

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 28.09.2017****CR No.5705 of 2014 (O&M)**

Ashwani Kumar

...Petitioner

Vs.

Amarjit Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. A.K.Chopra, Senior Advocate, with
Mr. G.S.Bhandal, Advocate, for the petitioner.

Mr. Chetan Mittal, Senior Advocate, with
Mr. Kunal Mulwani, Advocate, for the respondent.

RAJIV NARAIN RAINA, J. (ORAL)

In a rent petition filed by the respondent/landlord, the Rent Controller, Chandigarh held that personal necessity was not proved, but partly allowed the petition on the ground of non-payment of rent, which order was made conditional on payment of arrears of rent w.e.f. 01.11.2000 to 31.08.2003 at the rate of ₹3000/- per month etc. within a period of two months from the date of order i.e. 08.12.2011 failing which the petitioner/tenant was liable to be evicted from the first floor accommodation in House No.1608, Sector 36-D, Chandigarh.

However, the Appellate Authority, Chandigarh was not impressed with the findings on personal necessity recorded by the Rent Controller, Chandigarh and overruled the judgment by what I find after hearing the learned senior counsel for the parties to be a well reasoned order dated 03.07.2014, which is subject matter of this petition brought by the tenant/petitioner praying that the order be set aside.

The property in rent dispute is a house built on a plot measuring 500 square yards. It consists of two floors and an annexe to the main building. The tenanted premises are on the first floor accommodation with access from without. The property was initially owned by late Major Jaswant Singh and on his death his wife Dalip Kaur inherited the property. She died on 14.05.2007 leaving behind two legal heirs i.e. the respondent – Amarjit Kaur and the respondent's brother, namely, Col. Kuldeep Singh Garcha (Retd).

The respondent Amarjit Kaur is a septuagenarian widow. Her children are settled in United States of America. It was her case in the petition filed by her under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') for regaining possession of the first floor of the demised premises that being single she lived with her brother who was settled in New Delhi in his house at W-19, Green Park, New Delhi. She lived as a licensee with her brother and in her old age had the desire to shift to the property in Chandigarh, which was mutually decided between brother and sister to accommodate herself in the first floor as co-owner of the demised premises leaving the ground floor for the use of her brother.

It may be mentioned as a matter of law that the bye-laws in Chandigarh framed under The Capital of Punjab (Development & Regulation) Act, 1952 make no provision for partition of plots in Chandigarh. This has been the bane of Chandigarh responsible for breaking families forced to sell when families fall apart and deserves the widest attention of the law makers.

Therefore, the observation of the Rent Controller that the property was not partitioned and thus the family partition or settlement was a necessary concomitant to accept the arrangement dividing orally the first and the ground floor is legally incorrect while questioning the landlords as to why the property has not been partitioned as a ground for disbelieving the settlement between the siblings as per the wishes of their mother by marking the ground and first floor by division of property between them. A mutual arrangement between the brother and sister can hold water and not be questioned by third parties, much less the tenant of which part is more suitable to either. Tenant cannot dictate terms to landlords.

It was pleaded that on retirement from the Army, the landlady's brother shifted firstly to the ground floor of the demised premises and also shifted all his belongings there. However, he shifted and resettled in New Delhi thereafter but his accommodation in New Delhi was not on the ground floor and was not suitable to him much less for his family and his sister. He had also by passage of time decided to shift to Chandigarh after renovating the entire house according to their status. The tenant had not maintained the premises in proper shape and has caused extensive damage to the floor and walls which had been defaced. This would be irksome to any property owner. She asserted that she did not own any other residential accommodation in India and whenever her children and grand children visited India, they had to stay in hotels so she required additional accommodation for her residence for which first floor of the entire house is needed. She needed space to accommodate visiting guests also. She was at the fag-end of her life and had reasonable desire to live in Chandigarh as per her status without support of her brother. She pleaded that she was not in

occupation of any other premises at Chandigarh nor had she vacated any other premises without any sufficient cause. She admitted that earlier suit for possession was filed for ejectment of the respondent, which was later on withdrawn and the suit is pending only for recovery of arrears of rent. That petition was filed by late Smt. Dalip Kaur, mother of the landlady and which litigation she had inherited and was withdrawn after her mother passed away.

