

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

**Civil Revision No.527 of 2017 (O & M)
Date of Decision:-23.03.2017**

Dr. Rajesh Verma

...Petitioner

Versus

Vinod Gupta

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Avnish Mittal, Advocate
for the petitioner.

Mr. Ajay Jain, Advocate
for the respondent.

HARI PAL VERMA J.

The petitioner-tenant has filed the present revision petition impugning the order dated 22.12.2016 whereby the application moved by the petitioner-tenant for leave to defend was dismissed by learned Additional Civil Judge (Sr. Divn.), Ambala.

Briefly stated, the respondent-landlord had filed a petition under Section 13A(1A) read with Sub Clause (i) of clause (a) of sub Section 3 of Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (hereinafter called 'the Act') for eviction of the petitioner-tenant from the premises in question as detailed in the ejectment petition.

The premises in question is situated on the corner of Nicholson road in Halwai Bazar, Ambala Cantt. The question for determination by this Court is where a specified land-lord, who is in possession of a portion

of the building and wanted additional accommodation by seeking the eviction of the tenant, whether tenant is entitled to seek leave to defend, so as to decide the sufficiency and suitability of the occupied portion of the land-lord?

The respondent/landlord while claiming as specified owner has filed a petition under Section 13 of the Act. In his capacity as owner and landlord of the building in question, he has filed ejectment petition of the ground floor portion i.e. property bearing House Tax No.5610 consisting of one room situated on the corner of Nicholson Road, Ambala Cantt. The property was rented out to the father of petitioner-tenant in the year 1961 on monthly rent of Rs.32/- plus 5% tax. The father of the respondent-landlord died in 1962 whereas the father of petitioner-tenant had died in 1987. The landlord was employee with the Government of India undertaking i.e. Bharat Sanchar Nigam Limited and had retired from service on 31.10.2015 after attaining the age of superannuation. Initially, there were four residential rooms on the ground floor, however, on account of some financial hardships, father of respondent/landlord had converted those residential rooms into shopping area and converted those four rooms into seven small rooms alongwith stairs. The landlord is in possession of two rooms, one room is being used as car garage, whereas in the other room the household articles are dumped. Remaining five rooms are in occupation of various tenants. The landlord is residing on the first floor portion of the building. The respondent has filed the eviction petition under the aforesaid provision of law on the ground that he has retired from service on 30.1.2015

after attaining the age of superannuation. Now, the landlord is in need of entire ground floor for his personal bona fide necessity after his retirement from service. He want to start his own business by renovating the entire ground floor into a single show-room. His only son is in a private job and is living away from the family. His major part of the salary goes for living in a rented accommodation. The wife of the landlord is suffering from breast ailment and has been operated twice, whereas his unmarried elder sister is staying with him and it is difficult for the petitioner to look after them alone. Therefore, the son of the respondent-landlord will join him in the business, so that they can look-after the family in a better way. Hence, his need is genuine. Thus, the respondent-landlord filed the eviction petition on the ground that he needs sufficient accommodation after his retirement.

After notice, petitioner-tenant appeared and filed an application seeking leave to defend. The leave to defend has been sought on the grounds that the claim of the respondent-landlord is totally false and baseless. The premises in occupation of the respondent is a shop and, therefore, the alleged provision is not applicable as the same applies to the residential buildings only. There are four other tenants on the ground floor of the building and the respondent-landlord has filed the petition against the other four tenants as well, which on the face of it, is malafide. The respondent-landlord has got vacated two shops on the ground portion of his building, which are still lying vacant and in possession of the respondent-landlord. In this manner, the landlord is in occupation of more than

sufficient accommodation for his requirement. Earlier, wife of respondent-landlord had opened a shop of readymade garments in the adjoining portion, which was got vacated from Dr. Ram Parkash, but she closed down the same just after a few months. The son of the respondent-landlord is working in National Capital Region and is not residing in Ambala Cantt. Therefore he has no intention to shift back to Ambala. The present petition has been filed with malafide motive so as to compel the tenant to pay the increased rent.

The learned Rent Controller has dismissed the application filed by the petitioner-tenant seeking leave to defend, observing therein that in view of judgment in **Dinesh Kumar (Gogal) and another vs. Lila Dhar 2015(3) PLR 454 (P & H)** no distinction can be drawn between residential and non-residential buildings for domain and sweep of provision of Section 13-A of Haryana Urban (Control of Rent and Eviction) Act, 1973.

Against the aforesaid order dated 22.12.2016 passed by learned Rent Controller, the present revision petition has been filed by the tenant.

On notice of motion having been issued, respondent-landlord had put in appearance.

Mr. Avnish Mittal, learned counsel for the tenant has argued that the learned Rent Controller was required to return its findings on the various pleas raised in the application, but the findings on these issues have been avoided without any justification. In fact the case of the respondent-landlord is a case of additional accommodation, but the Rent Controller has failed to return its findings on this specific plea as raised by the petitioner-

tenant. The points so agitated by the petitioner have not been decided by the Rent Controller. The landlord is not in need of whole accommodation, rather, it is a case of additional accommodation. As against the total seven shops on the ground floor, the landlord is already in possession of two shops and even these shops are being used (i) for garrage and (ii) for dumping the house hold articles, thus, not being used for the purpose for which eviction is sought. In support of his submission, learned counsel for the tenant has relied upon **Mrs. Kushal Takhar vs. Gurinder Singh 2009 (1) RCR (Civil) 629**, **K.G.P. Pillai vs. Subhash Chander Pathania 1990 (2) RCR (Rent) 386**, **Amarjit Singh Chadha vs. Col. Jasbir Singh Likhari 2012(1) RCR (Rent) 15**, **N.N. Jain, Advocate vs. Ved Parkash Sharma 1995(1) RCR (Rent) 455**, **R.K. Sakhuja vs. Shri Chander Parkash 1991(2) RCR (Rent) 351**, **Ravinder Nath Khanna vs. T.R. Lakhanpal and another 1990(2) RCR (Rent) 73** and **Prit Pal Kaur vs. B.S. Ahuja 1996(1) RCR (Rent) 630**.

On the other hand, learned counsel for the respondent-landlord has argued that the accommodation with the landlord is insufficient and the judgment referred in **Mrs. Kushal Takhar's** case (supra) is distinguishable in facts and circumstances of the case. The very purpose of provision of Section 13A of the Act is to accept the pleadings of the speciried landlord outrightly, when the landlord has prima facie proved his case. In the case in hand, the wife of the landlord is not keeping well and therefore, the business, which was started, had to be closed. Merely because the landlord has filed petition against the other co-tenants, it does not mean that it is a

case of additional accommodation, rather filing of other petitions against the co-tenants is sufficient to establish that the landlord want eviction of all the tenants from the building, so that he can construct a big show-room, where he can start his business along with his son. In support of his contentions, he has relied upon **M.D. Rao vs. Satish Augustin and another 1995(1) RCR (Rent) 404** and **Jitender Kumar vs. R.S. Virk and others 2014(2) RCR (Rent) 234**.

I have heard learned counsel for the parties.

Considering the rival contentions, the relationship of landlord and tenant between the parties is not disputed. The landlord is occupying two shops/rooms in the ground floor whereas other five shops/rooms are in occupancy of the different tenants. Out of two available shops, the landlord is using one for dumping household articles, whereas, other to park his car. In order to consider the material aspect as to whether the accommodation, already in possession of the landlord, is sufficient or not, this issues can only be determined if parties are allowed to lead evidence. The landlord has not brought any material on record, which includes the approval of map from the Municipal Committee or Municipal Corporation that in order to execute his requirement, he has already initiated the process of acquiring additional accommodation. No such material has been placed on record. Therefore, declining to leave to defend and ordinary eviction of the tenant in a summary manner will be in violation of the test of prima facie as laid down by the Hon'ble Apex Court in **Inderjeet Kaur vs Nirpal Singh, 2001 (1) RCR (Rent) 33 (SC)** and in **Mrs. Kushal Takhar vs Gurinder Singh's**

case (supra). The very object of Section 13 A of the Act is to provide immediate abode to a retired employee though that was a case of residential building, but in order to grant an opportunity to the petitioner-tenant to test the truth of application made in the eviction petition, this Court finds that the petitioner-tenant deserves grant of leave to defend as this Court has observed that the gist of the petition filed by the landlord under Section 13 of the Act is requirement of additional accommodation, because as against the seven rooms/shops on the ground floor, he is already in possession of two shops, which are being used for storage of house hold articles and parking of the car. This proposition has been answered by this Court in **K.G.P. Pillai's** case (supra) wherein this Court has held as under :-

