

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 117

CR-5184-2017 (O&M)

Decided on : 08.08.2017

Paramjit Singh and another

..... Petitioners

VERSUS

Sat Pal and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Rajan Bansal, Advocate, for the petitioners.

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DEEPAK SIBAL, J. (ORAL)

On 17.04.2014, the respondents-landlords filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 before the Rent Controller, Bathinda, seeking therein the eviction of the petitioners-tenants from a shop on the Ground Floor measuring 10' X 15'3" (approximately) forming part of building bearing M.C.No.4540-B, situated in Middu Mal Street, Bathinda (for short 'the tenanted premises').

The eviction of the petitioners was sought on the ground that the tenanted premises was needed by the respondents-landlords for their own use. The case set up by the respondents was that respondent No.2-Munish Kumar who was the co-owner of the tenanted premises, for the last several years had been employed as a salesman in M/s Walaiti Ram Satpal, Dhobi Bazar, Bathinda which was a kiryana shop. During the course of his service, he had gathered valuable experience of running a kiryana shop but he was not satisfied with the salary being given to him and for that reason as also for meeting the growing needs of his family he needed the tenanted premises to set up a kiryana shop therein. It was further pleaded that the aforesaid Munish Kumar, at one stage, in April, 2013 had left the employment of M/s Walaiti Ram Satpal and at that time had persuaded the petitioners to vacate the tenanted premises but when his efforts remained

unsuccessful as the petitioners demanded a hefty *Pagri* amount for vacating the tenanted premises, in September, 2013 he rejoined the employment with M/s Walaiti Ram Satpal. However, such re-employment was temporary in nature and only till the time the tenanted premises was vacated by the petitioners.

On appearance before the Rent Controller the petitioners denied the pleaded bonafides of respondent No.2-Munish Kumar for seeking the eviction of the petitioners from the tenanted premises. It was submitted that the above-said ground taken by Munish Kumar was only a camouflage; had been raised by him with malafide intention to deprive the legal rights of the petitioners; the respondents had been jointly carrying on the business in M/s Walaiti Ram Satpal for the last several years and that the story made up by respondent No.2 with regard to his employment therein, then leaving such employment in April, 2013 and rejoining the same in September, 2013 was nothing but a fabrication of facts.

On 18.10.2014 i.e. about three years ago, the Rent Controller framed the following issues: -

- “1. Whether the respondents are liable to be evicted from the disputed shop? OPA
2. Whether the applicants bona-fidely require the demised premises for their personal necessity? OPA
3. Whether the application is not maintainable? OPR
4. Whether the application is bad for non-disclosure of true description of demised premises? OPR
5. Relief.”

While the petitioners were in the process of leading their evidence, on 01.05.2017 i.e. after 2½ years of the framing of the above issues, the petitioners filed an application for framing of the following additional issues: -

- “i. Whether applicant was employed as salesman with firm M/s Satpal Walaiti Ram, Dhobi Bazar, Bathinda and he left his job in April, 2013? OPA (As alleged in para no.3(a) of eviction application).

- ii. Whether applicant joined as salesman with firm M/s Walaiti Ram Sat Pal, Dhobi Bazar, Bathinda in September, 2013? If so its effect? OPA (As alleged in para no.3(a) of eviction application).
- iii. Whether the application does not fulfill the requisite mandatory conditions for filing the present application? If so its effect? OPR
- iv. Whether the applicants have concealed true facts and have not come with clean hands? If so its effect? OPR
- v. Whether the application is false, frivolous, vexatious to the knowledge of applicants and deserves to be dismissed with special costs? OPR.”

As per the petitioners the above-quoted issues were required to be framed for the just and proper adjudication of the eviction petition. The same were being sought to be framed on the basis of facts pleaded by the respondents which they were required to prove after framing of the above issues.

The application was opposed by the respondents on the grounds that the issues now sought to be additionally framed at the instance of the petitioners were already covered by the issues framed earlier by the Rent Controller on 18.10.2014 and that there was no necessity for framing of any additional issues. It was further pleaded that the application was frivolous, vexatious and with the malafide intention only to delay the eviction proceedings.

