

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 27.10.2017****CR No.7382 of 2016 (O&M)**

Hukam Chand

...Petitioner

Vs.

Saroj Rani

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Deepak Raghava, Advocate, for
Mr. S.K.Aggarwal, Advocate, for the petitioner.

Mr. Vikas Bahl, Senior Advocate, with
Mr. Nitish Garg, Advocate, for the respondent.

RAJIV NARAIN RAINA, J.

1. The Appellate Authority under the Haryana Urban (Control of Rent and Eviction) Act, 1973 at Kaithal by order dated 03.08.2016, while setting aside the order of the Rent Controller, Guhla dated 31.07.2014 dismissing the ejectment petition filed by the respondent/landlady, had ordered the eviction of the petitioner/tenant from the demised premises (Shop/Booth No.110 situated within the municipal limits of Municipal Committee, Cheeka, Tehsil Guhla, District Kaithal) with a direction to handover vacant possession of the tenanted premises to the respondent/landlady within a period of two months from the date of passing of the order.

2. The landlady (respondent herein) sought eviction of the tenanted premises for her personal necessity i.e. for business purpose of her

son, namely, Sandeep Kumar Mittal, to settle him as he was unemployed. Non-payment of arrears of rent as a ground of eviction was given up with the arrears paid. The ground that tenant had made material alterations in the demised premises without the consent and knowledge of the respondent-landlady was the third ground for seeking eviction. The last ground has failed before the Rent Controller, but the landlady was non-suited on the ground of personal requirement.

3. The respondent-landlady purchased the shop in dispute vide registered sale deed dated 29.09.2009 with sitting tenant, the present petitioner.

4. The questions, which fell for consideration before the Appellate Authority, were (i): whether the son of the landlady 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 Haryana Urban (Control of Rent and Eviction) Act, 1973, and; (ii) where son does not appear in the witness-box, while the mother does, what would be the fate of the ejectment petition, by omission to plead that the son does not own any other building in that urban area or landlady or her son for whose need ejectment was sought does not own any building in the same urban area, and thus learned counsel for the petitioner argues that this is a mandatory requirement if a petition is filed on the ground of bona fide requirement of the landlady for her son. The question is; what is inevitable result.

5. On the ground of non-examination of person for whose need the demised premises is required, Mr. Vikas Bahl, learned senior counsel representing the respondent/landlady, contends that this is not a valid ground

to non-suit the landlady. He relies on ruling in C. Karunakaran (D) by LRs Vs. T. Meenakshi, (2005) 13 SCC 99, wherein the Supreme Court held, while dealing with the provisions of Sections 11(1)(a), (b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 that there is no such legal requirement so long as the landlord has stepped into the witness-box in support of the facts pleaded in the petition. The Kerala and Haryana law on the point are *pari materia* and therefore the principle applies. He multiplies the principle by citing Single Bench judgment of this Court in S.P.Sethi Vs. R.R.Gulati & others, 2006 (3) PLR 93; 2006 (2) RCR (Rent) 205 to the same effect. It appears settled that mere non-examination of the son would not weaken the case of the respondent-landlady. The landlady is the best judge of her needs, which need or requirement has to be examined broadly and reasonably considering the social status of the parties and other requirements so long as the need pleaded is bona fide then there would arise a presumption in favour of the landlady when she assures the Court that she requires the building for her own occupation through her son to settle him in business.

6. Mr. Bahl next relies on Mehmooda Gulshan Vs. Javaid Hussain Mungloo, AIR 2017 SC 1047; 2017 (1) RCR (Rent) 273. In this case, eviction of the tenant was sought under the provisions of the Jammu & Kashmir Houses and Shops Rent Control Act, 1966 for bona fide personal need of landlord for settling his unemployed son in business. The Supreme Court observed that the requirement of the landlord for 'own occupation' would also mean occupation by member of his family. In interpreting 'own use', the Court should adopt a practical and meaningful approach guided by the realities of life. It is not confined to mean actual physical user by

landlord personally. Besides affirming the law by interpreting the expression ‘own use’, the Supreme Court further held that non-examination of the son for whose benefit the premises is sought to be vacated is no ground to non-suit the landlord. Once there is no perversity in the appreciation of evidence, such finding of fact cannot be reopened. In revisional jurisdiction exercised by the High Courts, the Supreme Court relied on its earlier dicta in *C. Karunkaran* (supra). Mr. Bahl draws the attention of this Court to Paras.13, 14 & 21 of the report, which read as follows:

