

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

C.R. No. 511 of 2017 (O & M)

Date of decision: 24.03.2017

Chuni Lal Chaudhary

....Petitioner(s)

Versus

Rakesh Bakshi

...Respondent(s)

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

Present: Mr. Vishal Aggarwal, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed under Section 15(5) of The East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') against the concurrent findings recorded by the Courts below whereby, ejectment has been ordered on the ground of bona fide requirement for use of the premises which is a shop in question, detailed in the head note of the petition. The Rent Controller, Pathankot had ordered eviction on 30.07.2014 whereas the Appellate Authority upheld the order on 18.01.2016.

Counsel for the petitioner has vehemently submitted that during the pendency of the proceedings which were initiated on 02.06.2006, Akhil Bakshi has let out a property and referred to sanction dated 20.01.2012 granted by the Election Department whereby rent is being paid by the District Electoral Office, Pathankot.

A perusal of the eviction petition would go on to show that the eviction petition was filed by the respondent through his wife, who was the General Power of Attorney taking the plea that the landlord was not keeping

well and the property was rented out to the petitioner in January, 2004 on payment of ₹350/- per month as rent for using the premises as a garage for parking his car. An attempt had been made to change the use as such and a civil suit for permanent injunction was also filed in which an interim injunction had also been issued. Resultantly, eviction was sought on the ground of non-payment of rent w.e.f. 01.08.2004 and also for the use of the property in question for settling his son Akhil Bakshi, who was doing a Chartered Accountancy Course. It was specifically alleged that at the time the tenancy was created, the landlord was sure that his son would get a job but he was still unemployed and thereafter, he had cleared the first group of Chartered Accountancy exam and, therefore, wanted to start the consultancy in accountancy in the shop in dispute. The other son Nikhil Bakshi had been settled by opening a shop in part of the residential house near the shop in dispute. The shop in dispute was suitable for setting up the office and the landlord had not vacated any other shop in the area of Pathankot and did not have any suitable accommodation in the urban area of Pathankot for settling his son Akhil Bakshi. Thus, it would be apparent that the mandatory ingredients which are required under the 1949 Act have specifically been pleaded.

A perusal of the reply would go on to show that a dispute was raised on the fact that eviction petition had been filed through an Attorney and that the construction had been done by the tenant. The Attorney was not well conversant to the facts of the case and there was denial that eviction was liable to be ordered. The rent had been deposited in the Court which had also been accepted by the counsel. There was also bald denial that the premises was not required by the applicant for his bona fide personal

necessity. Thus, no specific ground as such or pleadings were ever taken that the landlord had any other property in the same urban area which were in his occupation which could be used by his son.

The argument which is now sought to be raised as such that there were other properties in possession is not tenable, specially keeping in view the fact that even during the pendency of the proceedings, an application for amendment under Order 6 Rule 17 CPC had been filed which was rejected by the Rent Controller on 01.02.2014 on the ground that the evidence had already been concluded by both the parties and it was fixed for further cross examination of RW-4 Chuni Lal. It is not disputed that the said order was never challenged, even though there was sufficient time as such with the tenant since the order of eviction was only passed on 30.07.2014. Therefore, the argument now sought to be raised that subsequent events are to be taken into consideration is without any basis. A perusal of the said order would go on to show that the amendment sought was qua the letting out to the District Election Office itself. Therefore, the argument which is now sought to be raised cannot be taken into consideration once the tenant had chosen not to challenge the said order which has become final inter se the parties.

Coming back on merits, the record would show that the wife of the landlord Nirmala Devi stepped into the witness box as AW-1 and also examined her son Akhil Bakshi as AW-2 for whom the premises were required. The draftsman was also examined. Since the rent had been tendered in court, the ground of eviction was as such decided against the landlord. It was also noticed that the tenant had been examined in chief but had never come forward to face cross examination and therefore, his

evidence was rightly rejected. The witness of the tenant Jugal Kishore, who was the Ex. Municipal Councilor, also admitted that the tenant was using the shop as a garage and the fact that Akhil Bakshi had passed B.Com and was doing his Chartered Accountancy Course. He also admitted that he was unemployed and wanted to do something in the shop in dispute. The landlord Rakesh Bakshi was not keeping good health and was bed ridden and, therefore, his wife had to prosecute the case. Resultantly, a finding was recorded that the premises were required for bona fide need of Akhil Bakshi.

The Appellate Authority has rightly noticed that once the wife had appeared as Attorney, her competency as such could not be challenged. The Apex Court in ***Man Kaur (dead) by LRs vs. Hartar Singh Sangha, 2010 (10) SCC 512***, has laid down the principles in cases of close relations where the husband and wife can depose in favour of each other because of their close relationship and, therefore, the need, specially in the present case, being of the son, the mother was competent to depose on behalf of her husband and, therefore, the objection which has been raised that it was on account that the landlord himself had not appeared is not well founded. It has already been noticed that the landlord himself was bed ridden and, therefore, could not come to the Court. The principles in *Man Kaur's case* (*supra*) read as under:-

“12. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about

the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those

different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."

Even otherwise, the requirement was for the son who has been duly examined as AW-2. The fact that some portion has been let out or the argument now sought to be raised that an office has already been opened of Chartered Accountancy and, therefore, the requirement is not bona fide is without any basis. The date of institution is the relevant date, which in the present case is in the year 2006. A decade has gone by since the eviction petition was filed. The son of landlord is not expected to sit idle to wait for the decision of the proceedings and, therefore, in case he has also set up office in another part of some building would not debar him as such to claim

eviction.

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 in limine.

24.03.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No