The Rent Controller after considering the submissions raised by either party ordered the framing of the following additional issue: -

“4A. Whether the application is false, frivolous and vexatious to the knowledge of the applicants and the same is liable to be dismissed with costs? OPR”

So far as the other issues were concerned the application was dismissed, giving a cause to the petitioners to approach this Court through the present petition.

Learned counsel for the petitioners submits that the additional issues sought to be framed at the instance of the petitioners were based on the facts

pleaded by the respondents and that being so, through them the respondents were only being asked to prove the facts pleaded by them. It was further submitted that without framing of the additional issues, there would be no occasion to prove the facts as pleaded by the respondents which were essential for the just and fair decision of the dispute.

No merit is found in the above submissions made by learned counsel for the petitioners.

The petitioners seek the framing of additional issues to the effect whether respondent No.2 left his employer in April, 2013 and then rejoined in September, 2013; whether the eviction petition did not fulfill the required mandatory conditions as also whether the respondents had come to the court with clean hands.

The respondents have sought the eviction of the petitioners from the tenanted premises on the ground of personal necessity and while elaborating on that ground the respondents have pleaded that respondent No.2-Munish Kumar was a salesman in a kiryana shop and in that capacity had earned valuable experience of running a kiryana shop on the basis of which he sought the eviction of the petitioners from the tenanted premises so that he could run a kiryana shop in the same. The respondents have further pleaded that respondent No.2 at one point of time had left the kiryana shop to persuade the petitioners to vacate the tenanted premises but when the petitioners failed to favourably respond to his pleas and on the other hand demanded a huge amount to vacate the tenanted premises, he temporarily went back in the employment of the kiryana shop. Whether respondent No.2 at one point of time had left his employer and rejoined the employment are all facts which the respondents need to prove to show their bonafides because only if the need of the respondents is found to be genuine and bonafide can they succeed in seeking the eviction of the petitioners from the tenanted premises. For this purpose the following issues No.1 and 2, which are

required to be proved by the respondents, as framed by the Rent Controller on 18.10.2014, are found to be sufficient: -

- “1. Whether the respondents are liable to be evicted from the disputed shop? OPA
2. Whether the applicants bona-fidely require the demised premises for their personal necessity? OPA”

The third issue sought to be framed at the instance of the petitioners as an additional issue is whether the eviction petition does not fulfill the requisite mandatory conditions and if so what is its effect? In my opinion, this issue would also be covered by issue No.3 framed by the Rent Controller on 18.10.2014 which is as under: -

“Whether the application is not maintainable? OPR.”

The next issue which the petitioners seek to be framed as an additional issue is whether the respondents have concealed true facts and have not come to the court with clean hands. This issue would also be covered under issue No.4 earlier framed by the Rent Controller on 18.10.2014 as also issue No.4A framed by the Rent Controller on 11.07.2017 which are as under-

“4. Whether the application is bad for non-disclosure of true description of demised premises? OPR”

4A. Whether the application is false, frivolous, vexatious to the knowledge of the applicants and the same is liable to be dismissed with costs? OPR”

Thus, the issues framed on 18.10.2014 alongwith the additional issue framed through the impugned order are found sufficient to adjudicate upon the eviction petition.

Originally the issues were framed by the Rent Controller on 18.10.2014. Such issues were framed in the presence of counsel for the petitioners. No objection to the framing of only those issues was then raised and this was in spite of the fact that all the facts which formed the basis of framing of

additional issues had been duly pleaded by the respondents in their eviction petition which was filed on 17.04.2014. After 2½ years of the framing of the issues, after the respondents had led their entire evidence and the petitioners were in the midst of leading their evidence the petitioners moved the present application seeking framing of additional issues. It cannot be ruled out that the delay in filing of the application was only an attempt on the part of the petitioners to put a spoke in the early disposal of the eviction proceedings.

In view of the above, finding no merit in the petition, the same is dismissed with costs which are assessed at Rs.10,000/-.

08.08.2017
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No