“13. We fail to understand the approach made by the High Court. It has clearly come in evidence of the appellant that her one son is unemployed and in view of unemployment, he was frustrated. The appellant’s husband had contracted second marriage and he had deserted the appellant. The appellant herself was unemployed with no source of income. The appellant, hence, prayed that the property be returned to her so that her son can look after the family. In cross-examination, she denied the suggestion that the son was doing business with his father. It had also been stated further that “except the premises and the residential house, the plaintiff has no other property”. The trial court has meticulously analyzed and appreciated the reasonable requirement of the premises for the business to be managed by the son of the appellant especially in her peculiar family circumstances. In our view, trial court has appreciated the evidence in the right perspective and held that it is not mere desire but genuine need. The finding of the trial court was challenged mainly on the ground that the son, for whose benefit the eviction is sought, has not been examined.

14. Mere non-examination of the family member who intends to do the business cannot be taken as a ground for repelling the reasonable requirement of the landlord. Under the Act, the landlord needs to establish only a reasonable requirement. No doubt, it is not a simple desire. It must be a

genuine need. Whether the requirement is based on a desire or need, will depend on the facts of each case.

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21. Thus, the question is whether there is a reasonable requirement by the landlord of the premises. This would depend on whether the landlord has been able to establish a genuine element of need for the premises. What is a genuine need would depend on the facts and circumstances of each case. Merely because the landlord has not examined the member of the family who intends to do business in the premises, he cannot be non-suited in case he has otherwise established a genuine need. The need is a matter of appreciation of evidence, and once there is no perversity in the appreciation of evidence on the need, the said finding of fact cannot be reopened. It may be crucially relevant to note that the eviction is not sought on the last limb of Section 11(1)(h) of the Act namely, “for the occupation of any person for whose benefit the house or shop is held”. The premises sought to be evicted is not held for the benefit of the son alone; but the whole family. It is for the own occupation of the landlord. It has been established in the facts of this case that the landlord was not happy and content with the paltry rent received from the premises. The landlord intended to engage her son in the business at the premises. It is for the landlord to decide as to the best use the premises should be put to. There is nothing wrong on the part of a landlord in making plans for a better living by doing business engaging her son. Having regard to the background of the son who is unemployed and undereducated, the appellant was able to establish that business was the available option and the tenanted premises was the only space available. Thus, the genuine need for the premises has been established. Unfortunately, the High Court has missed these crucial aspects.”

7. In all these three cases, the sons for whose personal requirement the ejectment was sought were not produced as witnesses and yet the plea succeeded. Therefore, the contention of the petitioner/tenant that non-appearance of the son of the landlady in the witness-box is fatal to the action is misjudged and the argument is only noticed to be rejected in view of the settled legal position.

8. Coming to the other crucial aspect; whether landlady was required to plead all the mandatory ingredients of Section 13(3)(a)(i) of the Act, the answer would depend on; whether tenant has taken the objection in the written statement before it can be said that the tenant has been prejudiced in this regard. Though there is no doubt that the landlady must plead the ingredients of the provision when setting up the case for eviction for the personal need of the son, as enunciated by the Supreme Court in Ajit Singh Vs. Jit Ram, 2008 (4) RCR (Civil) 390 and the judgment of this Court in Rajiv Gupta Vs. Jiwan Ram, 2010 (2) RCR (Civil) 762 but at the same time to those shortcomings have to be added the exposition of the law in two decisions of this Court in Gurbaj Singh Vs. Parshotam Singh & others, 2011 (3) PLR 653; 2011 (4) RCR (Civil) 518 and Amrik Singh & another Vs. R.R.Gulati & other, 2011 (3) PLR 572; 2012 (1) RCR (Rent) 25, articulately delivered by Rakesh Kumar Jain, J. on the subject matter in answer to the four questions framed in *Gurbaj Singh's* case which were as follows:

“1. Whether a landlord can seek eviction of a tenant from a non-residential premises on the ground of bona fide necessity of his son and whether son's requirement is also covered by the word used "his own occupation"?