On notice, the tenant opposed the petition admitting that earlier late Smt. Dalip Kaur was the owner of the house. It was denied that first floor came to share of the petitioner after the death of Smt. Dalip Kaur. The tenant stated that the petitioner was residing at New Delhi in the house of her brother Kuldeep Singh Garcha and she never resided in the house in question or at any other building in Chandigarh even during the lifetime of Smt. Dalip Kaur. Her mother used to live all alone in Chandigarh in the ground floor portion. There was no bona fide need for her residence in Chandigarh. Besides, it is asserted by the tenant that the original petitioner (present respondent) was not the owner and landlady of the first floor of the demised premises and was not entitled to seek ejectment. She was not an NRI and was well settled at Delhi.

It may be mentioned that the present eviction was filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') and not under Section 13-B of the Act.

The tenant asserted that ground and second floor of the house in question are lying vacant. The division of shares between the brother and sister was disputed since property was not partitioned. The petition was filed simply to pressurize the respondent to increase the rent. The second action

for eviction was not maintainable since the earlier suit was not withdrawn when the present petition was filed.

The Appellate Authority, Chandigarh considered the entire evidence on record and analyzed the same with clarity in a well considered order. She found in evidence that it was the desire of late Smt. Dalip Kaur that ground floor portion of the house should go to her son and the first floor to her daughter, the respondent landlady. The Rent Controller was wrong in his approach to start with the presumption that the need was not bona fide till such time it was proved mala fide and on the other hand the landlady was only required to meet out a prima facie case. The Appellate Authority overturned the findings of the Rent Controller on account of disregarding the settled principles of law to hold that the need of the petitioner/landlady was not bona fide.

Both the present respondent and her brother appeared as witnesses before the Rent Controller and stated on oath facts as per the version in the pleadings regarding family settlement by virtue of which petitioner became owner of first floor of the house with right to possession.

On a careful reading of the judgment of the Rent Controller, I find it seriously wanting in its legal approach to the issue of personal need. The Rent Controller misdirected himself wrongly laboring under the impression that the family settlement would have to be proved to be hilt as in a civil case. On the other hand, the tenant had no demonstrable locus standi to question the oral family arrangement in the family of the landlords, as co-owners and there was nothing to doubt in the settlement and the affirmative statements of the landlords deposing in the witness box. It is not abnormal for a Hindu mother to apportion the ground floor to the son and

the first floor to the daughter at the time or before death. Moreover, the position of the original petitioner in the house of the brother was of a mere licensee, but if she were to recover possession of the first floor of the demised premises, she would live there in her last years as part owner of the premises without depending on the brother. Her need to shift to the first floor portion was not unbelievable and if she did upon eviction, the tenant would have protection of Section 13(4) of the Act to gain repossession even after eviction in case she failed to shift. That test gaining possession to live on the first floor was a contingent fact dependent on eviction by the force of its own logic. That was not an accomplished fact dependant on eviction to satisfy the empirical test. The tenant could not pre-empt the need of the landlady to be on her own and protect her self esteem and dignity as per her status by wanting to withdraw from her brother's house where she would always be at the mercy of his family. It is often said that distance makes the heart grow fonder.

There is nothing palpably wrong or unreasonable for an old lady's wish and desire to shift to Chandigarh where she grew up and has memories of her parents and family to take care of herself independently and receive her children and grand children and live among them on their visits to India and not be forced to live out of hotels or to keep visiting their mother in the her brother's New Delhi residence.

The Appellate Authority concluded that the judgment of the Rent Controller based on misreading of pleadings and evidence adduced by the parties deserves to be set aside. The Appellate Authority took notice of the law in Chandigarh that fragmentation of property is not permitted. It was not for the tenant to advice the landlady how she would adjust herself in

a jointly owned property or to question the mutual arrangement by a family settlement apportioning possession while both being owners of the property. Even assuming that the ground floor was vacant, even then the tenant cannot insist that she must live on the ground floor and leave him alone to pay rent and remain a tenant.

All the arguments addressed by the tenant in contradicting the oral partition are neither here nor there and on the other hand are of no consequence. It is settled position in law that a family settlement can be oral and could not be challenged by the tenant, who had no say in the matter nor the tenant could decide where the original petitioner should spend the evening of her life while she is on the threshold of becoming an octogenarian. Her husband died in 1998. The Appellate Authority was correct in observing that the petitioner/landlady cannot claim entitlement to continue in occupation of the house of her brother in her own right nor is she required to narrate the inconveniences of staying in her brother house. If she wants to leave the house of her brother and shift to her own house in Chandigarh, her need must be presumed to be bona fide and genuine. This is even the way that our society is fashioned, that is to say, why should an owner of property in Chandigarh be forced to live at the mercy of her brother even if he is kind. She may need her own private space. And who is to question that, certainly not the tenant. Her brother appeared as PW-2 and deposed regarding family partition by virtue of which ground floor has come to his share. He also deposed that the house in dispute requires major renovation and he with his sister would renovate the house to make it worth living in the event of eviction and for this there should be no impediment of a squatting tenant. The family of respondent Amarjit Kaur was deposed to

by the brother as in European life style and her status and station in life deserves to be respected as “Class-I” which could only be provided by renovation of the house on eviction.

