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

Civil Revision No.651 of 2017(O&M)

Date of decision: 01.02.2017

Prem Nath

...Petitioner

Versus

Smt. Sheela Devi (since deceased) through her legal heirs and others

...Respondents

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

Present: Mr. Rai Singh Chauhan, Advocate for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The present petition has been filed by the petitioner-tenant who is aggrieved against the concurrent findings recorded by the Courts below whereby eviction had been ordered on the ground of bonafide requirement of the respondents no.2 to 4, who are sons of Hans Raj (since deceased).

The ejectment application was filed by the deceased respondent no.1 along with her children on the ground that Hans Raj had been running a 'Dhaba' in the premises in question in the year 1984 and she had fallen ill and other applicants were busy in her treatment. Therefore, the petitioner had started sitting in the premises and managing the affairs of the business. Reference was made to the earlier litigation qua the suit for possession and recovery which had attained finality interse the parties. The Civil Court had held that the present petitioner was tenant on payment of rent at the rate of ₹ 600/- per month with effect from February, 1979 and therefore, the Rent Controller, Pathankot had the jurisdiction. Resultantly, the claim was made

on account of respondents no.2 to 4 being sons along with their mother who has now expired for earning their livelihood by running a 'Dhaba' in the disputed premises. Apart from this, it was alleged that the payment of rent was not made from 1.1.1989 to 1.4.2008 and therefore, ejectment was sought.

Counsel for the petitioner has vehemently submitted that there was earlier litigation interse the parties and therefore element of bonafide requirement is missing and thus challenges the findings recorded by the Courts below. The defence of the present petitioner was that the requirement was not bonafide and there was also denial that rent was payable and the rent had been paid upto 1.12.1993.

The following issues were framed on 9.9.2011 by the Rent Controller, Pathankot:-

- “1. Whether the applicants are entitled to eviction on the ground of personal necessity?OPA
2. Whether the respondent is in arrears of rent and applicants are entitled to eviction on this ground?OPR
3. Whether the application is not maintainable being barred by principle of resjudicata?OPR
4. Whether the applicants have concealed the material facts?OPR
5. Relief.”

One of the landlord Jagdish Raj stepped into witness box as AW-1 and proved the site plan and also order dated 27.8.2007 passed by this Court in RSA No.725 of 2002 as Ex. A-2.

The petitioner himself stepped into the witness box as RW-1 and placed on record other evidence which was in the form of litigation interse the parties. The allegation of non payment of rent was disbelieved

by the Rent Controller, Pathankot on account of the fact that no steps had been taken to initiate the proceedings since 1989. On the ground of personal necessity, it was held that the premises were required bonafide by the applicants. It was noticed that the present petitioner was a Social Studies Teacher and teaching in village Chakkar for the last 4/5 years and drawing salary of ₹ 35,000/- per month. Resultantly, keeping in view the settled position, it was held that the tenant was nobody to question the right of the landlord as such to seek eviction from the rented premises for bonafide requirement. Accordingly, the ejectment was ordered vide order 5.3.2014.

The appeal has also been dismissed on 17.3.2016 by the Appellate Authority, Pathankot keeping in view the above reasons.

As noticed above interse the parties the finding had been recorded that there was relationship of landlord and tenant as such which would be clear from the judgment of the Addl. District Judge dated 20.11.2001 (Ex.R-9 and R-10=Annexure A/2) wherein it was noticed that the present petitioner was a tenant and paying rent at the rate of ₹ 600/- per month. The relevant observations read as under:-

“Admittedly no rent note was executed between the parties but the rent receipts issued by Shila Devi regarding receipt of rent for certain period clearly establish that defendant has been in possession of the shop in dispute as tenant under the plaintiffs. Taking into consideration the rent and the constant stand taken by the defendant from the year 1985 onwards and the fact that the put forward by the plaintiffs that defendant has trespassed into the shop being not proved, it can be safely said that defendant has been in possession of the shop in dispute as tenant paying rent at the rate of

Rs.600/- per month.”

Once there was no dispute qua the relationship of landlord and tenant, it would not lie in the mouth of the tenant to say that the respondents are not entitled to eviction on the ground of personal necessity. The settled principle is that the tenant is not to dictate to the landlord as to how he is to use his property as such and once it has come on record that the present petitioner is a Government employee and using the property in question for the purpose of running a 'Dhaba' which the respondents also want to utilize for their family business, no fault as such can be found with the findings recorded by the Courts below.

