

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.497 of 2013
Reserved on: 01.06.2017
Date of decision:09.08.2017

Radha Kishan

....Petitioner

Versus

M.P.Vishnoi @ M.P.Bishnoi

...Respondent

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

Present: Mr.Arun Jain, Sr.Advocate
with Mr.Arn timer Sood, Advocate, for the petitioner.

Mr.Kunal Mulwani, Advocate, for the respondent.

G.S. SANDHAWALIA, J.

The present revision petition has been filed by the petitioner-landlord, under Section 15(6) of the Haryana Urban (Control of Rent & Eviction)Act, 1973 (for short, the 'Act'), aggrieved against the concurrent findings of the Courts below, whereby his petition for eviction of the respondent on the ground of personal necessity, has been rejected by the Rent Controller, Panchkula on 14.06.2011, which order has been upheld by the Appellate Authority on 10.10.2012.

The ejectment on the ground of non-payment of rent from 01.02.2007 was conditionally ordered by the Rent Controller by holding that the rate of rent was Rs.9000/- per month instead of Rs.24,500/- as claimed by the petitioner-landlord. The ground of personal necessity was rejected on the ground that the son of the petitioner was employed and residing at Shimla and he was not residing along with the landlord and the daughter was also married and staying separately. The house in which the landlord was residing was a three-storey house and therefore, the need, as such, was held not to be *bona fide* and genuine and since he had rented out the first and second floors of House No.362, Sector 9, Panchkula, in the same urban area. Similarly, the

ground of nuisance, on which the eviction was sought that the tenant was keeping dogs and letting them loose upon the landlord, it was held that there was no pleading that there was anybody in the neighbourhood who was being disturbed and neither any such neighbour had been examined.

As noticed, the findings have been upheld by the Appellate Authority, with directions to make payment @ Rs.9000/- along with interest @ 12% per annum.

A perusal of the record would go on to show that it was the case of the landlord that he was a retired Government employee and a senior citizen of 80 years of age and residing along with his son and family in a 10 marla house with both his son and daughter's family. The house in question was a 2 kanal house, bearing House No.467, Sector 6, Panchkula, which had been rented out vide agreement dated 01.08.2006 and consisting of 5 bedrooms with attached bathrooms, apart from kitchen, store, drawing and dining room. One kitchen and one store on the ground floor was retained by the petitioner and he had kept his articles in the said store and only one kitchen and store had been let out. The rent was settled @ Rs.24,500/- for a period of 11 months till 30.06.2007 and was subject to enhancement @ 7.5% per year. Resultantly, enhanced amount of rent @ Rs.26,337/- was claimed after 01.07.2007 and rent was only paid upto 01.02.2007 and not thereafter. It was further pleaded that one Vikas Sheokand had also taken one room set with kitchen and bathroom on the first floor, who was a driver of the respondent and separate tenancy was created qua him. The respondent used to pay the rent for the said person

also. The rent was not paid for the month of February, 2007 onwards and he issued cheques of Rs.10,000/- and one of Rs.6000/- dated 06/07/08.03.2007. The post-dated cheques were issued in February, 2007 and request had been made that they may be presented in the end of May, 2007. The said cheques were not encashed when deposited, as the payment had been stopped and were returned unpaid by the banker. An assurance had been held out that all the arrears would be cleared and that he wanted to vacate the house but neither he had vacated the house nor paid the arrears. The landlord was threatened that he would be got bitten by his dogs if ever he entered the house and he had also taken over the possession of one kitchen and one store and the articles kept in the kitchen and store on the ground-floor.

