

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

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|----------------------------|-------------------------|-------------|
| 1. | CR No.1582 of 2018(O&M) | |
| Vijay Kumar | --- | Petitioner |
| | Versus | |
| Charanjit Singh and others | --- | Respondents |
| 2. | CR No.1588 of 2018(O&M) | |
| Jarnail Singh | --- | Petitioner |
| | Versus | |
| Charanjit Singh and others | --- | Respondents |
| 3. | CR No.1591 of 2018(O&M) | |
| Hardeep Singh | --- | Petitioner |
| | Versus | |
| Charanjit Singh and others | --- | Respondents |
| | and | |
| 4. | CR No.1624 of 2018(O&M) | |
| Chanan Lal | --- | Petitioner |
| | Versus | |
| Charanjit Singh and others | --- | Respondents |

Date of Decision: October 12, 2018

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.Sanjiv Gupta, Advocate for the petitioners.

Mr.Vaibhav Sehgal, Advocate and
Mr.Gagandeep Singh Chhina, Advocate for the respondents.

HARINDER SINGH SIDHU, J.

This order shall dispose of aforesaid four revisions petitions.
The landlords (respondents herein) in all these petitions are the same though
the tenants (petitioners herein) are different. The ground of eviction in all
the four petitions is the same. The eviction of the tenants has been sought
from four different shops in the same building.

The facts are being taken from Civil Revision No.1582 of 2018. For convenience, the parties will be referred to as per their status in the eviction petition. The tenant will be referred to as the respondent and the landlords will be referred to as the petitioners.

The respondent has filed this revision petition impugning the order dated 17.11.2016 of learned Rent Controller, Ludhiana whereby the eviction petition has been allowed and the order dated February 14, 2018 of the Appellate Authority, Ludhiana whereby his appeal has been dismissed.

The property in question was originally owned by one Haveli Singh. After his death, it was inherited by his daughter Manjit Kaur on the basis of a registered will. The respondent was inducted as a tenant in the shop by Jaswant Singh, husband of Manjit Kaur on a monthly rent of Rs.230/- per month. Jaswant Singh died on 22.5.2001. After his death, the rent was being collected by Manjit Kaur. The rent was periodically increased and at the time of filing of the eviction petition was Rs.500/- per month. Manjit Kaur died on 2.10.2006 leaving behind the petitioners as her legal heirs. Petitioner No.1 and 2 are the sons of Jaswant Singh and Petitioner No.3 is his daughter.

The ejectment was sought on two grounds:

- (i) For non-payment of rent w.e.f. 1.4.2007.
- (ii) For bona fide use and requirement by the petitioners for their personal use and occupation of Taranjot Singh and Gurmukh Singh sons of Charanjit Singh-petitioner no.1 and Jaspreet Singh son of petitioner No.3- Harjit Kaur.

It was pleaded that there are seven shops in the building in

rent with the respondent. It was pleaded that Petitioner No.1 is carrying on the business of denting and painting of scooters and motorcycles in shop shown as yellow in the site plan. The said shop is in small lane on the rear side of the building whereas the other six shops were abutting the main *chowri sarak* road. There is no proper approach to the shop of petitioner no.1 from the road. As such his business had not picked up. The shop shown as green in the site plan was in possession of Gurmukh Singh son of petitioner No.1- Charanjit Singh. Gurmukh Singh was stated to be handicapped and unable to move about. He was stated to be in the business of mobile accessories, recharge coupons and repairs of mobiles in the shop shown as green in the site plan under the name and style of 'M/s Singh Telecom'. It was pleaded that the said shop was very small in size and not conducive for him to carry on his business. After getting the shops vacated he intended to increase the size of his shop in order to expand his business. The other shops were in possession of other tenants regarding which also eviction petitions had been filed. It was pleaded that petitioner no.2 was not in possession of any shop in the building. He was in the business of selling fruit on a *rehri* just in front of the building in question. Jaspreet Singh son of petitioner no.3- Harjit Kaur had passed 10+2. He had learnt the art of AC Repair. As he was not in possession of any shop, he was doing repair work of ACs from his house. Taranjot Singh was studying at Guru Nanak Dev Poly Tech College, Sidhwan Bet and pursuing Mechanical Engineering. He would complete his education within one year. Thereafter, he intended to set up his business in Mechanical Engineering in a shop in this building. It was pleaded that except for the shops shown as red, yellow,

green and brown shown in the site plan, the remaining portion of the building shown as blue was residential and the same was being used by petitioner nos.1 and 2 and their family members for residential purposes. The children of the petitioners were totally dependent upon them for the purpose of commercial accommodation.

