

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

Civil Revision No.7538 of 2012

Reserved on: 14.02.2017

Decided on : 16.03.2017

Daljit Singh

... Petitioner

Versus

Kulwant Rai & Sons and another

... Respondents

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

Present : Mr. Pankaj Jain, Advocate
for the petitioner.

Mr. Sanjay Gupta, Advocate
for the respondents.

G.S. Sandhawalia, J.

The present revision petition filed under Section 15 (5) of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') by the landlord is directed against the order of the Appellate Authority dated 06.10.2012, whereby the appeal of tenant was allowed and the ejectment order dated 27.01.2010 passed by the Rent Controller, Kharar was set aside.

The reasoning which prevailed with the Appellate Authority for reversing the findings on the ground of bonafide need was that the landlord had not proved the family settlement arrived at between the family members and that earlier petitions had been filed for ejectment in which the grounds were arrears of rent and sub-letting. It was, accordingly, held that if there was necessity for the use and occupation of his son Surinder Singh, he would have taken the grounds of personal

necessity in the petition which was filed on 21.01.1999 (Ex.R-7) and which was withdrawn on 04.09.2003 (Ex.R-8). Similarly, another petition had been filed on 26.02.2002 (Ex.R-10) in which also the ground had not been taken which was withdrawn on 03.09.2012 (Ex.R-12). The factum of the landlord having 20 feet area situated in front of his house lying vacant and four shops could be constructed weighed with the Appellate Authority, though it was noticed that the landlord could not be forced to raise construction and that he had deposed that he had no funds to raise construction. The admission of the landlord that his son Surinder Singh was running a business of the tailoring work for the last 10 years in one of the shops out of the two shops in front of the house of the petitioner also weighed with the Appellate Authority while reversing the findings. Therefore, keeping in view that another shop was available in front of the house of the petitioner and keeping in view the judgment of the Apex Court in '**Ajit Singh and another Vs. Jit Ram and another**' 2008 (2) **RCR 328 (SC)**, it was held that there was suitable accommodation available with the landlord and his son who had not pleaded that he was in occupation of another building, the appeal was allowed on 06.01.2003.

The eviction petition was filed by the petitioner on the ground that the tenancy had been created on 16.02.1976 at a monthly rent of ₹177.50/- for a period of 3 months. The tenant being a statutory tenant, thereafter, having not vacated was carrying on his business under the name & style of Kulwant Rai & Sons. The property in question had

been owned by Lachhman Singh and Bachittar Singh sons of Hansa Singh and had fallen to the share of the landlord. Even otherwise from the day of the tenancy, the petitioner had inducted the tenant and had been receiving the rent. Resultantly, eviction was sought on the ground of non-payment of rent from 01.06.2002 alongwith house tax @ 15% on the abovesaid rent. Apart from that bonafide requirement of the son Surinder Singh was put forth and it was specifically alleged that the petitioner was not occupying any other premises in the urban area for the purpose of business and had not been evicted any other building without sufficient cause, after the commencement of the Act.

The requirement for starting of his own tailoring shop was put forth and that the petitioner previously had been doing tailoring shop in the upper Bazaar Kharar. Since, the said shop had fallen to the share of his brother Randhir Singh vide family settlement dated 30.05.1996 and the petitioner had got this house, which was situated on Badala Road, the need was put forth. It was further stated that different portion of the house was being used by the sons of the petitioner, namely, Harbans Singh and Sukhdev Singh for carrying on the business of scooter repairs and the premises were needed for the requirement of the petitioner and his son Surinder Singh for carrying on their business. Despite request, the same had been not been vacated.