Resultantly, arrears of rent were claimed @ Rs.24,500/- from 01.02.2007 and from 01.07.2007 @ Rs.26,337.50, apart from local taxes. As noticed, the ground of nuisance was raised on the ground that the dogs would be let loose upon the landlord if he entered the premises and he could also not inspect the premises and the premises of the kitchen and the store and therefore, the ground of nuisance was also pleaded. On the ground of personal necessity, it was pleaded that the landlord was residing at a 10 marla house, bearing No.392, Sector 9, Panchkula and his son was a Doctor who was also residing along with his wife and a minor son. The daughter was also residing in the portion of the same house with her husband and the minor daughter. The son-in-law was posted at Patiala, to which he was a daily commuter and the relations between the son and

daughter had become sour and he required the premises for his daughter and her family comprising of husband and minor daughter. It was further pleaded that the brother of the petitioner had also died leaving behind his widow-Pushpa Devi, who was residing with the petitioner. The accommodation in the 10 marla house was not sufficient for the personal residential use and the premises were required for the family. The family members had not vacated any such residential accommodation in the urban area of Panchkula without sufficient cause. Allegations were also made that the house in question was damaged and resultantly, eviction was sought.

Initially, respondent was proceeded against *ex parte* on 20.05.2008 and the landlord examined 3 witnesses and closed his evidence. The case was put up for *ex parte* arguments on 29.07.2008 and thereafter, adjourned to 28.08.2008, on which date, an application was filed for setting aside the *ex parte* order. On the consent of the landlord and on account of the fact that he was of old age, the petitioner requested that the case be decided expeditiously and resultantly, the *ex parte* order was set aside, subject to deposit of Rs.1000/- as costs.

Thereafter, written statement was filed by the respondent, taking the plea that he was a tenant @ Rs.9000/- per month and he had paid the rent upto July, 2007. He had advanced a sum of Rs.8 lakhs to the petitioner on 02.08.2007. The interest payable was liable to be adjusted in the rent payable and the tenancy was to continue. An affidavit regarding the payment was alleged to have been executed and it was his case that

after 3 months, the landlord started to threaten him and disconnected the water and electricity connection and therefore, he had filed a suit for permanent injunction on 28.11.2007, which was pending in the Court of Civil Judge (Sr.Divn.) Panchkula. It was alleged that the tenant was occupying the entire ground-floor and it was incorrect that the kitchen and store was ever in possession of the petitioner and that the premises were let out for 11 months. The enhancement clause was also denied and the water-electricity charges were to be paid by the tenant and have been duly paid. The interest element was to be adjusted against the rent payable by the respondent every month and resultantly, the rate of rent, as such, was denied. The factum of unlocking the kitchen and store and extracting the articles, was denied and the ground of personal necessity was repelled on the ground that the landlord was residing alone in his own right as owner in House No. 362 Sector 9, Panchkula and he did not require the house in question for his personal necessity and had sufficient accommodation in the urban area of Panchkula. His son and daughter-in-law were Doctors and presently posted at Shimla and the daughter was residing along with her husband at Patiala. The son-in-law was living in separate house at Panchkula and there was no dependency, as such. The petitioner was residing alone on the ground-floor of a triple-storey house of which he had recently rented out the first and second floors. The fact that widow of one of the brother of the petitioner was staying with him, was also wrong and therefore, there was sufficient accommodation available with him for his requirement. Similarly, other allegations, as such, were denied regarding

damaging the house in question or any part, as such.

The following issues were framed by the Rent Controller on 10.10.2008 and thereafter, vide order dated 12.11.2009, the additional issues were framed, as under:

1. Whether the respondent is liable to be ejected from the demised premises on the grounds stated in the petition?

OPP

2. Whether petition is not maintainable and petitioner has no locus standi to file the present petition? OPR

2A. Whether the petitioner has concealed the true and material facts from this Hon'ble Court and the present petition is liable to be dismissed on this ground? OPR

2B. Whether the rent agreement dated 1.8.2006 is result of forgery and tampering? OPR

3. Relief.

The petitioner examined as many as 5 witnesses and thereafter, examined himself again in rebuttal, apart from examining Sumit Arora and Manjinder Kaur, as PW-7 & PW-8, respectively. The respondent had examined as many as 5 witnesses.

