

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

Civil Revision No.2476 of 2015 (O&M)

Reserved on: 08.03.2017

Decided on : 21.03.2017

Kishan Singh Rahi and another

... Petitioners

Versus

Hans Raj Kaushal (since deceased) through his legal representatives

... Respondents

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

Present : Mr. Rakesh Gupta &
Mr. Harsh Garg, Advocates
for the petitioners.

Mr. Dheeraj Chawla, Advocate
for the respondents.

G.S. Sandhawalia, J.

The present revision petition is directed against the concurrent findings of the Rent Controller, Pathankot and the Appellate Authority, whereby eviction has been ordered on the ground of bonafide requirement on 17.12.2012 and upheld on 16.12.2014.

The petition was initially filed by Hans Raj Kaushal, the husband of Bimla Devi and father of Rajesh Kaushal on 29.10.1997. Initially the application was filed for ejectment from the two shops No.9 & 10 was allowed on 04.01.2006 and which was upheld on 31.03.2009. On account of death of the said landlord, the matter had been remanded back in ***Civil Revision No.8436 of 2010.***

The case of the respondents was that two shops No.9 & 10 had been let out on 01.10.1997 on payment of ₹250/- per month as rent and there were arrears from that date. The property had been sublet to

petitioner No.2 Madan Lal who was in actual possession, since petitioner No.1 had joined service at Calcutta, West Bengal. Change in user was also alleged from the business of handloom to wooden furniture, which was being carried out. The landlord having retired on 31.10.1996 from the Post Graduate Institute of Medical and Research, Chandigarh as Assistant Store Officer wanted to settle at Pathankot and start his business and required the rented premises for bonafide requirement.

In defence, relationship of landlord and tenant was admitted and it was alleged on 14.10.1981 a partnership had been entered by the two petitioners and they were doing business under the said partnership. Thereafter, on 06.04.1992 a third partner was inducted and he was son of the petitioner No.1. The landlord had been informed on 14.10.1981 at that time and again when the second partnership had been entered into. He had accepted rent and, therefore, the application being bad for non-joinder of Surinder Singh was set up, apart from the conduct of the landlord. It has been, accordingly, averred that after the death of the landlord Ashok Kumar his brother-in-law had accepted the rent. It has been further alleged that the respondent No.1 controlled and had grip over the business and also inducted his son as partner with respondent No.2. He had gone to Calcutta, West Bengal in connection with handloom business as Jute which is the basic material for handloom products comes from West Bengal. It was a mutual arrangement and he kept on shuttling between two places.

Reference was made to the income tax returns showing that

he and Surinder Singh were partners and, therefore, there was no seizure of control and neither there was any subletting. Wooden work was carried out which was connected with the handloom business. The landlord was settled at Chandigarh and it was denied that he wanted to start his business at Pathankot.

The following issues were framed by the Rent Controller:-

- “1. Whether the respondent No.1 has not paid the arrears of rent since 1.10.97? OPA*
- 2. Whether the respondent No.1 has sub let the premises in dispute to the respondent No.2? OPA*
- 3. Whether the respondent have changed the user of the premises in dispute for which it was let out? OPA*
- 4. Whether the premises in dispute are required for personal use and occupation by the applicant? OPA*
- 5. Whether the respondent is liable to vacate the premises in dispute on account of personal bonafide need of the petitioner? OPP (issue framed as per the direction of the Hon'ble High Court)*
- 6. Whether the respondent is liable to be evicted from the tenant premises on any of the above said ground? OPA*
- 7. Relief.”*

Six witnesses were examined by the landlord including the wife and son as AW-5 and AW-6, whereas similarly six witnesses were examined by the petitioners.

Keeping in view the fact that the rent had been tendered the said issue was decided in favour of the tenants.

On the issue of subletting, it was found that the tenant was visiting Calcutta in connection with the handloom business and respondent had not ceased to occupy and there were three persons

including the son of the petitioner No.1 in occupation.

Similarly under issue No.3, it was held that wooden work like manufacturing of cots and preparing of legs of cots was part and parcel of handloom business. Once the said fact had been admitted by the witnesses of the landlord, there was no change of user as such.

Under issue No.4, the onus to prove was upon the original applicant, in view of the fact that the landlord had died and resultantly the matter was adjudicated upon the issue No.5, which was framed, once the matter was remanded from this Court.

The deposition of respondent No.2 was taken into consideration and the fact that he had done his Engineering Course from Thapar Institute of Engineering & Technology, Patiala and also done his PG Diploma and Business Management Course in the year 2003 from the Birla Institute of Management and Technology, Greater Noida. It was noticed that he was doing field job of the bank in corporate branch and he had no promotion prospects. Merely because he was settled at Panchkula, which was also admitted by his mother, the bonafide requirement as such could not be ruled out. Reliance was placed upon the judgment in '*Sarla Ahuja Vs. United India Insurance Company Ltd.*' 1998 (8) SCC 119, *Maganlal Vs. Nanasaheb* 2009 (1) RCR (Rent) 16 and '*Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde & another* 1999 (1) RCR (Rent) 508 for the said proposition and keeping in view the tenant cannot dictate the terms to the landlord, the eviction was duly ordered on that ground.

Counsel for the petitioner, accordingly, has raised the argument that the genuineness and bonafide requirement of the legal heirs of Hans Raj Kaushal is not liable to be accepted. It is submitted that he is working at Panchkula, which is more than 200 Kms away from Pathankot and therefore, it is not possible for him to start any business as such at the said premises.

The argument merely, because the son of the original landlord is employed with the bank and at present earning reasonable amount and he could not as such start his business in the premises in dispute is liable to be rejected.

As noticed, the matter was remanded back, thereafter, the said persons have stepped into witness box to depose about Rajesh Kaushal's requirement. It is not that denied he is a stranger as such to the town of Pathankot. It has come on record that the mother Bimla Devi belongs to Pathankot as she has share in the residential house left by her father. After the death of her father, the amount of rent has been collected by her brother, therefore, the family is not a stranger as such to Pathankot and that they would not go to do any business at Pathankot cannot be accepted. This aspect has also been noticed by the Appellate Authority. The presumption is in favour of the landlord, in case the property is rented out to some other person or sold out after eviction, the tenant can always approach the Rent Controller for the necessary relief.

The Supreme Court while while dilating on the issue of bonafide requirement of the landlord in *Sarla Ahuja (supra)* held that the

requirement of landlord for occupation of the tenanted premises must be bonafide and the Rent Controller shall not proceed on the assumption that requirement is not bonafide. 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) Supreme Court Reporter 1260**, it was held that the bonafide 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 bonafide. 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.

It is settled principle that this Court is not sitting as a Court of second appeal which would re-examine the evidence for the third time. The said view has been laid by the Constitutional Bench of the the Apex Court in ***'Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh'* 2014 (9) SCC 78**. The relevant observations read as under:-

“45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High

Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

The said view has been followed and reiterated in '**M/s Boorugu Mahadev & Sons & another Vs. Sirigiri Narasing Rao & others'** (2016) 3 SCC 343 wherein the High Court had interfered with the findings of the fact and the reasoning was held to be not justified in view of the law laid down. The relevant observations read as under:

*“21. Likewise, when we peruse the impugned order, we find, as rightly urged by the learned counsel for the appellants, that the High Court did not keep in mind the aforesaid principle of law laid down by the Constitution Bench in the case of **Hindustan Petroleum Corporation Ltd. (supra)** while deciding the revision petition and proceeded to decide the revision petition like the first appellate Court. The High Court as is clear from the judgment probed in all the factual aspects of the case, undertook the appreciation of whole evidence and then reversed all the factual findings of the appellate Court and restored the order of the Rent Controller. This, in our view, was a jurisdictional error, which the High Court committed while deciding the revision petition and hence it deserves to be corrected in this appeal. In other words, the High Court should have confined its inquiry to examine as to whether any jurisdictional error was committed by the first appellate Court while deciding the first appeal. It was, however, not done and hence interference in this appeal is called for.”*

Resultantly, keeping in view the above, this Court is of the opinion that there is no scope for interference in the well reasoned orders passed by the authorities below. Accordingly, the present revision petition stands dismissed.

MARCH 21, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

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