

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

Civil Revision No.5609 of 2012 (O&M)

Reserved on: 01.02.2017

Decided on : 23.02.2017

M/s Mangal Deep and another

... Petitioners

Versus

Rajinder Parsad and others

... Respondents

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

Present: Mr. Pawan Kumar Mutneja, Advocate
for the petitioners.

Mr. Akshay Bhan, Senior Advocate with
Mr. Gurinder Singh, Advocate
for the respondents.

G.S. Sandhawal, J.

The petitioner tenant challenges the concurrent findings of the courts below, whereby the eviction petition filed by respondent No.1 landlord had been allowed and he has been ordered to be evicted on the ground of personal bonafide necessity from the shop in question situated at Ground Floor, 33, Old Hospital Road, Palika Bazar, Panipat by the Rent Controller on 26.07.2011 and upheld on 27.07.2012.

Counsel for the petitioner has placed reliance upon the Full Bench judgment of this Court in '*Banke Ram Vs. Sarasti Devi*' 1977 Vol.1 ILR P&H and the judgment of the Apex Court in '*Ajit Singh and another Vs. Jit Ram and another*' 2008 (9) SCC 699 to contend that the mandatory provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 had not been pleaded and, therefore, the revision petition is liable to be allowed.

On the contrast senior counsel for respondent No.1 has referred to the pleadings and the evidence led by the parties as such to show that the stand was very clear and no ambiguities were present regarding the stand of the landlord and, therefore, the judgments are not applicable in the facts and circumstances.

A perusal of the eviction petition which has also been appended would go on to show that vide application for ejectment dated 22.12.2008 eviction was sought from the premises in question as described above as shown in the site plan attached with the ejectment application. It was the pleaded case that the shop was allotted to the landlord in the year 1975 by Municipal Council and the registered sale deed was executed on 18.08.2004. It was specifically pleaded that the shop in question is having two floors and a stair-case as shown green in the site plan on the ground floor and the stair case as well as first floor of the demised shop was stated to be in occupation of the landlord himself. The petitioners had taken the shop on rent in the year 1980 vide rent deed dated 01.11.1980 @ ₹1,400/- per month and were carrying the business of Cloths and Garments. The rate of rent after every five years had to be increased by @ 10%. Thus, there were arrears from 01.01.2008 and rent had been paid @ ₹1863/- per month. It was further averred that respondents No.2 and 3 herein were occupying the shop and possession had been parted with and they were carrying on the business as sub-tenant under a secret arrangement by paying substantial rent. The rate of rent was stated to be ₹2049/- after 30.10.2008. It was also alleged that

the tenants had raised level of the floor without any requirement or consent and, therefore, materially impaired the value and utility of the demised shop by reducing the value of the space inside the shop. Resultantly, the ejectment was sought on the ground of arrears, sub-letting, material impairment and for the bonafide requirement of the owner son Gaurav who was stated to be around 26 years of age. It was further specifically averred that there was no other shop or urban property available with the petitioner for starting business for his son and, therefore, it was the moral and pious duty of the petitioner to help his son, so that he could earn his livelihood and premises were required.

The petitioner took the plea that it was a partnership concern and petitioner No.2 herein was one of its partner. It was denied that the others were doing business in the demised shop and they were exclusively occupying the shop and that any secret arrangement had taken place and they had parted with the possession of the ground floor. The rent had been paid which was due alongwith interest as assessed by the Court and it was denied that the petitioner required his shop for his bonafide requirement. It was denied that he had no other shop or urban property as alleged. The sub tenants were proceeded against ex parte and the following issues were framed by the Rent Controller:-

- “ 1. Whether the respondents are liable to be ejected from the demised shop, on the grounds as mentioned in the petition? OPP*
- 2. Whether the petitioner has not come to the Court with clean hands? OPP*
- 3. Whether the petitioner has no cause of action to file the*

present suit? OPP

4. Relief.”

After examining four witnesses from both the sides Rent Controller came to the finding that the ground of non-payment as well as impairment of value and utility of the demised shop had not been pressed. It was noticed that the landlord had examined himself as PW-1 and his son Gaurav as PW-2 and both of them had been duly cross-examined, but nothing had come fruitful in favour of the respondents. Resultantly, keeping in view the principle that the landlord is best judge of his bonafide need and it has to be seen from the angle of the landlord and not from the tenant and in the absence of any evidence to the contrary, the eviction application was allowed qua bonafide necessity of the landlord. It was also further observed that no cogent and consistent evidence had been produced by the petitioners that the landlord was having any other property, though the plea had been taken. The ground of sub-letting was decided in favour of the tenants that because of electricity bills and photographs, it could not be held that there was any sub-letting.

The order dated 26.07.2011 passed by the Rent Controller was, accordingly, challenged before the Appellate Authority, who came to the conclusion that in view of the specific provision provided under the Act, the tenant could be put back in possession and since the son of the landlord had been examined, the bonafide requirement was well justified. Accordingly, the appeal was dismissed on 27.07.2012.