The Rent Controller, as noticed, rejected the case of the landlord that the rate of rent was Rs.24,500/- per month, on the ground that the stamp paper of the agreement dated 01.08.2006 (Ex.P-1) had been purchased on 15.09.2006 and the date of attestation was 24.10.2006. The attesting witnesses had not been examined and neither the rent agreement which had been exhibited as Mark-X, which was of the same date and was purchased on 18.07.2006 had been denied by the respondent. His signatures on the rent agreement, the same having been proved by

examining the handwriting expert, PW-7, who had given his opinion that the agreement bore the signatures of the respondent, would not mean the execution of the same. The 3 cheques which were bounced amounted to a sum of Rs.26,000/- and the rate of rent claimed was Rs.24,500/-, which was not properly explained. The argument that on an earlier occasion, the premises had been leased out at Rs.20,000/-, lease deed of which had been exhibited as Ex.P-11 and prior to that, on 01.04.1997 @ Rs.17,436/- was also rejected. Similarly, another agreement executed with Mr.Akshay Manchanda on 01.09.2005 was also rejected as the date of purchase of the stamp paper was 06.08.2005, mainly on the ground that it was not registered.

It was further held that no Income Tax returns had been placed on the file and therefore, the important documents had been withheld and an adverse inference had been drawn. The son and daughter were not witness to the agreement and therefore, the rate of rent was held not to be proved @ Rs.24,500/-. The denial of the rate of rent as such and as held out at Rs.9000/- per month being admitted by the tenant was, thus, accepted. It was held that the affidavit on the basis of which the amount of Rs.8 lakhs was actually loaned out, had not been proved. The report of the handwriting expert of the tenant, as such, was discarded that the same bore the signatures of the landlord and the opinion of the expert of the landlord was accepted. The affidavit (Ex.R-3) was allegedly executed on a stamp paper and the stamp vendor had not been examined, neither the Notary Public and as to how the amount of Rs.8 lakhs had been advanced and

drawn from where, had not been shown. Resultantly, the amount of Rs.9000/- was held to be payable as monthly rent and a conditional order of ejectment was passed to make the payment, as noticed.

On the issue of *bona fide* requirement, it is to be noticed that ejectment was denied on the ground that the son and daughter-in-law were posted in Himachal and the son-in-law was posted at Patiala and therefore, it was held that the petitioner was residing alone on the ground-floor of the triple storey house and had leased out the first and second floors.

The findings recorded by the Courts below are liable to be interfered with, as they are perverse and based on misreading of the pleadings and evidence on the record and they have failed to take into account the fact that it was the grouse of the respondent-tenant that the rate of rent was Rs.9000/-, on the strength of the affidavit executed on 02.08.2007 (Ex.R-3). This stand was taken initially before filing of the eviction petition and the suit for permanent injunction was dated 28.11.2007 whereas the eviction petition was filed later, only on 05.02.2008. In the written statement filed on 23.08.2008 by the respondent-landlord also, in the said suit, it had been specifically averred that it was a forged and fabricated document and that he had filed the petition under Section 13 of the Act, for the eviction of the plaintiff. In the written statement, he had relied upon the rent agreement dated 01.08.2006 (Ex. Mark-A) to claim that the rate of rent was not justified. On earlier occasions, rents had been fixed with 3 independent tenants with much higher rates, as has been noticed, between Rs.17,436/- upto Rs.21,500/-.

Even the Courts below rejected the rent agreement dated 08.06.2007 (Annexure R-4) projected by the tenant, to hold out that the affidavit had not been signed by Radha Kishan and was result of fraud and forgery. In such circumstances, once it was the stand of the tenant that in the present case also, the rate of rent was Rs.9000/- and merely because there was a admission, as such, the Rent Controller fell into an error by holding out at the said rate and having accepted it, as such.

It is to be noticed that the house in question is a 2 kanal house having over 5 bedrooms and 2 kitchens apart from the other rooms which had also been occupied by the Driver of the respondent. An earlier rent agreement dated 01.04.1997 (Ex.P-13) executed almost 10 years earlier between the landlord and the Principal of St.Xaviers' High School had also been placed on record to show that rent had been settled at Rs.17,436/- for a period of 11 months. The same had been witnessed by Arvind Sethi, the son of the petitioner, who had been examined as PW-2, who had deposed regarding the same and his evidence had wrongly been ignored, as such, by the Courts below whereby the landlord had effectively proved the rate of rent with an earlier tenant. The agreement of lease (Ex.P-13) would go on to show that it was executed with the Principal Shri George S.Shear and Arvind Sethi was a witness. PW-5-Shri R.N.Dhar, Office Superintendent of St.Xavier High School, Sector 20, Panchkula has been examined to prove that the school was running in the said house before the construction of the school building at Sector 20 and that Shri George S.Shear was the School Principal, who had authorized him to give the statement and the authority

