

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 6176 of 2016 (O&M)

Date of decision: 01.03.2017

Ram Narayan

... Petitioner

versus

Raj Kumar Aggarwal

.... Respondent

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

Present: Mr. Santosh Sharma, Advocate for the petitioner.

G.S. SANDHAWALIA, J. (ORAL)

The petitioner-tenant challenges the concurrent findings of the authorities below whereby eviction has been ordered on the ground of *bona fide* requirements by the Rent Controller, Hodal on 09.04.2014 which has been upheld in the appeal on 08.02.2016 by the Appellate Authority, Palwal.

The respondent-landlord had sought the ejectment from the premises in question which is a shop situated at Gadiya Bazar, Hodal and which is described in paragraph No.1 of the petition and the boundaries were also mentioned. The rate of rent was Rs. 120/- per month and the ejectment was claimed on the ground of arrears of rent w.e.f. 01.10.2011 to 29.02.2012. The bona fide requirement was sought on the ground that landlord-respondent is an Advocate and enrolled with Bar Council of Punjab and Haryana at Chandigarh and wanted to run a office in the premises. It was averred that he was practicing at the

Civil Courts, Hodal as well as District & Sessions Court, Palwal. The averment was made that he has not got vacated any other shop in the urban area. The landlord had also alleged that the shop in question has been unfit and unsafe for human habitation and being 33 years old and the fact that the tenant had ceased to occupy the shop in question had also sought eviction on that ground also.

On account of not pleading the mandatory ingredients that he did not have the ownership and possession of similar accommodation, the argument has been raised that in the absence of mandatory ingredients the petition is liable to be dismissed. Counsel for the petitioner has placed reliance upon the Full Bench judgment of this Court in 'Banke Ram Vs. Sarasti Devi' 1977 PLR 112 and the judgment of the Apex Court in 'Ajit Singh and another Vs. Jit Ram and another' 2008 (9) SCC 699 to contend that once the same has not been done, the petition is liable to be dismissed. Apart from that reliance has been placed on the judgment on this Court in 'Anil Kumar Sood Vs. Subhash Chander Kapila, 2015 (1) PLR 815 & Ravinder Sood and another Vs. Mohan Lal, 2013 (2) HLR 173.

In the written statement, the ownership of the premises and the relationship of landlord and tenant was also disputed apart from the fact that the landlord had not come to the court with clean hands.

As per the petitioner, rate of rent was also disputed. It was pleaded that the rent had been tendered to avoid the eviction. It was

further averred that the respondent/landlord has other buildings in his occupation and he had many houses and shops within the municipal limits and that he did not require the shop for his occupation. The allegations of the building being unfit and unsafe for human habitation and also the factum of cease to occupy were denied. The Rent Controller framed the following issues:

1. *Whether agreed rate of rent is Rs. 120/- per month plus house tax and there is as default in payment of rent? OPP.*
2. *Whether petitioner requires the shop for his bonafide need? OPP.*
3. *Whether the demised shop is in dilapidated condition and unsafe for human habitation ? OPP.*
4. *Whether respondent has ceased to occupy the shop for over 33 years ? OPP.*
5. *Whether the petition is not maintainable in the present form ? OPP.*
6. *Relief.*

The respondent-landlord examined himself as AW5 apart from Sushil Kumar Clerk as PW1, Suraj Munshi as PW2, Chandan Singh Draftsman as PW3 and Radha Raman Clerk as AW4.

On the other hand, the petitioner-tenant examined three witnesses Sandeep as RW1, Ram Narain as RW2, Rajbir Singh Ahlmad

as RW3.

Keeping in view the evidence on record, Rent Controller noticed the parentage of the landlord and the receipt Ex.P8 in which there was admission that Raj Kumar Aggarwal the landlord had issued the receipt of the rent. It was noticed that the family partition had taken place between the Raj Kumar and Sunil Kumar and in Ex. P8 the name of the owner of the shop had been mentioned as Raj Kumar Aggarwal-respondent. Resultantly, it was held that there was a relationship of landlord and tenant. Keeping in view the principle that a tenant cannot question the title and there is an estoppel as such, the issue was decided against the present petitioner. In view of the rent being tendered it was held that there was no default in payment of rent.

It was noticed that the landlord was a practicing advocate which had been proved by summoning Sushil Kumar, Clerk as PW1 Bar Council of Punjab and Haryana which mentioned that he had enrollment No. R48031/2010. Similarly, the clerk of the Bar Association, Hodal, namely Radha Raman as PW4 in his testimony stated that respondent is a member of Bar Association, Hodal. Keeping in view the fact that he himself stepped in to witness box and deposed regarding his personal need and necessity, the issue was decided in his favour.

The question of the building being unfit and unsafe was decided against the landlord on the ground that the building was intact

and there was no sign of decay or any other defect. Similarly, the issue of cease to occupy was not pressed and, therefore, decided accordingly. The petition was held maintainable and the issue was decided in favour of the landlord and eviction was accordingly ordered.

Before the Appellate Authority, the argument which has now been raised was also raked up. Further, in view of the Judgment of this Court in **Rajinder Parshad Vs. Sohan Lal, 2012 (4) RCR (Civil) 184**, the said contention was rejected that the flaw as such was not as such fatal on account of the non-pleadings of the mandatory ingredients. The judgment of the Apex Court in **Ajit Singh (supra)** and **Banke Ram (supra)** were also noticed. Resultantly, keeping in view the evidence on record, the eviction on the ground of bona fide requirement was thus, upheld.

Counsel for the petitioner could not as per the evidence which was brought on record show to this Court that there was any other premises which were in occupation of the respondent-landlord which he has concealed from the Court. In the absence of any such evidence being brought on record merely because the mandatory ingredients had not been pleaded under Section 13(3)(a)(i) that the landlord was not occupying any other building in the urban area concerned would not disentitle the landlord to seek eviction.

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 (supra) and that of Full Bench in Banke Ram (Supra). 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 asked 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 on 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 answered against the tenant.

The judgment in Anil Kumar Sood (Supra) would not be applicable in the facts and circumstances of the case since in the said case a finding was recorded that the clerk of the Municipal Corporation had brought the record that there were other properties which were entered into the ownership of the landlord. It was thus held that concealment was there of the material fact. It was been in such circumstances held that the necessary ingredients having not pleaded and sufficient material having come on record, the eviction was not justified and was liable to be set aside.

Similarly, in Ravinder Sood (supra) this Court set aside the eviction which had been ordered by the Appellate Authority on the ground that the authority had not considered the existence of other buildings which the landlord and his family members were having. The location of such buildings were to be seen and the landlord's requirement was to be noticed.

It was noticed that the landlord had one house in the name

of his son, another in the name of his wife and yet another is rented apart from the property which is already in occupation and in such circumstances the Appellate Authority order was reversed. Thus, the said judgment is not applicable to the facts and circumstances of the case.

Resultantly, in the absence of any procedural illegality and infirmity, this Court in revisional jurisdiction would not interfere in the findings recorded and the instant revision petition is dismissed in *limine*.

(G.S. SANDHAWALIA)
JUDGE

01.03.2017

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Whether speaking/non-speaking: Yes/No
Whether reportable : Yes/No