 (2) PLR 625*** while taking into consideration the provisions of section 13 of the East Punjab Urban Rent Restriction Act, 1949 has held as under:

“24. We are of the opinion that the expression 'for his own use' as occurring in Section 13(3)(a)(iii) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove we have found the pari materia provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependents and kith and kin in the requirement of landlord as "his" or "his own" requirement and user. Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support

himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire : (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close interrelation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act.

Thereafter, the conclusions were drawn up which reads as under:

Our conclusions are crystalised as under:

(i) the words 'for his own use' as occurring in Section 13(3) (a) (ii) of the East Punjab Urban Rent Restriction Act, 1949 must receive a wide, liberal and useful meaning rather than a strict or narrow construction.

(ii) The expression landlord requires for 'his own use', is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord himself but also of the normal 'emanations' of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on a variety of factors such as inter-relationship and inter-dependence economic or otherwise, between the landlord and such person in the background of social, socio-religious and local customs and obligations of the society or region to which they belong.

(iii) The tests to be applied are : (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement? and, (ii) Whether on the facts and in the circumstances of a given case actual occupation and user by a person other than the landlord would be deemed by the landlord as 'his own' occupation or user? The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as 'his own' and the person who would actually use the premises; (ii) the circumstances in which the claim arises and is put forward, and (iii) the intrinsic tenability of the claim. The Court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.

(iv) While casting its judicial verdict, the Court shall adopt a practical and meaningful approach guided by the realities of life.

(v) In the present case, the requirement of landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord 'for his own use' within the meaning of Section 13(3)(a)(ii)."

Similarly, in ***Atma S. Berar Vs. Mukhtiar Singh AIR 2003 SC***

624 it was held that the landlord is the best judge of the premises and has complete freedom regarding how he is to use his premises and it is not for the tenant or for the Courts to hold whether the requirement is not appropriate and that he continues functioning in the premises in question.

The relevant observations read as under:

"15. The learned Counsel for the tenant-respondent submitted that the findings arrived at by the Rent Controller and the appellate authority were vitiated and the High Court was justified in interfering therewith especially in the light of the events which had taken place during the pendency of the proceedings. The power of the Court to take note of subsequent events is well-settled and undoubted. However, it is accompanied by three riders; firstly, the subsequent event should be brought promptly, to the notice of the Court; secondly, it should be brought to the notice of the Court consistently with rules of procedure enabling Court to take note of such events and affording the opposite party an opportunity of meeting or explaining such events; and thirdly, the subsequent event must have a material bearing on right to relief of any party. We have dealt with each one of the so called subsequent events brought to the notice of the High Court as also of this Court by the learned Counsel for the tenant-respondent. None of them causes a dint in the case of bona fides and need as were found proved by the authorities below the High Court. Seen in the

light of normal human nature and behaviour, the events pendente lite rather reinforce the direness of the need. We need only remind ourselves of the observations made by three-Judges Bench of this Court in Prativa Devi's case (supra) - "the landlord is the best judge of his residential requirements. He has a complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own". The High Court need not be solicitous and venture in suggesting what would be more appropriate for the landlord to do. "That was the look out of the appellant and not of the High Court. The gratuitous advice given by the High Court was uncalled for..... There is no law which deprives the landlord of the beneficial enjoyment of his property". The present one, in our opinion, is an appropriate case where the High Court ought not to have interfered with the findings of fact arrived at by the two authorities below and that too concurrently, in exercise of its revisional jurisdiction simply because it was inclined to have a different opinion."

The right and privilege of the landlord to choose the nature of business and place and the fact that the tenant cannot dictate the terms and advise him what line of action he should follow or what he should do and what he should not do has time and again been frowned upon by the Apex Court. It has also been held that a pragmatic approach is to be taken and the crucial date of litigation when the suit for eviction was filed although subsequent events can be taken into consideration for moulding the reliefs have to be kept in mind but the fact remains that the person who had started litigation cannot be expected to sit idle during the said period. The

observations of the Apex Court in *Pratap Rai Tanwani Vs. Uttam Chand (2004) 8 SCC 490* and *Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal and others (2005) 8 SCC 252* are to this effect.

Accordingly, no ground is made out to interfere in the well reasoned orders passed by the Courts below and the present revision petition is dismissed.

24.03.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No