letter was exhibited as Ex.P-12. He identified the signatures of the Principal on the agreement of lease. Similarly, Ex.P-11, executed on 01.04.2005, entered into between one Ramesh Kumar Singla was also placed on record and the said tenant was examined as PW-4, to prove that the rate of rent was Rs.22,000/- at that point of time. A perusal of the agreement of lease dated 01.04.2005, the stamp paper of which was purchased on 18.01.2005, would go on to show that the rate was settled @ Rs.20,000/- per month, for 6 bedrooms, drawing room, dining room, one kitchen, one lobby and one store, for a period of 11 months. Accordingly, PW-4, Ramesh Kumar Singla had stepped into the witness-box and deposed that he had taken the property on rent @ Rs.20,000/- per month and admitted that an agreement was scribed between him and the petitioner-landlord and the same had been taken for the purpose of his son who had to run a business. Both lease agreements (Exts. P-11 & P-13) were not registered but were got executed on stamp paper which had been purchased on 18.03.2005 and 02.07.1997 and thus, were executed well before the litigation commenced in the present case in the year 2010 and had been wrongly discarded by the Courts below.

It was a categorical averment of the landlord that the 3 cheques, total amounting to Rs.26,000/- were in lieu of the rent which pertain to the premises in question including the premises which had been rented out to the Driver. Resultantly, the fact that the cheques which bounced, would go on to show that there was non-payment of the rent which fact was not explained by the respondent. Evidence has, thus, come

on record that the premises had been leased out at a much higher rate than the one which has been held out by the authorities below. The authorities below were not justified in holding out that the landlord was not entitled for the payment of rent @ Rs.24,500/- from 01.02.2007. Resultantly, it can be safely held that the findings, as such, recorded on the rate of rent, by the authorities below, are not justified and are liable to be interferred with.

Both the authorities below came to the conclusion that the agreement dated 08.06.2007, which was exhibited as Ex.R-4, whereby the tenant had sought to claim that the rate of rent was Rs.9000/- per month, was a case of copied-forgery at points D-1 to D-3. Similarly, the signatures on the affidavit dated 02.08.2007 whereby the landlord had allegedly admitted that he had taken a sum of Rs.8 lakhs in advance and he had signed at points Q-1 and Q-2 were also held to be the cases of copied-forgery by the expert-Sumit Arora, which has been accepted by tenant and not been challenged, as such, by him, at any stage. The suit was, accordingly, cleverly withdrawn on 02.01.2001, before any such findings could come on the issue of forgery. A perusal of the original rent agreement dated 01.08.2006 (Mark-X), the stamp paper of which was purchased on 18.07.2006, would go on to show that it pertains not to the ground-floor but to the first-floor, consisting of 2 bedrooms and 2 bathrooms whereas Mark-Y which is of even date and the stamp paper of which was purchased on 18.09.2006, which was attested on 24.10.2006, would go on to show that it was for the ground-floor, consisting of 5 bedrooms and the rate of rent was fixed @ Rs.24,500/-.

The landlord, in his rebuttal evidence, had explained that on 01.08.2006, the rent agreement (Mark-X) was inadvertently typed for the first-floor but the tenancy was to be of the ground-floor and there was no construction on the first-floor, which was only a annexe with the attached toilet and kitchen. Resultantly, a fresh agreement had been executed (Ex.P-1) Mark-Y, and the same date was written as the date of execution, being the date of the tenancy of the ground-floor which had initially commenced.

Thus, due explanation had been given regarding the earlier agreement which came on the record, which pertained to the first-floor wherein no construction had been done and thus, the subsequent stamp paper which was purchased on 15.09.2006 and the date was incorporated as 01.08.2006, was justified which fact has been ignored by the Courts below.