In cross-examination, the brother stated that his luggage was still lying in the ground floor portion of the house and that was enough to conclude that the family settlement did not provide for Amarjit Kaur to live on the ground floor. Nor could he be compelled by the tenant to shift his belongings elsewhere. This is obviously true desire and assertion of right if the brother and sister are not to quarrel on what is manifestly clear between them with the lines drawn marking territories in an indivisible house which cannot be legally partitioned by metes and bounds or other mode in the face stringent bye laws prevailing in Chandigarh. The brother may have own personal property in Delhi, but he may still like to keep his constructive foot on the ground floor and keep it for himself. What is true for the sister is true for the brother that even he should not depend on his sister on his visits to Chandigarh, as he would have personal space for himself and his family on the ground floor without troubling the sister.

The argument of the tenant that ingredients of Section 13(3)(a)(i) of the Act were not pleaded and proved and the petition deserves to be dismissed on this ground alone was an argument found against the record by the Appellate Authority when it looked at Para.4 of the petition, where it was recorded that the original petitioner was not in occupation of any premises in Chandigarh, as she is living with her brother in New Delhi and the remaining portion was lying locked and not in use.

Landlady Amarjit Kaur appeared in the witness-box and faced cross-examination and reiterated the presence of the ingredients of her

affidavit Ex.PA by way of examination-in-chief. There was also no merit found in the argument of the tenant that landlady omitted to plead that she was in occupation of annexe portion of the first floor. To the contrary, there was a specific averment in Para.1(i) that she needs the entire first floor i.e. the area in occupation of the tenant along with one room and a room above the garage, i.e., the annexe already in her possession for her comfortable and convenient living. Everything has not to be pleaded and many things can be taken judicial notice of or easily imagined, for instance, she might like to employ a domestic hand/family to look after her and he would need space also at striking distance for extending help at all times living on premises. Such an inference can always be logically drawn looking at the age of the landlady, her station in life, given that her children are NRIs and visit India often, as was deposed by her brother in his testimony that indeed they visit India regularly to be with their mother. She has two daughters and a son, who all are settled in the USA. She has grand children as well.

The original petitioner is a daughter of an Army Officer and belongs to a well to do family and, therefore, the Appellate Authority concluded that she appeared to enjoy a good standard of living and expecting her to squeeze into the annexe portion of the house to suit the needs of the tenant would not be fair to think in the facts and circumstances. The findings of the Rent Controller on Issue No.1 with regard to bona fide need have been shown to have been result of grave error of reasoning committed on account of lack of appreciation of facts and the evidence and experience of life. As a matter of fact, to my mind the Rent Controller appears to have not only erred in legal reasoning but has also unnecessarily laboured hard over his order, going by the length of it, and in this, going

completely astray in his reasoning and thought processes resulting in errors which have rightly been corrected by the Appellate Authority and the case put back on its tracks by overruling the judgment for good and sufficient cause.

I do not think that even this order can justify its length on such a simple issue that a widow wants to shift from her brother's house in Delhi to her own first floor portion of the house in Chandigarh which she owns in half; a desire which all Chandigarians dream of to live in the tranquility that the City offers and particularly sparsely inhabited Sector 36, which has one of the largest tracks of salubrious open green spaces in the southern belt and what forms part of what are commonly called the 'defence Sectors' carved out for defence personnel in yesteryears by the UT Administration.

As a result of the above discussion, I find no legal or factual infirmity or shortcoming in the judgment of the learned Appellate Authority, which has rightly reversed the judgment of the learned Rent Controller.

Accordingly, I would dismiss the petition as devoid of merit and substance. The respondent has established personal need.

As a result, the petitioner/tenant is granted two months' time to vacate the demised premises and handover its peaceful possession to the respondent within two months from the communication of this order. The arrears of rent, if any, shall be paid to the respondent before delivering vacant possession.

Tenant would furnish an undertaking by way of an affidavit within 10 days of the receipt of a certified copy of the order presented before the Rent Controller, Chandigarh that he would hand over the peaceful possession of the demised premises to the landlady within the time allowed

failing which the respondent may seek Police help in evicting the tenant from the demised first floor premises of the house brought in dispute.

28.09.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>