

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

CR No.6384 of 2013 (O&M)

Date of Decision: 4.8.2017

M/s Ajit Agro System and Another

... Petitioners

Versus

Krishan Chand

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ashish Gupta, Advocate for the petitioners

Mr.Rajinder Goyal, Advocate for the respondent

RAJIV NARAIN RAINA, J. (Oral)

1. Active non-disclosure of property in the pleadings other than the demised premises from where ejectment is prayed by the landlord is fatal to a petition for eviction of tenant. Section 13 (3)(a) (i) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short “the Act”) postulates full disclosure of properties whether in possession or self acquired or tenanted. It is only when there is a candid disclosure in the petition, the Rent Controller can be in a position to do justice while evaluating personal necessity and bona fide need.

2. Mr.Ashish Gupta, learned counsel for the petitioning tenant has handed over copies of the petition filed under Section 13 of the Act alongwith the reply thereto. In the petition for eviction, the following averments have been made in paragraph 4 (b):-

“4 (b).That the petitioner/applicant requires the tenanted premises for the personal bona fide need of his son Gaurav Jain who is an Advocate and has been enrolled as an advocate with the Bar Council of Punjab and Haryana High Court and he passed his L.L.B in the year 2007 and

practicing as an Advocate in Distt. Courts, Kaithal since 2007, said Sh.Gaurav Jain is unmarried and is residing with the applicant and is dependent upon the applicant. The property shown in yellow colour is lying vacant which is adjoining to the tenanted premises and the size of said property is very small and the area of the same is approximately 81/2 square yards, the applicant requires the tenanted premises for the office of his said son and after demolishing the intervening wall of the suit property and the tellow colour property, both the suit property and property shown in yellow colour shall be clubbed together and the same shall be used by aforesaid Gaurav for setting up of his office as Advocate. The applicant or Sh.Gaurav Jain does not own or possess any other property within the Municipal Limits of Kaithal town, which can be used by him for his office use. The applicant or Sh. Gaurav Jain have not ever vacated any such property within the Municipal Limits, Kaithal without sufficient cause which could be used by him for his aforesaid necessity.”

3. In response to the averments as above, the tenant asserted in his written statement the following-

“4.That para no.(b) of the application is wrong and denied. The applicant is not required the above said property for his personal use, as the applicant has sufficient property to fulfil his requirement. The applicant has 6/7 shops at the same place which can be required for his personal requirement of the office. The applicant has filed the present application only to harass the respondent. The

respondent is not in arrear of any rent amount of the said premises.”

4. The tenant having successfully encountered the landlord’s emphatic declaration in the eviction petition dated 20th May, 2009 duly verified under his signatures, and falsified it that neither he nor his son owns or possesses any other property within the municipal limits in Kaithal Town which can be used for his son’s Office. Even though the statement was qualified with choice of property for a lawyer’s office, he still asserted in his replication dated 16th October, 2009 to the corresponding reply in paragraph 4 (b) [reproduced above] that the contents of the reply are wrong and those of the application are correct and re-affirmed the pleadings on the moot point in the eviction petition. It is with these pleadings, the trial started.

5. There is indeed a tacit admission that the landlord owns several shops all in a row and the shop shown in yellow in the Site plan is in possession of the landlord while the one he wishes to evict the tenant from is shown in red colour. Landlord's case as explained is to expand the shop in his possession by breaking the intervening wall for his son’s office, making one big room out of two shops adjoining each other.

6. If the statutory requirements laid down in the Act itself are not satisfied in the pleadings and the landlord has not come to Court with clean hands and has on the other hand withheld vital information personal to his knowledge, and the position of owning many shops in a string was ultimately admitted and truth revealed in oral testimony while facing cross-examination, then the entire case of the landlord stands falsified. In such circumstances, the Court faced with the admission not

pleaded must lean in favour of the tenant. Equity in case of concealment and suppression of material facts runs against the person who acts in a dishonest manner and dishonesty never pays in the long run.

7. For the foregoing reasons, this revision petition is allowed and the judgments dated 4th May, 2011 passed by the Rent Controller, Kaithal and dated 12th August, 2013 passed by the Appellate Authority, Kaithal are set aside.

4.8.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No