On the issue of personal necessity also, it is not disputed that the petitioner examined himself and his son-Arvind Sethi and daughter-Ranju Sethi, for whom the *bona fide* necessity, as such, was set up. Merely because the son and daughter-in-law were serving in Himachal Pradesh, would not be, as such, a ground to decline eviction on the ground of *bona fide* necessity, once it was the specific case that the premises were required for his own purpose and for his larger family which included the widow of his deceased brother. The Courts below were not justified in substituting their viewpoint that the premises which were in occupation of the petitioner was sufficient for his *bona fide* requirement.

As discussed above, the petitioner has been non-suited on the ground that he was in occupation of sufficient accommodation in the same urban area of a house measuring 10 marla and which is triple-storied. The first and second floors had been let out by him and therefore, the requirement was not *bona fide* and the fact that his son and daughter-in-law were posted in Himachal and that he had contributed to the construction whereas that was the admission made by his son in the cross-examination and the requirement was, accordingly, held not to be sincere and honest. The material pleading, as such and the ownership of the house in which the petitioner was in possession has also been lost sight by the Courts below. It was the categorical case of the petitioner that he was residing in the house along with his daughter and family. The defence of the respondent-tenant was that the petitioner was residing in the house in Sector 9, in his own right as owner and he had rented out the first and second floors of the house. It is a matter of record that the house in Sector 9 was never owned by him but by his son. His son has specifically deposed that he had given the above-mentioned both portions on rent and this aspect has been ignored by the Courts below. The ownership element of the house in Sector 9 was never of the petitioner and this fact had also been elicited in the cross-examination of the landlord himself by counsel for respondent-tenant that the ownership of the premises was in the name of the son and it had never been in the name of the landlord. Therefore, an incorrect premise has been taken to hold it out against the landlord that since the first and second floors had been let out by him, therefore, the need was not genuine. The

son had specifically deposed that his uncle's wife was being looked after by his father and he and his sister along with their spouses were living together in the said house. The brother-in-law was commuting to Patiala and there remained a dispute in the house and his wife was compelling to live separately and it was for this reason they wanted to shift and the father required the tenanted premises. It was also clarified that at present he was transferred to Parwanoo and was earlier living at Shimla and was preparing for his Post-Graduate examination while staying in the house at Sector 9, Panchkula which had only 4 rooms. His sister was doing service in Chandigarh, being a Government teacher and it was on that account the additional accommodation was required. He clarified that he comes twice a week and stays at Panchkula. The daughter-Ranju Sethi, in her statement, had also deposed on the same lines that there was lot of difficulties in the accommodation that they were staying and thus, there remained a dispute with her brother and they had been compelled to shift to some other accommodation from the above-mentioned house. She had denied the factum of ownership also in the house at Sector 9, Panchkula by her father or that it was sufficient for the needs of the father and the brother. She had also further admitted that her brother and bhabhi come to Panchkula on weekends, though they were serving in Himachal.

Thus, from the statements of the witnesses of the landlord, it would be clear that the landlord, who has retired as a Deputy Director from the Department of Food & Supplies, in the evening of his life, is being denied the luxury of living in a comfortable environment. He has

specifically deposed that his daughter was posted in Chandigarh and she was living along with his family members and even the voter card of his daughter was prepared together with him at the address of the house located at Sector 9, Panchkula. Similarly, the ration card of his son was prepared at Sector 9, Panchkula and the son-in-law was commuting to Patiala. It is apparent that on account of shortage of accommodation, his daughter had moved out and is living separately during the litigation and the family has, thus, been denied the benefit of a spacious house on account of the stand taken by the tenant that the landlord is in occupation of sufficient accommodation and therefore, is not entitled to reside in his own house, which is against the settled principle that the tenant is not to tell the landlord as to how he is to live and that how much accommodation is suitable for him.

It is settled position that the landlord is the best judge of his requirements and it is not the concern of the Court to dictate as to how and in what manner he should live and prescribe the schedule for his use. It has also come on record that the son-in-law was commuting to Patiala and therefore, it could not be held that it was a mere wish of the landlord, who in the evening of his life, wanted to live a more comfortable life and needed more spacious accommodation owned by him. Even otherwise, there is sufficient protection granted in the Rent Act that in case the tenant is got evicted and the premises are not used for the purpose for which it was got evicted, the tenant can always get back the said accommodation.