In the written statement the plea taken was that the shop was rented out to Kulwant Rai and his son Sudarshan Kumar and they were running a joint family firm as Sudarshan Kumar being the elder son of

Kulwant Rai working with him right from the day the shop was taken on rent. The rate of rent was denied. The dispute of ownership had arisen between the petitioner-Daljit Singh and Lachhman Singh sons of Bachittar Singh. It was admitted that the petitioner had starting taking rent alleging some family settlement. Kulwant Rai had expired and Sudarshan Kumar was occupying the premises. On an earlier occasion Kulwant Rai and Lachhman Singh had taken the rent and after the death of Kulwant Rai, it was not clear that as to whom the rent is to be paid. Bachittar Singh had left a registered Will dated 28.04.1995 in favour of Randhir Singh, Mohinder Singh sons and Iqbal Singh son of Gurmukh Singh. The family settlement was, thus, being questioned. It was alleged that Bachittar Singh had also cancelled the General Power of Attorney in favour of the petitioner and given it to his another son Randhir Singh on 07.03.1988 and he had started collecting the rent from the respondent. Thereafter, again Daljit Singh had started taking the rent who was occupying the shop of the tenant. The tenant asked the petitioner to receive the rent, but he had been putting off the matter. The rent due from 01.06.2002 till 31.07.2005 alongwith interest @ ₹127.50/- per month came to ₹4972.50/- and house tax came to ₹750/- alongwith interest element of ₹475/-. The same was allegedly to be tendered by reserving the right to get the extra amount refunded.

On the issue of bonafide requirement, the plea taken was that the petitioner was having his house in front of which there are shops and the front was 40 feet wide having one gallery and two shops. One site on

the front had been kept open where a shop was yet to be constructed. One shop was being used for tailoring by the petitioner and Surinder Singh actually. Daljit Singh was an old man and just living a retired life, the plea had wrongly been taken to get the shop vacated and Surinder Singh was running the shop. The other shop and area was being used by other two sons, namely, Harbans Singh and Sukhdev Singh who were doing scooter repair work and, therefore, the bonafide necessity was questioned. It was alleged that only increase of the rent was the interest of the landlord. Earlier also similar petitions had been filed and the plea of personal necessity had not been taken and, therefore, the second petition was not maintainable.

The petitioner examined himself and whereas the tenant examined another witness, namely, Anil Kumar apart from himself. The Rent Controller, accordingly, came to the conclusion that the petitioner required the disputed property for his bonafide requirement and was liable to be evicted while discussing that the petitioner had started taking rent from the tenant and it was the case of the respondent himself that he had been putting off the matter of payment of rent at a earlier point of time. The petition was, accordingly, held maintainable and decided against the tenant and ejection was, accordingly, allowed.

The Appellate Authority as noticed examined the matter in greater detail and keeping in view the fact that the admission of the Sudarshan Kumar that he had paying the rent sometime to Daljit Singh and approximately for 10-12 months to Randhir Singh and, therefore,

held that their exists relationship of landlord and tenant between the parties. Kulwant Rai had expired and, therefore, Sudarshan Kumar was occupying the shop. The rent had been tendered under protest and there was no ground as such available for eviction on that ground and the Will by Bachhitar Singh in favour of Randhir Singh, Mohinder Singh and Iqbal Singh was not liable to be taken into consideration due to the admission of the fact that rent was being paid to the petitioner.

However, as noticed the Appellate Authority wrongly proceeded on the premise that on account of the earlier filing of the eviction petitions, the bonafide requirement was not made out, since the present petition was filed on 06.01.2003 and earlier petitions had been filed on 21.01.1999 (Ex.R-7) and another one was filed on 26.02.2002 (Ex.R-10). In the said petitions, the ground of arrears of rent and sub-letting had been taken and bonafide necessity had not been taken. Resultantly, it was held that if the need was there, the said ground would have also been taken in those petitions.

The said reasoning is against the principles laid down by the Full Bench in '*Harnam Singh Vs. Surjit Singh*' 1984 PLR 104. The question which was referred to the Full Bench was that once an earlier petition if a plea could have been taken by the parties in the proceedings and the ground available was not taken would it on the subsequent occasion bar the landlord on the principle of constructive resjudicata. It was, accordingly, held that the evidence to establish the two is clearly distinct and different and the cause of action is also different. Though the

law disfavoured the multiplicity of the litigation, but the requirement of personal use and occupation was a distinct and separate cause of action, as that of the non-payment of the rent. Resultantly, the question and the answer posed were as under:-

“Is requirement of personal use and occupation by the landlord under section 3(a)(i) a distinct and separate cause of action from that of non-payment of rent under sub-section 2(i) for the eviction of the tenant as prescribed by section 13 of the East Punjab Urban Rent Restriction Act, 1949 - has come to the fore as the spinal question in this reference to the Full Bench.

xxxxxxxxxxxx

15. To finally conclude it must be held that on the larger scheme of Section 13 of the Act; the specific language of the respective provisions, on principle and precedent, the requirement of personal use and occupation by the landlord is a distinct and separate cause of action from that of non-payment of rent by the tenant. The answer to the question posed at the very outset is, therefore, rendered in the affirmative.”

