

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

Sr. No.120

Civil Revision No.5134 of 2017 (O&M)
Date of decision: 28.08.2017

Chunni Lal

....Petitioner

versus

Sham Lal and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

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

* * *

DEEPAK SIBAL, J. (Oral)

The respondent-landlord filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short the 'Act') before the Rent Controller, Bathinda, seeking therein the ejectment of the petitioner from the tenanted premises as described in the petition. Such eviction was sought on the grounds of non-payment of rent, bonafide personal necessity and subletting.

Respondent No.1-landlord had *inter alia* pleaded before the Rent Controller that the petitioner had neither paid nor tendered rent of the tenanted premises to him since 01.01.2007; the petitioner had illegally and unauthorizedly sublet/parted with possession of the tenanted premises in favour of respondents No.2 and 3 who are the petitioner's brother and nephew respectively; the petitioner himself had shifted to Delhi where he was well-settled and that the tenanted premises were needed by the landlord

the Punjab Road Transport Corporation for over 39 years, had retired from service in the year 2010 and was idle since then due to which he was getting depressed and frustrated.

On being put to notice, the petitioner *inter alia* submitted before the Rent Controller that he had vacated the tenanted premises in the year 1989 and had handed over vacant possession of the same to the elder brother of respondent No.1. Thereafter, the tenanted premises had been let out to respondent No.2-Krishan Lal who was the petitioner's brother.

Respondent No.2-Krishan Lal also filed a separate written statement on the same lines as the petitioner.

On 18.10.2014, the Rent Controller framed the following issues:-

- “i) Whether the applicant is entitled to the eviction of respondents as prayed for?OPP*
- ii) Whether the application is bad for misjoinder of parties?OPR*
- iii) Whether the applicant has no Locus-standi or cause of action to file the application? OPR*
- iv) Whether the application is not maintainable?OPR*
- v) Whether the petition is false and frivolous and vexatious?*
- vi) Relief.”*

A perusal of the afore-quoted issues shows that an issue whether the landlord was entitled to the eviction of the respondents had been framed. The onus to prove such issue was on the landlord. However, no issue had been framed with regard to the facts pleaded by the petitioner and respondent No.2 that the petitioner had vacated the premises in the year 1989 and had handed over the vacant possession of the same to the elder

the tenanted premises by the elder brother of respondent No.1. Therefore, the landlord filed an application before the Rent Controller for framing of additional issues which was allowed on 06.01.2016 and the following additional issues were framed:-

“1-A) Whether the disputed shop was vacated by respondent No.1 in the year 1989 as alleged?OPR

1-B) Whether the disputed shop was let out to respondent No.2 on rent of Rs.165/- per month, as alleged?OPR”

No challenge was made by the petitioner or respondent No.2 to the afore-referred order dated 06.01.2016 before any Superior Court. Respondent No.2 has still not challenged the same. However, on changing of his counsel, an application dated 13.05.2016 was filed by the petitioner for deletion of afore-quoted issues framed on 06.01.2016 as also for framing of additional issues. Through order dated 09.03.2017, the Rent Controller while declining the prayer of the petitioner for deletion of the issues framed on 06.01.2016, framed the following additional issues:-

“1.1 Whether there exists relationship of landlord and tenant between applicant and respondent No.1?OPA

1.2 Whether the respondent No.1 is in arrears of rent since 01.01.2007 as alleged by the applicant?OPA

1.3 If issue No.1.1 is proved, whether respondent No.1 sublet the tenanted premises to respondents No.2 and 3 without the consent of the landlord?OPA

1.4 Whether the shop in question is bona fidely required by the applicant for his own use or business?OPA”

Learned counsel for the petitioner submits that issues 1-A and 1-B framed on 06.01.2016 being a part of issues of 1.1 & 1.3 respectively as framed on 09.03.2017 are irrelevant and therefore were required to be deleted especially when the onus to prove issues 1-A and 1-B had been put upon the petitioner whereas the onus to prove issues 1.1 and 1.3 was on respondent No.1.

The submissions of the learned counsel for the petitioner do not deserve a favourable consideration.

The issues which are sought to be deleted were framed through order dated 06.01.2016. Such order was not challenged before any Superior Court by either the petitioner or respondent No.2. In fact, respondent No.2 has still not challenged the same. A perusal of the application filed by the petitioner for deletion of the issues framed on 06.01.2016 also does not show as to under which provision of law the same has been filed. It virtually seeks review of the order of the Rent Controller dated 06.01.2016. Neither any grounds for review of the order dated 06.01.2016 have been spelt out in the application nor any ground is made out.

Even otherwise, issue 1.1 as framed through order dated 09.03.2017, is whether there exists a relationship of landlord and tenant between the petitioner and respondent No.1 whereas issue 1-A as framed on 06.01.2016 is whether the tenanted premises were vacated by the petitioner in the year 1989. Both the issues are distinct. A decision on issue 1.1 would prove whether respondent No.1 was the petitioner's landlord. Such issue has been framed in the light of the pleaded case of the petitioner that in the year 1989 he had handed over the vacant possession of the tenanted premises to the elder brother of respondent No.1 and not to respondent No.1. Thus, the

petitioner had denied respondent No.1 to be his landlord. The onus to prove this issue was put on respondent No.1.

The decision on issue 1-A would go on to prove whether the petitioner vacated the tenanted premises in the year 1989 as specifically alleged by him. The finding on the issue whether the petitioner vacated the tenanted premises in the year 1989 would also throw light on the dispute between the parties whether after the year 1989 the tenanted premises were taken on rent by respondent No.2 or that the petitioner sublet the same to respondents No.2 and 3. Once this fact has been specifically pleaded by the petitioner the onus has rightly been put on him to prove the same.

So far as the issue 1-B framed on 06.01.2016 is concerned, it primarily pertains to respondent No.2, who has neither challenged the order dated 06.01.2016 nor the order dated 09.03.2017. Even otherwise, issue No.1.3 framed on 09.03.2017 is whether it was the petitioner who had sublet the tenanted premises to respondents No.2 and 3 and issue No.1-B as framed on 06.01.2016 is whether the tenanted premises was directly let out to respondent No.2 by the elder brother of respondent No.1 on a monthly rent of Rs.165/-. Further, issue 1.3 is dependent on the decision of issue 1.1 which has already been held to be distinct to both issues 1-A & 1-B.

It is clear from the above that though the petitioner is wanting to plead facts in his defence but seems to be reluctant in proving the same in the affirmative. The facts pleaded by him are not simple denials. Rather, through them he has sought to set up a case of his own. Therefore, the Rent Controller has rightly framed the issues and put the onus on him to prove them.

In view of the above, no merit is found in the present petition
and the same is hereby dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

August 28, 2017
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>