2. Whether 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 eviction petition?

3. Whether the landlord who though pleaded bona fide need of the non-residential premises for his son who has not pleaded that he does not possess another non-residential premises in the urban area concerned or had not vacated such a building without sufficient cause after coming into force of the Act, but would it be sufficient if he had appeared and deposed on oath that he does not possess another non-residential building in the urban area concerned nor had vacated such a building without sufficient cause in the same urban area after coming into force of the Act?

4. 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?"

9. The Court noticed and explained the decision of the Supreme Court in *Ajit Singh's* case (supra). The second question is involved in this case as well and was answered in Paras.13 & 14 of the judgment explaining *Ajit Singh's* case. Both the Paras.13 & 14 are best quoted below so as not to dilute the reasoning by précis of this bench:

"13. In respect of the second question, the word used by the Legislature in Section 13(3)(a) is that "a landlord may apply" to the Controller for an order directing the tenant to put the "landlord in possession", meaning thereby it is bona fide requirement of the landlord who would be competent to apply and has to prove the three ingredients of Section 13(3)(a)(i) of the Act, which are reproduced as under for the ready reference:

"(a) he requires it for his own occupation;

(b) he is not occupying another residential building in the urban area concerned; and

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area."

14. In the case of Ajit Singh and another (supra), which has been basically relied upon by learned counsel for the tenant, the facts were that the appellants before the Supreme Court were both father and son, out of whom, appellant No.1 (son) became the owner of the shop involved in that case on the basis of a family partition dated 26.08.1998 and appellant No.2 (father) was both the landlord and the owner prior to 26.08.1998. The eviction was sought from the shop in dispute, inter alia, on the ground of subletting, non-payment of rent and for bona fide requirement of the personal use and occupation of appellant No.1 (son). In reply, it was alleged that personal necessity of the shop in dispute for the use and occupation of appellant No.1 (son) was not available. The learned Rent Controller ordered eviction only on the ground of subletting which was challenged by the tenant by way of appeal and by the landlords by way of cross-objections. The learned Appellate Authority allowed the appeal of the tenant as well as the cross-objections of the landlords and ordered eviction on the ground of personal necessity. The tenants challenged the order passed on cross-objections by way of Civil Revision in the High Court which was allowed and the order of eviction was set aside on the ground that the appellant No.2 (father) was the landlord of the said shop, but he had failed to plead ingredients as required under Section 13(3)(a)(i) of the Rent Act. It was held that the averments made in the eviction petition were only to the extent of personal requirement of appellant No.1 (son), but such pleadings did not relate to the personal requirement of appellant No.2 (father) who was also the landlord of the said shop and in the absence of pleadings of averments in the eviction petition to the extent of personal requirement of appellant No.2 (father), the High Court held that the order of eviction passed by the Appellate Authority could not sustain. Against that order, appeal was filed before the Supreme Court

in which it has been held that the requirement of the shop in the said case was made for the son who admittedly became the owner by virtue of family partition dated 26.08.1998 and also became the landlord and since the appellant No.1 (son) had pleaded all the mandatory requirements of Section 13(3)(a)(i) of the Act, therefore, it was held that even the mandatory pleadings do not relate to the appellant No.2 (father) who was also a landlord would be of no consequence, resultantly, the Supreme Court reversed the order of the High Court. Thus, a close reading of the decision of the Supreme Court in the case of Ajit Singh and another (supra) shows that the person who maintains an eviction petition on the ground of bona fide necessity, has to be a landlord and has to plead all the mandatory ingredients of Section 13(3)(a)(i) of the Act in the eviction petition and even if the premises is required by the landlord for use and occupation of his son, the son of the landlord is not required to plead all the ingredients of Section 13(3)(a)(i) of the Act if he himself is not the landlord of the premises. Hence, the second question is also answered accordingly.”