Resultantly, the reasoning given by the Appellate Authority that on an earlier occasion petitions had been filed under the separate provisions regarding non-payment of arrears and sub-letting cannot be justified and, accordingly, is set aside. The bonafide of the landlord was rather apparent that he chose not to take up the plea of personal necessity without any requirement. Only as and when the same cropped up, he chose to file on the said cause of action.

The other ground for allowing the appeal was that the landlord had not pleaded and proved that his son was not occupying any other building and the same had to be pleaded specifically in view of the judgment passed in ***Ajit Singh (supra)***.

The pleadings have been discussed above in detail would go on to show that there is a specific mention as such, that the shop was required not only for him but also for his son. The front portion of the house was being used by his two sons, namely, Harbans Singh and Sukhdev Singh for carrying on the business of scooter repairs. The landlord was thus categorical in stating that he had no other premises in his possession in urban area and had neither evicted any other rented premises without sufficient cause. He had, thus, deposed about two shops which were in possession of his two sons, whereas, the requirement was for himself and his third son of the tenanted premises. Thus, the mandatory ingredients as such were duly pleaded by the landlord which is the requirement as laid down by the Full Bench in '**Banke Ram Vs. Shrimati Sarasvati Devi**' 1977 PLR 112.

The second ground by the Appellate Authority was one of the shops was with Surinder Singh and, therefore, there was suppression as such and reliance had been made on a alleged admission of the petitioner in his second part of his cross-examination.

A perusal of the second cross-examination dated 26.02.2009 would go on to show that it is not of the petitioner but of Sudarshan Kumar, which has been misread by the Appellate Authority that the second shop was in occupation of Surinder Singh. Therefore, on a wrong premise the words of the tenant have been put in the mouth of the landlord to hold that he has one shop in his possession.

The observations have come on account of misreading the

evidence of Sudarshan Kumar that there was an admission by the petitioner during the second part of the cross-examination that two sons were running one shop out of the two shops doing business is also against the record, which was the ground for reversing the findings.

Thus, a procedural illegality and infirmity in the order of the Appellate Authority has been rightly brought forward and highlighted which needs to be rectified, as misreading of evidence has taken place.

The 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 that the need of the landlord is not to be seen from the restrictive angle. The relevant portion read 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.

In the present case, the requirement is for the son and as noticed there are three sons of the landlord and two of them already doing business. Merely because there was some vacant portion available on which construction had not been raised, it was not for the tenant to dictate the terms as such to the landlord as how he should use his property.

Similarly, in '**Gurbaj Singh Vs. Parshotam Singh & others**'

2011 (2) RCR (Rent) 349, after considering the judgments of the Apex

Court in *Ajit Singh (supra)* and that of Full Bench in *Banke Ram (supra)* while considering on the two issues 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 ask 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, it was held that the person who maintains an eviction petition on the ground of *bona fide* necessity, has to plead all the necessary mandatory ingredients. Even, if the premises are required by the landlord for the use and occupation of his son, it is not required for him to plead all the ingredients as he himself is not the landlord of the premises and the question was answered against the tenant.

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 also answered against the tenant. The argument raised by the respondent counsel that the statement of the son was not recorded as such is without any basis.

Resultantly, keeping in view the above discussion, this Court is of the opinion that the order passed by the Appellate Authority is not

justified and is based on a wrong principle of law and the evidence has been misread and is liable to be interfered with. Accordingly, the same is set aside. The present revision petition is allowed. The order of the eviction on the ground of bonafide necessity as directed by the Rent Controller is maintained.

However, keeping in view the fact that the respondents have been in possession since 1975, time is given to vacate the premises till 30.09.2017, subject to clearing all arrears of rent within two months and depositing the rent which falls due by 7th of each month.

MARCH 16, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No 7