

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CR No.806 of 2015 (O&M)

Suresh Kumar Malhotra, Deceased through LRs ... Petitioners

Versus

Sanjeev Sood and others ... Respondents

2. CR No.5086 of 2014 (O&M)

Vikas Malhotra and another ... Petitioners

Versus

Sanjeev Sood and others ... Respondents

Date of Decision: 28.09.2017

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

Present: Mr. A.K. Chopra, Sr. Advocate,
with Mr. G.S. Bhandal, Advocate,
for the petitioners.

Mr. Karan Nehra, Advocate,
for the respondents in CR No.806 of 2015.

Mr. Yogesh Chaudhary, Advocate,
for the respondents in CR No.5086 of 2014.

RAJIV NARAIN RAINA, J.

1. This order will dispose of CR No.806 of 2015 titled *Suresh Kumar Malhotra, deceased through LRs v. Sanjeev Sood and others*, and CR No.5086 of 2014 titled *Vikas Malhotra and another v. Sanjeev Sood and others*.

2. The Rent Controller, Chandigarh vide order dated August 08,

2012 passed in a petition presented under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (sic, 1973 described in the file which relates to Haryana) (for short “the Act”) has accepted the ground of personal necessity of respondent-landlord as well as eviction based on non-payment of arrears of rent and has restored possession by allowing the application for eviction.

3. The Appellate Authority, Chandigarh vide its order dated January 03, 2015 has declined the appeal and affirmed the award of the Rent Controller with liberty granted to the tenant under Section 13 (4) of the Act for restoration of possession in case landlord fails to occupy the premises on vacation by the tenant as per law. Both the authorities have concluded that the evidence adduced by the parties supports eviction for personal need and have appreciated the facts in a proper manner and nothing has been found in the evidence to show that the claim of the landlord lacks in bona fides.

4. Against these orders, the tenants have approached this Court praying that the orders be set aside.

5. The necessary facts which give rise to this petition may be noticed. The original petitioners before the Rent Controller are Sanjiv Sood and Vinod Sood both sons of late Dwarka Dass Sood of Shimla. Sanjiv Sood was represented through his brother, the original petitioner No.2 as his holder of power of attorney. On the death of Dwarka Dass Sood the property devolved on his wife Veerwati and the two petitioners and their sister Kumari Vinod. The tenancy house is located in Sector 18-C, Chandigarh.

6. It was averred that the respondent was inducted as a tenant

described as the demised premises being the 1st floor of House No.1217, Sector 18-C, Chandigarh comprising of drawing dinning, two bed rooms, kitchen, latrine, bathroom, store and verandah. The eviction petition was filed on January 04, 2007. The tenancy began 11 years prior thereto. The monthly rental settled was ₹3500/- payable on or before the 7th day of each calendar month. It was averred by the landlords that rent was agreed to be increased every year by 5% of the existing rate of rent. The rent as on December 01, 2006 respecting the 1st floor accommodation was ₹6565/- per month. The admitted position was that tenant would pay the rent to Vinod Sood for and on behalf of other co-owners/landlords. It was averred that the tenant fell in default of payment of rent rather regularly and the rent account ran into default since March 2002. The property appears to be measuring 1 Kanal. The admitted position is that the original petitioners' mother Veerwati is aged and lived in the annexe portion of the house.

7. In the eviction petition personal necessity was pleaded. The demised 1st floor premises were required by the landlord for their personal use and occupation. At the relevant time, Udit Sood son of Sanjiv Sood for whose need the eviction was based was employed with HDFC Bank and posted in its branch in Sector-37, Chandigarh. At the relevant time, he lived in the annexe with his grandmother and served as a Branch Manager. Udit Sood came of marriageable age and intended to settle down in matrimony as per the wishes of his father petitioner No.1. Marriage would entail it necessary to repossess the 1st floor to house Udit Sood and his to be bride. The annexe portion was not sufficient to meet the growing needs of the family and particularly in the event Udit Sood got married.

8. It transpired that once the ground floor was occupied by an Advocate who by July 2011 had vacated the premises and shifted elsewhere. This was the subsequent event pleaded by the tenant that the ground floor had become available for occupation and, therefore, the need for the 1st floor was no longer bona fide or existent as the ground floor would offer additional space together with the annexe to accommodate the family of the landlord.