The Supreme Court while while dilating on the issue of bonafide requirement of the landlord in **Sarla Ahuja Vs. United India Insurance Company Ltd. 1998(Sup2)) Supreme Court Reporter 390** held that the requirement of landlord for occupation of the tenanted premises must be bonafide and the Rent Controller shall not proceed on the assumption that requirement is not bonafide. The principle that tenant is not to dictate terms to the landlord as to how the property could be utilized and how the landlord had to adjust himself was kept in mind. Thereafter, in **Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta 1999(3) Supreme Court Reporter 1260**, it was held that the bonafide and genuine need of the landlord is to be taken into account and that the Court would not put its own wisdom upon the choice of the landlord and a practical approach was to be kept in mind. The requirement should be sincere and honest and not a mere pretense. If the facts showed that the answer was in positive, the need was to be considered bonafide. Relevant observations read as under:-

12. Chambers 20th Century Dictionary defines *bonafide* to mean 'in good faith : genuine'. The word 'genuine' means 'natural; not spurious; real: pure: sincere'. In Law Dictionary, Mozley and Whitley define *bonafide* to mean 'good faith, without fraud or deceit'. Thus the term *bonafide* or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required *bonafide*' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contra-distinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its *bonafides* would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is *bonafide*. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the *bonafides* of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice ~~shall be~~ ^{shall be}

respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of *bonafide* need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.”

Accordingly, it was held that the landlord could not be asked to shift to a different house and locality whereas the tenant would continue to live in the tenanted premises and if the landlord wished to live in comfort of his house, the law could not expect him to live in a smaller premises while protecting the tenant's occupancy.

Similarly, Hon'ble Apex Court in ***Joginder Pal Vs. Naval Kishore Behal 2002 (2) PLR 625*** while taking into consideration the provisions of section 13 of the East Punjab Urban Rent Restriction Act, 1949 has held as under:

“24. We are of the opinion that the expression 'for his own use' as occurring in Section 13(3)(a)(iii) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of

the landlord for his own use. In the several decided cases referred to hereinabove we have found the pari materia provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependents and kith and kin in the requirement of landlord as "his" or "his own" requirement and user. Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire : (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close interrelation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a sense the actual occupation by

the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act.

Thereafter, the conclusions were drawn up which reads as under:

Our conclusions are crystalised as under:

(i) the words 'for his own use' as occurring in Section 13(3) (a) (ii) of the East Punjab Urban Rent Restriction Act, 1949 must receive a wide, liberal and useful meaning rather than a strict or narrow construction.

(ii) The expression landlord requires for 'his own use', is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord himself but also of the normal 'emanations' of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on a variety of factors such as inter-relationship and inter-dependence economic or otherwise, between the landlord and such person in the background of social, socio-religious and local customs and obligations of the society or region to which they belong.

(iii) The tests to be applied are : (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement? and, (ii) Whether on the facts and in the circumstances of a given case actual occupation and user by a person other than the landlord would be deemed by the landlord as 'his own' occupation or user? The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as 'his own' and the person who

would actually use the premises; (ii) the circumstances in which the claim arises and is put forward, and (iii) the intrinsic tenability of the claim. The Court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.

(iv) While casting its judicial verdict, the Court shall adopt a practical and meaningful approach guided by the realities of life.

(v) In the present case, the requirement of landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord 'for his own use' within the meaning of Section 13(3)(a)(ii)."

Similarly, in *Atma S. Berar Vs. Mukhtiar Singh AIR 2003 SC 624* it was held that the landlord is the best judge of the premises and has complete freedom regarding how he is to use his premises and it is not for the tenant or for the Courts to hold whether the requirement is not appropriate and that he continues functioning in the premises in question.

The relevant observations read as under:

"15. The learned Counsel for the tenant-respondent submitted that the findings arrived at by the Rent Controller and the appellate authority were vitiated and the High Court was justified in interfering therewith especially in the light of the events which had taken place during the pendency of the proceedings. The power of the Court to take note of subsequent events is well-settled and undoubted. However, it is accompanied by three riders; firstly, the subsequent event should be brought promptly, to the notice of the Court; secondly, it should be brought to the notice of the Court consistently with rules of procedure enabling Court to take note of such events and affording the opposite party an opportunity of meeting or explaining such events; and thirdly, the subsequent event must have a material bearing on right to relief of any party. We have dealt with each one of

the so called subsequent events brought to the notice of the High Court as also of this Court by the learned Counsel for the tenant-respondent. None of them causes a dint in the case of bona fides and need as were found proved by the authorities below the High Court. Seen in the light of normal human nature and behaviour, the events pendente lite rather reinforce the direness of the need. We need only remind ourselves of the observations made by three-Judges Bench of this Court in Prativa Devi's case (supra) - "the landlord is the best judge of his residential requirements. He has a complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own". The High Court need not be solicitous and venture in suggesting what would be more appropriate for the landlord to do. "That was the look out of the appellant and not of the High Court. The gratuitous advice given by the High Court was uncalled for..... There is no law which deprives the landlord of the beneficial enjoyment of his property". The present one, in our opinion, is an appropriate case where the High Court ought not to have interfered with the findings of fact arrived at by the two authorities below and that too concurrently, in exercise of its revisional jurisdiction simply because it was inclined to have a different opinion."

Accordingly, keeping in view the above principles and finding no merit in the present revision petition, the same is dismissed.

February 01, 2017
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(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No