

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

104

CR No.1573 of 2011 (O & M)  
Date of Decision:06.08.2018

Thakar Dass

...Petitioner

Versus

Madan Mohan

...Respondent

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

Present: Mr. Munish Gupta, Advocate  
for the petitioner.

Mr. Vijay Sharma, Advocate  
for the respondent.

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**ANIL KSHETARPAL, J.(Oral)**

Tenant-petitioner is in the revision petition against the order passed by the Rent Controller affirmed by the Appellate Authority ordering his eviction on the ground of personal necessity. As per Section 13 (3) (a) of the East Punjab Urban Rent Restriction Act, 1949, landlord while filing a petition is required to plead accommodation in his occupation. Section 13 of the East Punjab Urban Rent Restriction Act, 1949 is extracted as under:-

***“13. Eviction of tenants -(1) A tenant  
in possession of a building or rented land  
shall not be evicted therefrom in execution  
of a decree passed before or after the  
commencement of this Act or otherwise and***

*whether before or after the termination of the tenancy, except in accordance with the provisions of this Section, 1[or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.]*

*(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied*

*(i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable:*

*Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the*

*Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid;*

*(ii) That the tenant has after the commencement of this Act without the written consent of the landlord-*

*(a) Transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or*

*(b) Used the building or rented land for a purpose other than that for which it was leased, or*

*(iii) That the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, or*

*(iv) that the tenant has been guilty of such acts and conduct as are a nuisance to the occupiers of buildings in the neighbourhood, or*

*(v) That where the building is situated in a place other than a hill-station, the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause, the Controller may make an order directing the tenant to put the landlord in possession of the building or*

*rented land and if the Controller is not so satisfied he shall make an order rejecting the application:*

*Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.*

***(3) (a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession-***

***(i) In the case of a residential building if -***

***(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;***

***(d) it was let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and the tenant has ceased, whether before or after the***

*commencement of this Act, to be in such service or employment:*

*Provided that where the tenant is workman who has been discharged or dismissed by the landlord from his service or employment in contravention of the provisions of the Industrial Disputes Act, 1947, he shall not be liable to be evicted until the competent authority under that Act confirms the order of discharge or dismissal made against him by the landlord.]*

*[(i-a) In the case of a residential building, if the landlord is a member of the armed forces of the Union of India and requires it for the occupation of his family and if he produces a certificate of the prescribed authority, referred to in Section 7 of the Indian Soldiers (Litigation) Act, 1925, that he is serving under special conditions within the meaning of Section 3 of that Act.*

***Explanation.-*** *For the purposes of this sub-paragraph--*

*(1) The certificate of the prescribed authority shall be conclusive evidence that the landlord is serving under special*

*conditions; and*

*(2) "Family" means such relations of the landlord as ordinarily live with him and are dependent upon him;]*

*(ii) In the case of 5 [a non-residential building or] rented land, if -*

*(a) He requires it for his own use;*

*(b) He is not occupying in the urban area concerned for the purpose of his business any other such 6[building or] rented land, 7[as the case may be]; and*

*(c) He has not vacated such<sup>8</sup> [a building or] rented land without sufficient cause after the commencement of this Act, in the urban area concerned;*

*[(iii) in the case of any building or rented land, if he requires it to carry out any building work at the instance of the Government or local authority or any Improvement Trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation;]*

*(iv) in the case of 1[any building] if he requires it for use as an office, or consulting room by his son who intends to start practice as a lawyer or as a "registered practitioner" within the meaning of that expression as used in the Punjab Medical*

*Registration Act, 1916, or for the residence of his son who is married, if -*

*(a) his son as aforesaid is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be; and*

*(b) His son as aforesaid has not vacated such a building without sufficient cause after the commencement of this Act, in the urban area concerned:*

*Provided that where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord 2 [shall not, except under sub-paragraph (i-a), be entitled] to apply under this sub-section before the expiry of such period:*

*Provided further that where the landlord has obtained possession of 3[a residential, a scheduled or nonresidential building or rented land] under the provisions of sub- paragraph (i) or sub-paragraph (ii) he shall not be entitled to apply again under the said sub-paragraphs for the possession of any other building of the same class or rented land:*

*Provided further that where a landlord has obtained possession of any building under the*

*provisions of subparagraph (iv) he shall not be entitled to apply again under the said subparagraph for the possession of any other building for the use of, or as the case may be, for the residence of the same son.*

*(b) The Controller shall, if he is satisfied that the claim of the landlord is bono fide make an order directing the tenant to put the landlord in possession of the building or rented land on such date as may be specified by the Controller and if the Controller is not so satisfied, he shall make an order rejecting the application:*

*Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.*

*[(c) Where an application is made under subparagraph (i-a) of paragraph (a), it shall be disposed of, as far as may be, within a period of one month and if the claim of the landlord is accepted, the Controller shall make an order directing the tenant to put the landlord in possession of the building on a date to be specified in the order and such date shall not be later than fifteen days from the date of the order.]*

*(4) Where a landlord who has obtained possession of a building or rented land in pursuance of an order under sub-paragraph (i) or sub-paragraph (ii) of paragraph (a) of sub-section (3) 5 [does not himself occupy it or, if possession was obtained by him for his family in pursuance of an order under sub- paragraph (i-a) of paragraph -(a) of sub-section (3), his family does not occupy the residential building, or, if possession] was obtained by him on behalf of his son in pursuance of an order under sub-paragraph (iv) of paragraph (a) of sub-section (3), his son does not occupy it for the purpose for which possession was obtained, for a continuous period of twelve months from the date of obtaining possession or where a landlord who has obtained possession of a building under sub-paragraph (iii) of the aforesaid paragraph (a) puts that building to any use or lets it out to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of such building or rented land and the Controller shall make an order accordingly.*

*[(4-A) Where a tenant is evicted from a residential building or scheduled building in pursuance of an*

*order made under Section 13-A and the specified landlord, or, as the case may be, the widow, child, grandchild or widowed daughter-in-law of the specified landlord, -*

*(a) Does not occupy it for a continuous period of three months from the date of such eviction, or*

*(b) within a period of three years from the date of such eviction of the tenant, lets out the whole or any part of such building, from which the tenant was evicted, to any person other than the tenant, such evicted tenant may apply to the Controller, for an order directing that the possession of the building shall be resorted to him and the Controller shall make an order accordingly.]*

*(5) Where the Controller is satisfied that any application made by a landlord for the eviction of a tenant is frivolous or vexatious, the Controller may direct that compensation not exceeding one hundred rupees be paid by such landlord to the tenant.”*

The word “residential” was struck down by the Hon'ble

Punjab, (1996) 1 SCC 1. Hence, statute is to be read as building only.

In the present case, it is proved on file that the landlady has constructed three shops in one line, which has been marked as “A” “B” “C” in layout plan Ex.R-3. She filed a petition seeking eviction of the petitioner-tenant while pleading as under:-

*“ The applicant needs the shop for her personal user and occupation, and she will run the business of selling ladies suits in the impugned shop along with her son Madan Mohan. The applicant and Madan Mohan are not in possession of any other non-residential property except another shop in possession of Adarsh Mohan tenant of applicant, within the Nabha Municipal limits and the applicant and Madan Mohan have not vacated any non-residential premises after coming into force of the said Rent Act, within the Nabha Municipal Limits.”*

In the written statement, tenant pointed out that the landlady does not have any bona fide necessity and there are two other shops, one of which is lying vacant. Tenant pleaded as under:-

*“ Sub para (ii) is wrong and denied. It is denied that the shop is required for personal user and occupation. The ground alleged is self-imaginary, illusory and nature or moonshine. It is unbelievable that a lady of 80 years intends to run the business of ladies suits at the final juncture of her life. The building in which the shop in question locates, has already been*

*sold by the petitioner and her family. This fact has been concealed by the petitioner. Adarsh Mohan alleged tenant is the son of petitioner at whose instance the present petition appears to be moved. When there is no necessity the question of occupying the other premises is meaningless. It is necessary to mention here that the shop was carved out from the residential house along with two other shops, one of which is still lying vacant.”*

In the re-joinder, landlady pleaded as under:-

*“Sub para (ii) is wrong and denied. It is denied that the ground is imaginary, illusion or pure moonshine. There is nothing to debar a lady of 78 years from starting a business, who is the respondent to say that it is the final juncture of her life. It is denied that the building of the shop has been sold by the applicant or anything has been concealed by her. The applicant will run the business with the help of her son Madan Mohan. It is denied that a shop is lying vacant and is petition has been filed at the behest of Adarsh Mohan. Of course he is son of the applicant. It is denied that there is no necessity of the applicant. This sub para of the application is correct.”*

It is apparent that even after being pointed out, the landlady just denied that the shop is lying vacant or the present petition has been filed at the behest of Adarsh Mohan.

When she appeared in the witness-box, she admitted that there

are three shops out of which one shop is in possession of other son i.e. Adarsh Mohan. She further reiterates that Adarsh Mohan is running his business from one shop and in the third shop he has stored some garbage.

Both the Courts below by misreading the evidence have recorded a finding that third shop is being used by Adarsh Mohan as a store. It may be noted that this is neither part of the pleadings nor part of evidence. Landlady only states that certain waste material (garbage) belonging to Adarsh Mohan is lying in the third shop. It is apparent from the reading of Section 13 of the Act, the landlord is required to plead that what are the properties, which are in his or her occupation.

In the present case, in the petition, the landlady had concealed the existence of third shop and when she was confronted with the aforesaid fact in the written statement, she did not accept availability of the third shop in the replication. In evidence for the first time, the landlady made a statement that third shop is being used by Adarsh Mohan for storing garbage. Even at that stage the landlady did not come forward with clean hands and pleaded that the third shop is available. There is no evidence on the file which proves that the third shop is being used by Adarsh Mohan. In fact, the entire case of the landlady is based upon incorrect facts. Courts below have erred in returning a finding that the third shop is being used by Adarsh Mohan as a store particularly in view of the statement of the landlady, who claims that Adarsh Mohan, her other son is running his business only from one shop.

Still further, all the three shops are of equivalent size and have an opening towards bank street. It was the duty of the landlady to come to

the Court with the clean hands. In the present case, this Court finds that the

landlady did not file the case and disclosed the facts in accordance with the statutory requirements.

Hence, orders under challenge are set aside.

Revision petition is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

06.08.2018  
*sheetal*

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

Whether Speaking/Reasoned: Yes/No  
Whether Reportable : Yes/No