

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 10.08.2017****CR No.4375 of 2013 (O&M)**

Sandeep & another

...Petitioners

Vs.

Janak Dulari & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. S.S.Kharab, Advocate, for the petitioners.

Mr. Sandeep Verma, Advocate, for the respondents.

RAJIV NARAIN RAINA, J.

The petitioning tenants are the respondents in the eviction proceedings and are presently in revision challenging the order dated 28.05.2012 passed by the Rent Controller, Panipat under the Haryana Urban (Control of Rent and Eviction) Act, 1973 and the order dated 07.02.2013 passed by the Appellate Authority, Panipat affirming the findings recorded by the Rent Controller. They have been evicted from the tenanted premises.

The respondents as landlords filed eviction petition under Section 13 of the Act before the Rent Controller, Panipat on the ground of personal necessity to regain possession of their property let out. The eviction was sought from the tenanted shop, marked ABCD as shown in red colour, situated in Mohar Singh Chowk, Panipat, fully described in the head note of the petition.

The tenanted shop forms part of a residential house. In 1975, late Kasturi Lal constructed four shops in his residential house facing the public road. The landlords are family members of late Kasturi Lal. The

present tenants took the shop on rent in March, 2006 at the rate of `2000/- per month, besides liability to pay house tax at the rate of 12.5% for the area in occupation. Electricity charges were also to be paid by the tenants for use of electric connection.

Apart from personal necessity, the landlords also sought eviction on ground of non-payment of rent, house tax and electricity charges unpaid since 01.10.2006; still further, that the tenants were creating nuisance by allowing strangers to use the premises for drinking alcohol. Pursuant to a complaint made to the Superintendent of Police, Panipat, they were *challaned* under Sections 107/151 Cr.P.C.; that the building was residential in nature and the shops formed an integral part of the residential building which did not change its nature as primarily residential; the landlords' family had grow over a period of time and comprises eight members.

The widow of late Kasturi Lal was 77 years old when the rent application was filed. She had a knee problem and the medical doctors advised her against climbing stairs to reach the first storey of the building. Both the sons of late Kasturi Lal, namely, Vijay Gulati and Rajesh Gulati, are married and were raising their families in the same quarters. One of the sons of Vijay Gulati – petitioner No.2 is physically unfit and needs a separate room for his personal care. The family is growing and their children need separate rooms for study. They were virtually squeezed in possession of only two rooms. They have no place to accommodate relatives and visitors if they call on them. Thus, they want to convert and assimilate all the four shops including the demised shop into the residential house so as to accommodate the growing family. They swore they do not own any other residential building in the urban area of Panipat and neither have they

vacated any residential building without sufficient cause in the urban area of Panipat.

The tenants resisted the petition pleading that the landlords only wanted to hike the rent; tenants who ran a cable business from the demised shop premises supplied two cable connections at the rate of `250/- per month per connection to the landlords. The agreed rent was not `2000/-, but only `400/- per month. They cited previous litigation filed by them by way of Civil Suit No.845 of 2009 for permanent injunction, which was decreed in their favour on 09.09.2009 to the effect that they would not be dispossessed except in accordance with law. This was on a statement of the landlords. The present eviction petition is a counter blast to the civil suit.

The Rent Controller, Panipat has accepted the plea of bona fide need of the landlords to regain possession of their shop and ordered eviction. In appeal, the Appellate Authority, Panipat has agreed with the findings recorded by the Rent Controller and held that the bona fide requirement of the landlords stands duly proved on record. The accommodation available with the landlords, as shown in the site plan, is not sufficient to meet the needs of a family of eight members. The landlord is the best judge of his personal requirements and a tenant cannot dictate terms to the landlord. Besides, the rent tendered by the appellants was short. The desire of the landlords is to include all the four shops in the residential house to accommodate the large family and there was nothing wrong in this. The Appellate Authority has held the need to be bona fide. Provisional rent as assessed by the Rent Controller vide order dated 11.06.2010 along with interest and costs thereon already stands tendered by the tenants, the present petitioners. The Rent Controller did not enter into the ground of non-

payment of arrears of rent or on the ground of public nuisance. To that I have nothing more to add.

In Harbilas Rai Bansal Vs. State of Punjab, 1995 (2) RCR (Rent) 672, the Supreme Court has authoritatively held that the ground of personal necessity is equally applicable to both residential and non-residential buildings. Thus, the plea that the demised premises is a commercial property and no ejectment on the ground of personal bona fide need of the landlords can be ordered is an argument which has been rightly rejected by the Appellate Authority. There is sufficient evidence by way of deposition of witnesses produced by the landlords that there are indeed eight family members and the shop on the ground floor is required for personal residence.

The Appellate Authority has noticed the law in Sarla Ahuja Vs. United India Insurance Company, (1998) 8 SCC 119, to conclude that the Rent Controller should not proceed on the assumption that the requirement of the landlord was not bona fide and that the tenant could not dictate to the landlord as to how he should adjust himself without getting possession of the tenanted premises. It has come in evidence that the non-filing of the ejectment petition against the other tenant, namely, Ram Phal would make no difference since landlords have pleaded that Ram Phal has agreed to vacate the shop in his possession of his own. The other two shops are already in their possession, as they are vacant. The expression 'for his own use' includes use of family members of the landlords, who are dependent upon him as well as the family members on whom the landlord is dependent. Suitability of premises is not for the tenant to object to, as the landlord is the best judge of his need.

If the petitioners have an apprehension that on eviction the premises will be let out at higher rate and that landlords have no intention to use the shop in dispute for their own occupation, it is misconceived and cannot be accepted, as the Appellate Authority rightly asserts. There is provision under Section 13(6) of the Haryana Rent Act that tenant can always apply to the Rent Controller for restoration of possession if process of law has been abused. When there is adequate safeguard provided in the Haryana Rent Act itself, then the petitioners can always avail that right in case of breach of law.

Consequently, I agree with the reasoning adopted by the Rent Controller, Panipat and the Appellate Authority, Panipat and find that there is no substance in this petition.

Accordingly, the petition is without merit and is ordered to stand dismissed. Needless to say, with the dismissal of the petition, the stay granted vide order dated 11.12.2013 stands vacated.

The petitioners are directed to handover the vacant possession of the demised premises to the landlords peacefully and to pay the outstanding arrears of rent, house tax and electricity charges, if any, to the landlords on or before 15.09.2017.

10.08.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

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