10. The answer to third question, one can skip since the Court has taken the view that if there is no objection in the written statement by the tenant as is clear on reading of pp.19 of the present paper-book read together with the fact that when landlady led her evidence to the effect of ingredients of Section 13(3)(a)(i), then non-pleading of the ingredients would not be fatal to warrant outright dismissal of the ejectment petition.

11. As regards the fourth question, the answer is contained in Para.16 of the judgment, which reads as follows:

“16. The fourth and last question is rather involved in many cases where the tenant do not challenge the averments made in the eviction petition on the issue of non-pleading of mandatory ingredients of Section 13(3)(a)(i) of the Act nor they ask for any issue in that regard, yet after loosing the case

before the Courts below , the said plea is taken as a question of law before this Court. In this regard, reference could be made to the facts of this case where the specific pleadings have been taken, though with regard to the landlord and not with regard to the son, as alleged by the counsel for the tenant now before this Court, but he did not take any objection about the non-pleading of the mandatory ingredients of Section 13(3)(a)(i) of the Act by the son in his written statement as a result of which there was no issue framed. This Court in the case of Sat Parkash Chaudhary (supra), while dealing with a similar controversy, has observed that "there is no dispute to the proposition of law as enunciated in the Full Bench judgment relied upon by the learned counsel for the petitioner. But, at the same time, the Court cannot be oblivious to the fact that mere non- pleading of a fact, which is enshrined in the statute, can always be rectified if a relevant objection is taken at the initial stage. The petitioner failed to take any such objection in his reply to the petition. The pleadings have to be considered broadly in a rent petition where it is not captive to the strict law of interpretation which may be the situation in a civil suit. In rent proceedings, the Rent Controller is merely obliged to hold an inquiry to look into the averments which have been made in the petition". Besides these observations, as per Order 8 Rule 5 of the Code of Civil Procedure, 1908, every allegation of fact, if not denied specifically, is taken to be admitted except as against a person under disability. Hence, this fourth and last question is also decided accordingly."

12. To the same effect is the judgment rendered in *Amrik Singh* case (supra) though a little less elaborately. The result has been achieved by introducing the test of prejudice. A defence which could have been taken by the tenant in the written statement while objecting to the ejectment petition when not taken, then it would not lie in the mouth of the tenant to urge before this Court as a legal proposition that the defect is fatal to the petition.

The mandatory requirement of the law in Section 13 was addressed to both the landlord and the tenant as a plea of offence and defence and when not taken by the tenant it is deemed to be waived. It is only when the provision is aimed at public interest as explained by the Supreme Court in a leading service matter in State Bank of Patiala & others Vs. S.K.Sharma, AIR 1996 SC 1669; (1996) 3 SCC 364, a decision expounding universal principle of prejudice, waiver and acquiescence, which principle has expanded the law pervading itself in other fields of litigation, then when the principles of acquiescence and waiver arise and the tenant will be seen to have parted away with the defence available to him in the law which was addressed to him but not public interest as a right which could be parted and surrendered. When these two material grounds fail to convince the Court in the present petition and still further when no objection was taken in the counter affidavit, then the Appellate Authority was within its jurisdiction to reverse the decision of the Rent Controller and allow the petition for eviction.

13. As far as the issue of other properties of the landlady or her son is concerned, it has been sufficiently explained that those businesses have closed down and in any case were not located in the urban area of municipal limits of Municipal Committee, Cheeka, Tehsil Guhla, where the demised premises is situated. The bona fide need of the landlady is clearly established to settle her unemployed son in business for which eviction was the only possible outcome.

14. As a result, no scope for interference subsists and the petition is hereby dismissed. The tenant is directed to vacate the demised premises on or before 31.01.2018 and handover the peaceful possession to the respondent/landlady by clearing outstanding arrears of rent/*mesne* profits, if

any. The petitioner/tenant would furnish an affidavit undertaking to vacate the premises on or before the date fixed as per this order before the Rent Controller/Executing Court within a period of 15 days from the date of receipt of certified copy of this order, which period will be inclusive of the time allowed for vacation and delivery of possession of the shop in dispute.

27.10.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*