9. The plea of the tenant on the subsequent event was refuted. It was asserted that qua additional accommodation becoming available to the landlord on the ground floor it was averred that the landlord had let out the entire building except the annexe portion in the beginning to supplement the family income through rent received from the tenants since the aged widowed mother of the original petitioners was dependent for her daily needs from her share of rent received by her by inheritance and for this reason, the ground floor was always let out to fetch a higher rental income than a 1st floor would yield. The last tenant paid the original petitioners-present respondents ₹14,500/- as rent per month and the available ground floor could be let out at a much higher rent to bring running income to the family and to the mother. This was a legitimate requirement of the family and how it arranges its finances to make one part of the property income producing while aiming to occupy the 1st floor in expansion of the family on the impending marriage of Udit Sood. Fulfillment of this bona fide need was possible only on eviction of the tenant from the 1st floor. Moreover, it was none of the business of the tenant to advise the landlord in a personal family matter regarding their choice of accommodation suitable to their

needs in the light of changing events.

10. A great deal of evidence has been led, both oral and documentary, by the parties on both the issues of bona fide personal need and for non-payment of arrears of rent.

11. On the issue of eviction for non-payment of rent the rent authorities have considered in extenso the nitty gritty of the facts pertaining to rent paid or in default or in short change. The learned Rent Controller has found excess amount paid by the tenant to the tune of ₹968.26 paisa in one of the slabs prior to December 01, 2005 which requires to be adjusted in favour of the tenant. However, for the period December 2005 to November 2006 the hike of 5% has been applied and amount due has been worked out by the Rent Controller with 6% annual interest. The same exercise has been done in the next phase i.e. December 2007 to November 2008 and certain amounts have been determined by calculation. The provisional assessment was made by the Rent Controller on November 17, 2008 from August 31, 2006 till November 30, 2008 at the flat rate of rent ₹5670/- per month pursuant to which tenant tendered ₹1,70,500/- in total as on December 08, 2008. The rest of the reasoning in calculation is best reproduced in the words of the Rent Controller which are:-

*“Out of the said amount **Rs.1,58,760/-** was the arrears of rent from 31.8.06 to 31.12.2008 along with interest @6% amounting to **Rs.10,716/-** and cost of Rs.1000/- which was accepted under protest by the petitioner. Thus, in view of abovesaid calculation the tenant-respondent was required to pay a sum of **Rs.2,43,370.32** ps inclusive of interest whereas he only paid **Rs.1,70,500/-**. Therefore, **the tender of rent made by the respondent for the period December, 2005 till November, 2008 is short and insufficient by***

Rs.72,870.32ps. But since tenant had paid excess of R.968.26ps in the earlier period of June, 2004 to November, 2005 same has to be adjusted while calculating aforesaid insufficiency. Resultantly, at that time of tender, the respondent had made the tender of rent short and insufficient by Rs.71,902.06ps which he is bound to pay. Consequently, the respondent is directed to clear the aforesaid arrears within two months from today failing which he shall be liable for ejectment on the ground of non payment of arrears of rent”

12. The calculation made by the Rent Controller leads to short tender of rent insufficient by ₹71,902.06 paisa for which two months time was granted failing which it shall become a ground for ejectment. The Rent Controller dismissed the petition on personal need not satisfied it was bona fide. The eviction was conditional on payment of balance rent. That is when the respondents moved the Appellate Court praying for reversal of the findings of the first authority on personal need.

13. Insofar as personal need is concerned a few more facts need to be addressed. The employment details of Udit Sood are documented and have been found to be genuine. The suggestions put by the tenant that Udit Sood was employed elsewhere at New Delhi have served no useful purpose in their bearing on the ground of personal requirement. There was sufficient evidence to conclude that Udit Sood was in residence with his grandmother in the annexe portion of the house. Another fact has come out that the landlord's mother had knee replacement of both knees and the additional accommodation on the 1st floor is required for expansion of the family of Udit Sood with the grand/daughter-in-law coming in with the parents-in-law frequent visitors in residence and thus the 1st floor accommodation has

become the bona fide need of the landlords. The annexe portion consists of two rooms and the Rent Controller has found this insufficient accommodation for the landlord when they would have ample space for their residence in the said house for their comfort.

14. It is for the landlord to see how to utilize his property and which of the property owned by him is best suited for his need and requirement. The suitability of any premises for the need of the landlord is to be considered as per the convenience of the family members keeping in view their need. The need of the family members is the need of the son who would be deemed to be a co-landlords by virtue of holding shares in the property.

15. On these premises, the eviction petition has succeeded. The Appellate Authority in its order dated January 03, 2015 has refused to affirm the finding on personal need. The appellate authority has taken cognizance of the subsequent event that Udit Sood, son of the 1st landlord who was working in HDFC Bank Chandigarh was transferred to New Delhi by HDFC after the decision of the petition by the Rent Controller. There could be no quarrel with the proposition that subsequent event should be considered by the Court to re-examine the need of landlord from more than one angle and for this an amendment was not necessary in the pleadings. The Appellate Authority was of opinion that though the landlords did not amend their pleadings to incorporate the factum of transfer of Udit Sood from Chandigarh, the subsequent event does not wipe out their genuine need on the foundations in the rent petition. Udit Sood was married by then.

It was explained that Udit Sood had got a transfer to Delhi due to his wife's

delivery and after child was born he left HDFC Bank with intention to start business as Advisor in Wealth Management at Chandigarh. The foundation of the eviction petition *inter alia* was in anticipation of the marriage of Udit Sood and, therefore, the pleadings were not lacking in form and substance to support ground for eviction. The marriage of Udit Sood was contingent and became an accomplished fact.

16. Long pendency of rent litigation to recover possession on one or more of the grounds in Section 13 of the Act will not bind the landlord forever till trial end or Udit Sood from shaping or re-shaping his career by permanently locating residence in Chandigarh and if Udit Sood has left the service of the Bank with active bona fide intention to start business in Chandigarh then he must be understood as requiring accommodation on the 1st floor of demised premises even while the family rents out the ground floor for its running income to which additional income the tenant cannot complain as he might have done the same thing had he been in the shoes of the landlords; if the requirement is reasonable and something more than mere desire but it need not be a compelling or absolute or dire necessity. The Court relied on the decision of the Supreme Court in Raghunath G. Pahlane (Dead) v. Chaganlal S. and Co., (1999) 8 SCC 1, in which ruling the Court held that the Courts where the appeal arose from, were wrong in thinking that the plaintiff (Tenant) must prove not his need but his 'dire or absolute necessity'. Thus the degrees of necessity were ruled out of consideration.

17. Furthermore, the Supreme Court has guided in Sarla Ahuja v. United India Insurance Co., 1998 (2) RCR (Rent) 533 that Rent Controller

shall not proceed with the presumption that the requirement is not bona fide. When landlord shows a prima facie case, it is open to the Rent Controller to draw up presumption that the requirement of the landlord is bona fide. It is often said by the Courts that it is not for the tenant to dictate terms to the landlord as to how he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fide requirement of the landlord, the Supreme Court held that it is unnecessary to make an endeavour as to how else the landlord could adjust himself. The landlord is the best judge of his requirement and has complete freedom in the matter. It is no concern of either the tenant or of the Court to dictate to the landlord how and in what manner he should adjust himself or to prescribe for him a standard of their own.

18. To support their pleadings, Sanjiv Sood, Vinod Sood and Udit Sood all stepped into the witness box to face searing cross-examination and withstood it supporting their pleaded case and the subsequent events. It was not for the tenant to dictate terms as to how the son of 1st landlord can adjust himself in the ground floor portion which is lying vacant when kept vacant to derive higher rent to add to the family's common wealth and not for the benefit of the tenant to hold on to the tenancy with future uncertain. This was a legitimate desire which the tenant could harbour and entertain had he been in the place of the landlord. Also the intention of Udit Sood to settle out down in Chandigarh with his wife and carry out business by changing careers cannot be suspected as it was too early to doubt and after all there is nothing abnormal in such a desire, notwithstanding that the family owned properties in Shimla from where they appear to initially hail from and were

in the process to wind up. For these reasons, in addition to the reasons assigned by the Rent Controller, the appeal of the tenant failed.

19. It is not necessary to go into the plethora of judgments cited by Mr. Nehra appearing for the landlord which would only add needless heft to this order.

20. I may record that I have been through the written brief note presented by the tenant at the hearing. Even assuming that entire rent was paid even then the eviction cannot be held up. The only argument urged by Mr. Chopra, learned Senior counsel for setting aside the impugned orders is that the appellate authority has erred in accepting a case on subsequent events which is neither pleaded nor proved by the landlords. The need as pleaded in the application for ejectment does not survive at all and the ejectment of the tenant on the ground of personal necessity is liable to be set aside. I may notice for the sake of record the 12 judgments cited by the tenant which are:-

1. Hasmat Rai and another v. Raghunath Prasad, AIR 1981 SC 1711;
2. Prabha Arora and another v. Brij Mohini Anand and others, 2007 (2) RCR 600;
3. Kedar Nath Agrawal (Dead) v. Dhanraji Devi (Dead) by LRs, 2004 (2) RCR 498 (SC);
4. Atma S. Berar v. Mukhtiar Singh, 2003 (1) RCR (Rent) 42 (SC);
5. Baba Kashinath Bhinge v. Samast Lingayat Gavali, 1995 (1) RCR (Rent) 518;
6. Vishal Garg v. Kanwaljit Kaur and others, 2011 (1) RCR (Rent) 389;
7. Mohd. Ismail v. Dinkar Vinayakrao Dorlikar, 2009 (2)