The Apex Court in **Sarla Ahuja Vs. United India Assurance**

Company 1998 (8) SCC 119, has held that the Rent Controller shall not proceed with the presumption that the requirement is not *bona fide*. It is not for the Courts to dictate as to how the landlord can adjust himself. 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)."

Similar view was followed in *Atma S.Berar Vs. Mukhtiar Singh (2003) 2 SCC 3* where the landlord was an old man of 80 years of age and he had, at one point of time, wanted to shift to Canada. Relevant portion of the judgment reads 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 dent 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 besollicitous 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, keeping in view the earlier observations of the Apex Court in the **Prativa Devi Vs. T.V. Krishnan (1996) 5 SCC 353**, it was held that it was not the concern of the Court to dictate to the landlord as to in which manner he should live and whether he should reside in the accommodation of his own. The said view was followed by the Apex Court in **Siddalingamma Vs. Mamtha Shenoy 2001 (2) RCR 539**, keeping in view the earlier judgment in **Shiv Sarup Gupta Vs. Dr.Mahesh Chand Gupta (1999) 6 SCC 222**.

The conduct of the tenant is also to be taken into consideration on subsequent events, on which, it was pointed out by the counsel for the petitioner that the premises were lying locked and the tenant was not even staying there. Accordingly, vide order dated 22.05.2017, Shri Sunil Panwar, Advocate, who was present in Court, was appointed as Local Commissioner, to find out that whether it was occupied by the tenant or

not. The Local Commissioner had visited the premises on the same date at 5.40 pm and submitted his report. As per the report, he has clarified that even though the tenant was present, but 2 bedrooms could not be inspected as they were lying locked and the keys were allegedly with the servant who never came present, during the said period. It was alleged by the tenant that his household articles were present and the room was used by him. Another bedroom was only being used as a pooja room with some framed photographs of Gods and Goddesses pasted on the walls and some framed photographs placed upon a platform made from a slab of marble laid upon some bricks. A perusal of the photographs would go on to show that room was not even furnished in any manner. The third room also abutting the varandah of the drawing room was lying locked from outside and unused which would be clear from the photograph No.3. Similarly, the dining room was also lying vacant and the kitchen was not in use and was in a disarray, which would be clear from photograph No.5. A lady was found present at the back varandah who stated that she and her husband were caretaker of the house and employed by the tenant and also was staying with her son-Ghanshyam. The bedroom at the back was in occupation of the caretaker with one double bed and one single bed and another room at the back had a double bed with a refrigerator and pedestal fan and a small kitchen opening towards the lobby. The other 2 bedrooms in the rear portions were lying vacant and not in use and only some iron and tin boxes for storing household goods were lying, as per the photographs, which have been appended. The tenant also informed that his sons were studying

in Class IV and IX in a school at Delhi and were residing with their maternal grandmother and he was an agriculturist and he was also active in politics and keeps on traveling frequently between his village, Delhi and Panchkula and usually resides in the house except when he is not at Delhi or the village. Thus, from the said report of the Local Commissioner also, it would be clear that the premises are merely being looked after by the caretaker and the tenant is also not residing at the tenanted premises and only hanging on to protect his position and ensuring that the landlord is deprived of a better living accommodation.

Accordingly, this Court is of the opinion that the Courts below have acted with material irregularity and illegality by not considering the material facts in its proper perspective which have come on record and failed to take notice of the conduct of the tenant who, on the basis of a forged document, has tried to reduce the rate of rent and put the landlord at a disadvantage and has been successful in denying him his rightful need of living in a better accommodation at the fag end of his life with his larger family, consisting of his brother's widow and his daughter's family. Accordingly, the findings of the Courts below are reversed, on both accounts, regarding the rate of rent, as noticed above and also on the issue of *bona fide* requirement.

Accordingly, the present revision petition is accepted and eviction is also ordered on the ground of *bona fide* requirement apart from the liability of the respondent-tenant to pay the rent at the rate of Rs.24,500/- from 01.04.2007 till 31.07.2017, within a period of two

months, after adjusting the balance of Rs.9000/-, which he was required to have paid.

09.08.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes