

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

CR No.1992 of 2008 (O & M)  
Date of Decision:03.07.2018

Parkash Rani and others

...Petitioners

Versus

Joginder Singh

...Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Amit Jain, Advocate  
for the petitioners.

Mr. Rajinder Goyal, Advocate  
for the respondent.

**ANIL KSHETARPAL, J.**

Today, the case was heard at length and the order was pronounced. This Court now proceed to record its reasons.

Tenant-petitioners are in the revision petition against the order of ejectment passed by the Rent Controller affirmed by the Appellate Authority. Petitioners have been evicted on the ground that the premises is required by the landlord for settling his unemployed son in the shop in dispute, who is a diploma holder in computers. This Court has heard learned counsel for the parties at length and with their able assistance gone through the records of the Courts below.

Learned counsel for the petitioners has submitted as under:-

(i) landlord-respondent did not file any replication to the written statement wherein tenant-petitioners had pleaded that son of the landlord Pardeep Singh is already running business in the name of friend's computers,

hence, the pleadings have not been denied;

(ii) Pardeep Singh, son has not been examined in the evidence;

(iii) landlord-respondent has not pleaded that son is dependent upon him.

(iv) the son is already in occupation of other building and, therefore, landlord is not entitled to evict the petitioners.

(v) There is concealment of facts by the landlord and, therefore, he is not entitled to any relief.

On the other hand, respondent-landlord has supported the judgments passed by the Courts below.

Filing of replication is optional. Replication can only be filed with the leave of the Court, therefore, the pleadings in the written statement cannot be held uncontroverted merely because replication has not been filed.

As regards argument of learned counsel for the petitioners that son has not been examined in evidence. It may be noticed that the landlord himself has appeared as PW-1. He has been thoroughly cross-examined. Landlord has answered all the questions which were put to him in the cross-examination. In such circumstances, adverse inference cannot be drawn against the landlord on the ground that the son has not been appeared or examined in evidence. Learned counsel for the petitioners although made submission, however, could not draw attention of the Court to any judgment on the aspect.

Before drawing adverse inference as provided under Section

114 of the Evidence Act, it is necessary for the Court to examine whether the evidence already available on the record is sufficient or not? Adverse inference can only be drawn if the Court records such finding. This issue has been examined in detail by this Court in RSA-2306-2008 decided on 24.04.2018. For the aforesaid reasons, there is no force in the second submission of learned counsel for the petitioners.

Next submission of learned counsel for the petitioners also does not have any substance as landlord-respondent in his petition for eviction has specifically pleaded that the tenanted premises are required for occupation of his son Pardeep Singh, who wants to start business of computer in the tenanted premises and he has passed his Diploma in Computer Science. It is further pleaded that the said son of the landlord is unemployed.

In such circumstances, it is apparent that the petitioners have pleaded that since the son of the landlord is unemployed, therefore, he requires the premises. Section 13 (3) (a) (i) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 does not require a particular form of pleadings. The words used in the statute are “he requires it for his own occupation”. His own occupation would include occupation of family members. An unemployed son even if he is major would be a member of the family and covered by the words “own occupation”.

Next two submissions of learned counsel for the petitioners can be dealt with jointly. Learned counsel has submitted that as per Section 13 (3) (a) (i) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, a landowner is required to plead and prove that he is not occupying any other building in the urban area concerned and has not vacated such building

without sufficient cause after commencement of the Act, 1949 in the said urban area. He submitted that in the present case, it is proved that son of the landlord-respondent Pardeep Singh is in occupation of other building.

This Court has examined the evidence referred by learned counsel for the petitioners, however, in the considered opinion of this Court, petitioners have failed to prove that the son of the landlord-respondent is in occupation of any other building. Petitioners in order to prove the possession of the son of the landlord-respondent has examined Vikas Ahuja as RW-1. However, it is clear from the reading of the cross-examination that this witness is a tutored witness and is stating before the Court whatever has been told to him by the tenant or his relative. This witness has admitted that Girish Miglani, one of the tenant and his cousin had told him what answers were to be given in the Court. Hence, his evidence cannot be relied upon. Second witness examined by the petitioners is Sunil Kumar, who is also alleged to be running a shop in the same area. However, when Sunil Kumar was cross examined, he also admitted that Arpit Miglani is his friend who is cousin of Girish Kumar, one of the petitioner. Girish Kumar when appeared has admitted that Sunil Kumar is his cousin also. Girish Kumar when cross-examined on this issue has admitted that he does not know whether the shop in which son of the landlord is working is owned by him or he is a tenant. He frankly admits that he has not seen the record of friend's computers. Landlord-respondent when appeared and cross-examined has stated that his son is visiting the friend's computer occasionally for labour work.

Once tenants had pleaded that son of the landowner is in occupation of the premises and is running business in the name of friend's computers, it was their duty to bring on record substantive evidence to

prove that fact. Petitioners have only produced on file photographs of the friend's computer shop from outside, however, name of the son of the landlord does not figure.

Still further, petitioners have produced an invoice of friend's computers and mobiles proving sale of a mobile phone dated 05.12.2006. Such invoice is alleged to have been signed by son of the landlord-respondent. However, apart from oral statement of Vikas Ahuja, who has already been tutored witness, no evidence has been produced to prove that the son of the landlord was in occupation of any other premises in the urban area concerned. Hence, this Court does not find any substance in the argument of learned counsel for the petitioners that son of the landlord-respondent is in occupation of other building or the landlord has concealed some facts.

In view of the aforesaid discussion, this Court does not find any good ground to interfere with the concurrent finding arrived at by the Rent Controller and the Appellate Authority.

Revision petition is dismissed.

03.07.2018

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**(ANIL KSHETARPAL)**  
**JUDGE**

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No