“3. The learned counsel for the petitioner submitted that after the said reference, the said learned Single Judge decided another revision petition in **Ravinder Nath Khanna v. T.R. Lakhanpal, reported as 1990(2) Rent Control Reporter 73**, in which reliance was placed on a Supreme Court judgment and the leave to contest the ejectment application was granted to the tenant. The said Supreme Court decision reproduced in paragraph 4 of the judgment in Ravinder Nath Khanna's cases (supra), reads as under :-

"Special leave granted. Having heard counsel for both the sides and also perused the material, we are of the opinion that this is a case where the Court below ought not to have refused leave to contest. The landlord is occupying the ground-floor besides the entire second floor. The tenant is occupying the first floor. The question is whether the landlord requires the first floor also. This question, in our opinion, could be properly determined only by granting leave to the

tenant to contest. There is no need to take a summary procedure since it is a case of additional accommodation."

On the facts and circumstances of the present case, the said Supreme Court judgment fully covers the matters and the tenant is entitled to the leave to contest the application.

4. In such a situation, when the landlord is already in occupation of certain accommodation in the urban area concerned, it will be a case of additional accommodation and the suitability of the same could be decided only if the tenant was allowed the leave to contest the ejectment application. However, special procedure for disposal of the applications under Section 13-A is provided under Section 18-A of the Act. Sub-section (4) thereof provides that the tenant on whom the service of summons has been declared to have been validly made under sub-section (3) shall have no right to contest the prayer for eviction from the residential building unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as provided. Sub-section (5) further provides that the Rent Controller may give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the specified landlord from obtaining an order for the recovery and possession of the residential building under Section 13-A of the Act. Thus, it will be a question of fact in each case to be determined by the Rent Controller on the basis of the affidavit filed by the tenant disclosing the necessary facts as would disentitle the specified landlord from obtaining an order of ejectment under Section 13-A. As regards the facts of the present case, as observed earlier, they do disclose such facts which may disentitle the

specified landlord to seek the ejectment of his tenant and, therefore, the leave to contest the ejectment application should have been granted in view of the above-said Supreme Court judgment relied upon by the learned Single Judge himself subsequent to the present reference. In the case in hand, the learned Rent Controller declined the leave to contest the ejectment application on the ground that under Section 13-A, the Court is not to go into the 'sufficiency' or 'insufficiency' of the accommodation available to the landlord. The question in the present case was not of 'sufficiency' or 'insufficiency', but was of additional accommodation as the landlord is already in occupation of the entire ground floor of the building in question.”

The judgment referred by learned counsel for the respondent-landlord in **Jitender Kumar's** case (supra) is not attracted in the facts and circumstances of the case, as in that case the retiree-landlord was not in possession of any part of the premises and thus in that case resort to summary proceedings was rightly invoked, whereas in the case in hand the respondent-landlord is already in possession of two rooms/shops on the ground floor. Therefore, his case is for additional accommodation. Similarly, the judgment in **M.D. Rao's** case (supra) the referred judgment is following a different provision of law i.e. Rajasthan Premises (Control of Rent and Eviction) Act, 1950, which is not applicable in the case.

Therefore, after detailed discussion on facts and circumstances of the case as well as the judgments, which have been relied upon by both the learned counsel for the parties, it is held that where a specified landlord

is already in possession of the demised premises and the tenants are in possession of some part of the demised premises, then it would be a case of additional accommodation and, therefore, the landlord would not hanker of immediate shelter after his retirement. The delay in deciding the eviction petition otherwise by way of summary procedure, which is provided under Section 13 of the Act, would not cause any harm and the question of sufficiency and suitability of the accommodation in possession of the landlord can be decided after the trial only.

Accordingly, the present petition is allowed and the impugned order dated 22.12.2016 passed by the Additional Civil Judge (Sr. Divn), Ambala, is set aside and petitioner-tenant is granted necessary leave to contest the ejectment application.

However, considering the nature of dispute between the parties, the Rent Controller is directed to make an endeavour to decide the eviction petition preferably within six months from the date of receipt of certified copy of this order.

March 23, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No