In the written statement filed on behalf of the respondents, it was pleaded that the petitioners had deliberately concealed the available accommodation with them. It was pleaded that before filing of petition, petitioner No.2 -Kulwinder Singh had vacated commercial/non residential building forming part of property no.1258 /1C/D Guru Nanak Dev Nagar Ludhiana where he was a tenant under one Sohan Lal. The relationship of landlord and tenant between the parties was not denied. However, it was denied that they (the respondents) were in arrears of rent. It was also pleaded that the requirement of the petitioners was not bona fide.

On behalf of the petitioners, petitioner no.1- Charanjit Singh, and petitioner no.2- Kulwinder Singh appeared as PW-1 and PW-3 and reiterated the averments of the petition. Jaspreet Singh appeared as PW-2. Taranjot Singh appeared as PW-4 and Gurmukh Singh appeared as PW-5. Besides, reliance was placed on various documents. On behalf of the respondent, Vijay Kumar his legal heir deposited as DW-1. Reliance was also placed on various documents Ex.R1 to R15.

The ground of arrears of rent was not pressed by the petitioners and the only ground on which the petition proceeded was the bona fide need of the petitioners.

The learned Rent Controller held that the petitioners had been

able to establish their bona fide need. Experience certificate dated 10.10.2014 Ex.P1 of Jaspreet Singh showed that he had worked with Novel Air-conditioning Company from 1.4.2012 to 31.3.2014 in the supervisor department where he supervised the activities of HVAC. Ex.P20 and P21 were the detailed marks card as per which Tarnjot Singh had completed his Mechanical Engineering from Punjab Technical University. The Ld. Rent Controller held that Jaspreet Singh and Taranjot Singh required one shop each to carry on their business. The need of petitioner no.1 who was doing the work of denting and painting of scooters and motorcycles from a shop which was not abutting the main road was also held to be bona fide. It was also concluded that Kulwinder Singh petitioner no.2 was not in possession of any shop and he was selling fruit and vegetable on a rehri just in front of the building. Hence, his need for a shop was also held to be bona fide. On the other hand, the Rent Controller concluded that the respondent had not been able to establish that Kulwinder Singh had been a tenant of Sohan Lal and had vacated that shop just before the filing of the eviction petition. The learned Rent Controller also considered and rejected the contention of the respondent that one out of the seven shops (shop No. 6) which had been vacated by Kamal Yashpal, was further let out by the petitioners to Shiv Chat Bhandar. To substantiate the assertion that the shop had been let out to Shiv Chat Bhandar, reliance had been placed on photographs Ex.R1 to R15. The learned Rent Controller held that these photographs only depicted the rehri of Shiv Chat Bhandar as standing in front of the building. One person was shown to be sitting in a shop, but from the photographs it could not be ascertained that it was the same shop which the respondent alleged had been

vacated by Kamal Yashpal. Further no rent deed in respect of this shop had been produced indicating that it has been rented out to Shiv Chat Bhandar.

Holding that the bona fide requirement of the shops for the personal use and occupation of the premises of the petitioners and of Jaspreet and Taranjot Singh had been proved, the eviction of the respondent was ordered.

The appeal filed by the respondent was dismissed by the learned Appellate Authority. Along with the appeal the respondent had filed two applications one under Order 6 Rule 17 CPC for amendment of written statement and another under Order 41 Rule 27 CPC for leading additional evidence. These applications were also dismissed by the learned Appellate Authority.

In the application under Order 6 Rule 17 CPC the written statement was sought to be amended by pleading that after the filing of the petition, one shop no.6 had been got vacated by the petitioners from Kamal Yashpal and the same had been let out to M/s Shiv Chat Bhandar where he had started '*Gol Guppa Business*'. Thereafter, even Shiv Chat Bhandar had vacated the shop and the same was in the physical possession of the petitioners. The said shop was not being used by the petitioners for starting any business and it was lying closed. It was also sought to be pleaded that other than the shops, the petitioners also had chabaras on the first floor of the property which were lying vacant and were in the occupation of the petitioners, but this fact had been concealed by the petitioners. These chabaras could have been easily occupied by the petitioners for their business had there been any necessity. It was pleaded that the amendment

had become necessary in view of subsequent events after the filing of the written statement.

In the application under Order 41 Rule 27 CPC permission to lead additional evidence to prove on record the complete site plan of the property was sought. It was stated that the petitioners had only submitted the site plan of the ground floor and intentionally not given the complete site plan of the property which included the chabaras on the first floor.

Regarding the application under Order 6 Rule 17 CPC the Ld. Appellate Authority noted that the applicant- respondent was aware of the fact that shop no.6 had fallen vacant just after he had filed the written statement as this fact was stated by the petitioners in the rejoinder. However, the respondent did not seek permission to amend the written statement at that stage but contested the petition and filed the application after inexplicable delay. Further the respondent had already led evidence to prove that the shop had been let out to Shiv Chat Bhandar which had been duly considered by the Ld. Rent Controller. Hence amendment of the written statement at a late stage would not serve any purpose except to delay the proceedings.

The application under Order 41 Rule 27 CPC was similarly disallowed by holding that the respondent was well aware of the fact of the existence of the chabaras and he could have easily led evidence during the course of the proceedings before learned Rent Controller which he chose not to do. Further it was not a case where the additional evidence was required to pronounce judgment.

Assailing the judgments and order of courts below, Mr.Sanjiv

Gupta, learned counsel for the respondent-tenant argued as under:

- (i) The petitioners had not disclosed the existence of the chabbara in the eviction petition. Hence the petition was liable to have been dismissed on this ground alone.
- (ii) The application under Order 6 Rule 17 CPC has been wrongly dismissed. As shop no.6 had been vacated after the filing of the petition, the petitioners ought to have amended the eviction petition by stating that this shop had been vacated but despite the shop becoming available, their need persisted. The petitioner had also not specifically pleaded that a chabara above the shops was lying vacant. Hence the amendment in the written statement was essential for the decision of the case and the application was wrongly rejected by the Appellate Authority.
- (iii) The application under Order 41 Rule 27 CPC was wrongly dismissed. Though initially he sought to contend based on a decision in Civil Revision No. 6325 of 2017 Daljit Singh and another Vs. Baljit Kaur decided on 25.10.2017, that the application ought to have been decided before the decision of the appeal, but considering that the Supreme Court had in various decisions including *Union of India v. Ibrahim Uddin, (2012) 8 SCC 148* held that the application under Order 41 Rule 27 has to be decided along with the appeal, he did not press this point. He then contended that the Appellate Authority ought to have first considered the evidence in the appeal and then appraised itself of the necessity of the additional evidence sought to be led. This he contended had not been done. He argued

that the Appellate Authority first decided the application without considering its impact on the decision. He argued that allowing leading of the additional evidence in the form of a complete site plan which would depict the existence of the chabara over the shops which could be used by the petitioners and satisfied their projected need was essential for the decision of the case.

(iv) As the petitioners claim that the building is residential and some shops have been let out for non-residential purpose, then without first getting the building converted into non-residential, eviction could not be sought on the ground that the petitioners need the shops for non-residential purpose. Reliance was placed on Section 11 of the East Punjab Urban Rent Restriction Act, 1949 as per which no person shall convert a residential building into a non-residential building except with permission in writing of the Controller.

(v) Challenging the bona fide need of the petitioners, he referred to the cross-examination of petitioner No. 1-Charanjit Singh, wherein he stated that all the petitioners conceived of the thought to file the rent petition when the tenants stopped paying rent. He had also stated that he cannot tell as to which petitioners would require which shop for which purpose.

Mr. Vaibhav Sehgal Ld. Counsel for the respondents on the other hand defended the orders of the Courts below. He argued that there was no merit in the submissions of the Ld. Counsel for the petitioners.

Mr. Sehgal contended that there had been no concealment by

the petitioners. In the eviction petition all the seven shops under occupation of the petitioners and the tenants had been variously shown in red, yellow, green and brown. It was further pleaded that except for the shops shown as red, yellow, green and brown in the site plan, the remaining portion of the building shown as blue was residential and the same was being used by petitioner nos.1 and 2 and their family members for residential purposes. He further argued that as eviction was being sought in respect of a shop, he was not required to disclose the accommodation which was being used as residential. He relied on **Krishan Lal v. Harvinder Singh 2004(2) R.C.R.(Rent) 550**. Regarding the absence of pleading of shop No. 6 having been vacated, he argued that this shop had been vacated during the pendency of the petition. This fact was disclosed in the replication where it has been stated that Kamal Yash Pal tenant of shop No. 6 had vacated the shop in his occupation and had handed over its vacant possession to the petitioners. It was also asserted that the shop was very small in size and petitioner No. 1 is storing his articles there. It was also stated that the shop alone cannot be used for any business purposes.

He argued that the Ld. Appellate Authority had rightly dismissed the application under Order 6 Rule 17 CPC as the respondent had given no reason as to why the amendment was not sought earlier despite it having been disclosed in the replication that the shop No. 6 had been vacated by the tenant occupying it.

Regarding the application under Order 41 Rule 27 CPC Mr. Sehgal argued that it had been clearly stated in the eviction petition that the remaining portion shown as blue was residential and was being used as

such. Further the chabara was on the first floor of the shop under the occupation of the tenant and its existence was known to him since the very beginning. Evidence regarding that could have been produced before the Rent Controller.

Regarding the argument of Mr. Gupta that as the building was a residential building, eviction for non-residential purpose could not have been sought, Mr. Sehgal argued that this plea of maintainability had not been raised before the Rent Controller and cannot be permitted to be raised for the first time in revision. Referring to the written statement he stated that there was no pleading based on Section 11 of the Act. There was also no pleading that the shop is a part of a residential building. The only preliminary objection taken was that petitioner No. 2 Kulwinder Singh had vacated a commercial/ non-residential building forming part of property No. 1258/IC/D, Guru Nanak Dev Nagar Ludhiana which had not been disclosed. He argued that in the absence of pleading that the building was located in a residential area as per the zoning plan, the plea that eviction for non-residential purpose cannot be sought cannot be urged. He further referred to the rent note Ex P6 as per which the premises taken on rent had been described as a shop. He relied on various decisions **Anima Biswas v. Gurbachan Singh 2010 (4) R.C.R. (Civil) 688, Rattan Lal v. Mst. Lakshami Devi 1970 R.C.R.(Rent) 923, Gopi Ram v. Jagan Nath 2003(1) R.C.R. (Rent) 664, Arun Kumar v. Ashok Kumar Chhabra 2011(1) R.C.R. (Rent) 138, Sh. Satpal Chadha v. Satish Kumar 2011(3) R.C.R.(Civil) 283, Lal Chand v. Bal Kishan 1987(2) R.C.R.(Rent) 283, Gopal Ram v. Govind Ram 2013(2) R.C.R.(Rent) 165**, to contend that

where a premises is let out as a shop, its eviction for non- residential purposes can be sought.

Mr. Sehgal further argued that the scope of interference in revision petition is only to test legality and propriety of the impugned orders. Findings of fact cannot be re-appreciated.

Having heard Ld. Counsel for the parties, in my view, there is no merit in the present revision petitions.

The contention of Mr. Gupta that the petition was liable to have been dismissed for not disclosing the existence of chabaras over the shops cannot be accepted. Mr. Sehgal has rightly pointed out that in the eviction petition the shops under occupation of the petitioners and the tenants had been variously shown as red, yellow, green and brown. It had been further pleaded that except for the shops shown as red, yellow, green and brown in the site plan, the remaining portion of the building shown as blue was residential and the same was being used by petitioner nos. 1 and 2 and their family members for residential purposes. Thus there was no concealment. Further as eviction was being sought in respect of a shop the petitioner was not required to disclose the accommodation which was being used as residential. (**Krishan Lal v. Harvinder Singh 2004(2) R.C.R.(Rent) 550**). Shop No. 6 had been vacated after the filing of the eviction petition. This fact was disclosed in the replication. It was also asserted that the shop was very small in size and petitioner No. 1 is storing his articles there and the shop alone cannot be used for any business purposes.

There is also no merit in the contention of Mr. Gupta that the Ld. Appellate Authority has erred in dismissing the application for

amendment of written statement under Order 6 Rule 17 and for leading additional evidence under Order 41 Rule 27. As regards the application under Order 6 Rule 17, the Ld. Appellate Authority has rightly noted that the respondent was fully aware of the shop No.6 having been vacated as it was mentioned in the replication filed by the petitioners. The respondent had led evidence with a view to prove that after having been vacated, shop No. 6 had been let out to Shiv Chat Bhandar. The Rent Controller had considered that evidence and not discarded it as being beyond pleadings. The respondent had not explained as to why he had not moved the application for amendment of written statement earlier, before commencement of trial, but filed it only at the appellate stage. It was rightly concluded that the intention of the respondent was only to delay the proceedings as the Rent Controller had already order his eviction.