RCR (Rent) 481;

8. Ajit Singh and another v. Jit Ram and another, 2008 (2) RCR (Rent) 328;
9. Manmohan Lal v. Shanti Parkash Jain, 2014 (2) RCR (Rent) 222;
10. Shankar Lal v. Madan Lal and others, 2011 (1) RCR (Rent) 139;
11. Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs and others, 2008 (2) RCR (Civil) 879 (SC);
12. Messers. Trojan and Co. v. RM.N.N. Nagappa Chettiar, AIR 1953 SC 235

21. In my considered opinion none of them is pat on the point as per ratio on the facts in each of those cases though the principles of law are binding decisions.

22. The other point raised in the brief note and taken at the time of hearing was that landlords failed to plead and prove that Udit Sood for whose personal necessity the petition was filed, does not own or possess any property in the urban area of Chandigarh and has not vacated any such accommodation which is mandatorily required under Section 13 (3) (a) (i) of the Act and for this is cited the authority in *Ajit Singh* (Supra) and *Hasmat Rai* cases (Supra).

23. Tenant argued that no application was moved by the landlord to amend the pleadings and set out the improved case that Udit Sood wanted to start consultancy business in Chandigarh and to settle in the city, and accordingly the ground of personal necessity must inevitably fail and still further the landlord has vacant possession of the ground floor which only show that the only intention of the landlords was to evict the tenant.

24. I would not accept these contentions advanced on behalf of the tenant because there was sufficient pleading in the petition of bona fide requirement to sustain an eviction order. Moreover, the dismissal of the application under Order 41 Rule 27 filed by the tenant for adducing additional evidence was dismissed as not pressed and the application was rendered infructuous because of the admission that Udit Sood who is the MBA Degree in Finance has left the bank on transfer to New Delhi while working with the same bank. It was specifically pleaded in the reply to the application by the landlord that Sanjiv Sood after the death of his wife is living alone in Shimla and is also in the process of winding up his wholesale business of fruit and vegetables which he has been running for the last 39 years and also wants to settle with his son at Chandigarh in his advanced age and in addition to the need and desire of the son to shift to Chandigarh, he would also wish to set up consultancy for Marketing and Transportation of Hill Fruits and vegetables with his son Udit Sood who will also join his father in the said business in addition to his desire to start his own business as Advisor in Wealth Management at Chandigarh to earn extra income. The tenant even cross-examined the witnesses on these facts which preclude him from urging that the pleadings were not amended. This is a plea of desperation.

25. I do not think that in this case the specific pleading that Udit Sood did not own or occupy any property of his own in the urban area at Chandigarh was fatal to the action. In any case, the Rent Act in the provisions of Section 13 (4) give right to re-possess the tenanted premises in case the landlord fails to occupy the tenanted premises. This is a safeguard

that tenants possess in rent law of Punjab applicable to Chandigarh.

26. I would, therefore, reject the argument as they have no material bearing on the result of the case and the conclusions arrived at by the authorities which I endorse as a possible view on the entire evidence on record. And not an impossible view no prudent person would take on the same material

27. I find no fundamental flaw of reasoning in any of the two orders passed by the authorities under the Rent Act in allowing the application for eviction of the tenant. I would, therefore, find no warrant to interfere with the well reasoned orders of the Rent authorities taken after appreciating the facts and the evidence on record there being no perversity in them.

28. As far as the second accompanying petition filed by the tenant is concerned i.e. CR No.5086 of 2014 against the warrants of possession issued after the executing court declining the objection petition filed by the tenant under Section 47 of the Code of Civil Procedure and I have no doubt that the warrants of possession will follow suit by force of the eviction order in the wake of dismissal of the main petition as a necessary corollary and no orders are required to be passed therein as the exercise would be only academic.

29. For the reasons recorded above, the petition is devoid of merit and is dismissed. The impugned orders are affirmed as fair and proper on the cumulative evidence produced by the parties. The tenant is granted two months' time to vacate the premises and handover its possession to the landlords after clearing the arrears of rent. The tenant would furnish an

affidavit by way of an undertaking before the Executing Court within ten
days from the date of receipt of certified copy of this order.

30. Accordingly, both the petitions stand disposed of in the above
terms.

28.09.2017
manju

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes