

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

**Civil Revision No.3664 of 2017  
Decided on : 19.05.2017**

B.S. Jattana

... Petitioner

Versus

Group Captain Gurpreet Singh Sandhu and another

... Respondents

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

Present : Mr. ADS Jattana, Advocate  
for the petitioner.

Mr. V.K. Sachdeva, Advocate  
for the caveator/respondents.

**G.S. Sandhawalia, J. (Oral)**

The petitioner-tenant challenges the concurrent findings of eviction passed on the ground of bonafide requirement by the Rent Controller, Chandigarh on 17.11.2015 and on 31.03.2017 by the Appellate Authority, on account of the fact that the premises are required by the daughter of the landlord, who had completed her BDS Course and wants to settle down in Chandigarh, while the landlord is an serving officer of the Indian Air Force.

The premises were also required for settling down the wife and the younger daughter who is pursuing her education at Bangalore. It has been further averred that in the eviction petition that the petitioner who is serving at the time of filing the petition was posted at Command Hospital (Air Force), Bangalore wants to settle down in Chandigarh after his retirement.

Counsel for the petitioner has agitated the issue that one of the rent note dated 15.03.2006 (Annexure P-1) *inter se* the parties as such had been forged and the purpose was to conceal another property, since the earlier rent note w.e.f. 01.12.2001 showed the address of another premises and, therefore, eviction should not have been ordered by the Rent Controller.

A perusal of the paper-book would go on to show that the case had been set up by the landlord that the petitioner had been inducted as a tenant in the year 2000 for the entire ground floor and subsequently vide rent note dated 15.03.2006 (Annexure P-1), the rent was enhanced for a period of 11 months and the rate of rent was Rs.16,000/- per month and there was an increase clause of 5% w.e.f. 01.1.2007. On account of default in payment, the petition was filed claiming the arrears upto June, 2011 and also for the bonafide requirement on the ground that landlord was serving in the Air Force and posted at Command Hospital (Air Force), Bangalore. The premises were required for his wife and for his daughter who had completed her BDS and wanted to start her dental practice and wanted to settle down in Chandigarh. The requirement was also for younger daughter, apart from his own need after his retirement.

In the reply to the eviction petition, the factum of the tenancy was admitted and it has been submitted the rate of rent was Rs.13,000/- and it had been enhanced to Rs.16,000/- per month, but the rent noted dated 15.03.2006 was denied and the increase clause also. The rent had been paid upto June, 2011 and, thereafter, the landlord had not accepted

the rent and the alleged balance amount was also not due. It was denied that the petitioner was posted at Bangalore and his job is transferrable. It was also denied that his daughter had completed BDS and required the premises.

It is to be noticed that before the Rent Controller apart from the landlord examining himself has also examined his daughter Dr. Tasneem Sandhu as PW-2, whereas, the the petitioner examined as many as five witnesses including the handwriting expert Dr. Jassy Anand as RW-1.

The ground of arrears of rent was never pressed and only the ground for bonafide requirement was pressed. Keeping in view the settled principles that the landlord is the best judge of his requirements and taken into account the judgment of the Apex Court in ***Sarla Ahuja Vs. United India Insurance Company Ltd. 1998 (8) SCC 119, Raghunath G. Panhale Vs. M/s Chagan Lal Sudarji and Company 1999 (2) RCR 485*** and in ***Magan Lal son of Kishan Lal Godha Vs. Nanasaheb son of Udhaorao Gadewar 2009 (1) RCR (Rent) 16***, the Rent Controller has directed the eviction.

The said order has also been as noticed upheld by the Appellate Authority by noticing that though the claim was that the daughter was employed in Delhi but she has no reason not to shift to Chandigarh and the fact remains that it was her intention and preference which has to be taken into consideration and the tenant is nobody to dictate the terms to the landlord. The issue of the forgery of the

document and reliance upon the opinion of the handwriting expert was also rightly repelled on the ground that once the issue of increase clause and the issue of arrears of rent had not been pressed, the issue of forged and fabricated document was of no relevance. The said fact is relevant, keeping in view the fact that the relationship of the landlord and tenant stood admitted.

It has been further pointed out that the landlord is to retire in January, 2018. Counsel for the caveator/respondent was gracious enough to contend that the tenant can continue to remain in the premises till 31.12.2017, but the said offer was not acceptable to the counsel for the petitioner-tenant, who wants that the matter should be decided on merits.

The arguments which have now been raised that there is another property as such and reference is made to the earlier rent agreement to show the address of another premises at Chandigarh is also of no consequence.

A specific plea had to be taken by the petitioner in the written statement that the mandatory ingredients had not been pleaded. The tenant was well aware that the defence as such has to be taken, so the landlord can be put to notice regarding the same and he can file his counter to the same. Neither any application for amendment of the written statement had been filed nor any fact has come forth in the form of cross-examination on the record to show that the landlord had another property in the urban area and, therefore, the arguments that the landlord owned sufficient accommodation, apart from the tenanted premises, is

without any basis.

The present case is a classic case where a serviceman, who is serving the Armed Forces and requires the premises at the fag end of his career and wants to settle his children is being deprived of the said necessity and is forced to litigate for a period of almost 7 years and the presumption which has been held by the Apex Court to be presumed to be correct in favour of the landlord is unnecessarily being doubted.

The Apex Court in ***Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta 1999(3) SCR 1260*** has 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 two 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.”

Resultantly, this Court is of the opinion that the findings recorded by the Courts below are do not suffer from any procedural infirmity or illegality, which would warrant interference by this Court under the revisional jurisdiction.

The Constitutional Bench of the Apex Court in **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh 2014 (9) SCC 78** has held that this Court is not sitting as a Court of second appeal. 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.*

Accordingly, there is no merit in the present revision petition

and the same is dismissed in limine.

MAY 19, 2017  
Naveen

(G.S. SANDHAWALIA)  
JUDGE

|                            |        |
|----------------------------|--------|
| Whether speaking/reasoned: | Yes/No |
| Whether Reportable:        | Yes/No |