As noticed above, apart from the pleadings as such, in which

there is a categorical averment that the shop on the first floor is in possession of the landlord and that there is no other urban property available with the deponent, the basic essential ingredients of Section 13 (3) (a) (i) of the Act have duly been pleaded. The said plea was reiterated by the landlord in his statement as a witnesses while submitting his affidavit in affirmative as PW1. A perusal of the cross-examination which has also been appended and brought on record as Annexure P-4 would also go on to show that nothing was put to him that whether the shop on top on the premises in question which was vacant and had not been put to any use was in possession. Thus, it cannot be said that there was any concealment on the part of the landlord that anything was held back from the court or the tenants to take advantage and get the eviction order. The factum of the vacancy of the shop which was on the first floor and in possession was candidly stated. It was not the case of the petitioner-tenant in the pleadings as such that the shop in question was sufficient as such on top and, therefore, the requirement was not bonafide. Similarly, the son of the respondent-landlord had also appeared and submitted his affidavit in which he has also stated that he has no shop or urban property available for starting business with him. Even in his cross-examination nothing was put to him that the shop available on the first floor was suitable rather in his cross-examination, it has come out that he had left his studies eight years ago and he had not given his examination of B.A 2nd year and he alongwith his brother and father had a joint business.

The argument thus which has been raised by placing reliance upon ***Banke Ram's (supra)*** case would not be applicable to the facts and circumstances of the present case. Apart from the landlord himself the son had also appeared and given an affidavit clarifying that there is no other shop as such available for starting any business. The Full Bench in the case of ***Banke Ram (supra)*** specifically held that it is essential to plead ingredients of Clause (b) and (c) of Section 13(3)(a)(i) of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act', in an eviction petition and if in a particular case the ingredients are not pleaded, but the parties have led their evidence, then what will be the effect have to be considered by the authorities.

Thus, in the present case as noticed necessary averments have been made that to the extent of occupation of the premises by the landlord himself which pertained to the first floor and that the landlord had no other shop or urban property available with him for starting the business of his son. Thus, once it was categorically mentioned that there was no other shop or urban property available and nothing as such was put to the landlords that they had vacated some other property without sufficient cause the judgment in the case of ***Banke Ram's (supra)*** would not come to the help of the petitioner.

Even in ***Ajit Singh's case (supra)***, it was held that if the shop was required for the son, it was to be specifically pleaded that he was not occupying any other building in the urban area concerned. As noticed reference to the pleadings, the landlord has clarified to the properties

which are in his possession as such. Similarly, while tendering the affidavit the son also clarified the issue. Thus, it can be safely held that there was no concealment on the part of material facts by the landlord.

In '***Banwari Lal Vs. Ram Parkash and another***' 2009 (2) ***RCR (Rent)*** 160 it was held that the ingredients of Section 13 (3) can be proved in evidence and if it is shown no prejudice is caused to the tenant then the petition is not liable to be rejected.

This aspect has been considered in **Gurbaj Singh Vs. Parshotam Singh and others** 2011(3) PLR 653 after considering the judgments of the Apex Court in **Ajit Singh and another Vs. Jit Ram and another**, 2008(4) Civil Court Cases 528 and that of Full Bench in **Banke Ram Vs. Shrimati Sarasvati Devi** 1977 PLR 112. Two issues were considered that (i) whether the tenant can raise the question of non-compliance of mandatory provisions of Section 13(3)(a) (i) of the Act even if he did not question it in his reply nor ask for any issue in this regard for the purpose of trial and (ii) whether the son of the landlord, for whose benefit the non-residential premises is sought to be got vacated, if not the landlord or the owner himself, is also required to plead the ingredients of Section 13(3)(a)(i) of the Act. In the said case, the *bona fide* necessity of the son of the landlord had been put up. Resultantly, the argument raised was that in the absence of any specific pleadings regarding the necessary ingredients qua the son, no eviction order could be passed under the Act. Resultantly, after discussing **Ajit Singh (supra)** threadbare, it was held that the person who maintains an eviction petition

on the ground of *bona fide* necessity, has to lead and plead all the necessary mandatory ingredients regarding the premises required by the landlord for the use and occupation of his son. The son is not required to plead all the ingredients as he himself is not the landlord of the premises and the question was answered against the tenant. Similarly, it was noticed that the son had appeared in the witness-box and deposed in oath that he does not own and possess another non-residential building in the urban area and resultantly, it was held that non-pleading of the ingredients would not be fatal and warrant dismissal of the application for ejectment. It was further held that once the tenant did not challenge the averments made in the eviction petition nor ask for any issue in this regard and did not take any objection for the non-pleading of the mandatory ingredients, the lack of denial specifically would be taken as an admission, except as against a person under disability. Resultantly, the question was also answered against the tenant.

Accordingly, keeping in view the above discussion, this Court is of the opinion that the findings which have been recorded by the authorities below do not suffer from any procedural infirmity, which would warrant interference by this Court in revisional jurisdiction. Consequently, the present revision petition stands dismissed.

FEBRUARY 23rd, 2017
s/ sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No