Similarly regarding the application under Order 41 Rule 27 whereby the respondent wanted to examine the draftsman to prove the complete site plan showing the existence of chabaras over the shops, the Ld. Appellate Authority again rightly held that the respondent was fully aware of the Chabaras over the shops and could have easily led evidence regarding that before the Rent Controller. His case was not covered by any of the conditions stipulated in Order 41 Rule 27 of the CPC. It was also not a case where the Court required the additional evidence to enable it to pronounce judgment.

There is also no merit in the contention of Mr. Gupta that though the shops have been let out for non-residential purpose, but being part of a residential building, eviction therefrom could not be sought on the

ground that the petitioners need the shops for non-residential purposes without first getting the building converted from residential to non-residential. There is no pleading in the written statement in this regard. There was no pleading that the shop is a part of a residential building. In the absence of such pleading the plea that eviction for non residential purpose cannot be sought cannot be taken in revision for the first time as this plea had not been raised before the Rent Controller. The Supreme Court in Mrs. A. Kanthamani Vs. Mrs. Nasreen Ahmed (2017)4 SCC 654 has held that a plea regarding maintainability of a suit cannot be permitted to be raised at the appellate stage without it being raised in the pleading (written statement).

“30.3. Third, it is a well-settled principle of law that the plea regarding the maintainability of suit is required to be raised in the first instance in the pleading (written statement) then only such plea can be adjudicated by the trial court on its merits as a preliminary issue under Order 14 Rule 2 CPC. Once a finding is rendered on the plea, the same can then be examined by the first or/and second appellate court. It is only in appropriate cases, where the court prima facie finds by mere perusal of plaint allegations that the suit is barred by any express provision of law or is not legally maintainable due to any legal provision; a judicial notice can be taken to avoid abuse of judicial process in prosecuting such suit. Such is, however, not the case here.”

It has been repeatedly held by this Court that in the absence of any zoning plan, scheme or notification proving the residential or non-residential character of a building, the purpose for which the demised premises was let out would determine its character as residential or non-residential.

In **Anima Biswas v. Gurbachan Singh 2010 (4) R.C.R. (Civil) 688**, it was observed thus:

“14. Undisputedly, the area where building is situated could not be proved to be residential zone by placing any scheme, notification, house tax assessment register. Rent receipts issued by the father of the landlord and

thereafter by the landlord, contain that rent is being received for two shops. The demised premises was let out initially for non-residential purpose i.e. to run clinic and part of which was never used for residential purpose, hence, in my view, demised premises shall fall within the definition of nonresidential building and shall not be subject matter of Section 13-A of the Act.”

In Arun Kumar v. Ashok Kumar Chhabra 2011(1) R.C.R.

(Rent) 138 it was observed as under:

“9. The nature and character of the tenanted premises for the purpose of determination of the controversy in hand will not make much of difference for two reasons - one is that after the decision of the Supreme Court in Harbilas Rai Bansal v. State of Punjab, 1995(2) R.C.R. (Rent) 672 (S.C.), the ground of personal necessity is equally applicable to both residential and non-residential buildings and can be availed of by a landlord to seek eviction of the tenant and the second is that the petitioner had pleaded that the tenanted room was being used by the respondent as a shop which fact has not been denied by the latter in his cross-examination. In addition to this, the tenanted room is required by the petitioner for setting up a shop for his son which is again a commercial purpose for which the same is already being used by the respondent since 1977.

10. Having regard to the aforesaid when the respondent himself has admitted that since 1977, he has been using the tenanted room as a shop, he cannot question the status of the building to be a residential so as to deny the petitioner the benefit of the same very purpose for which it is being used.”

In Satpal Chadha v. Satish Kumar 2011(3) R.C.R.(Civil)

283 it was held as under :

“8. After taking into consideration the precedents referred to by both learned counsel for the parties, I am also of the view that the demised premises in both the cases, which is though a part of a residential building and is being used for non-residential purpose by the tenants, is a separate non-residential building and fall within the definition of non-residential building for which landlords can seek eviction of the tenants for the non-residential purposes and not for residential purposes. Insofar as the bona fide necessity is concerned, a concurrent finding has been recorded by the Courts below and no case is made out by learned counsel for the tenants to persuade this Court to take a view different from the view taken by the Courts below in order to disturb the said finding.”

Admittedly, in this case as per the rent note Ex P-6 the premises taken on rent had been described as a shop. It was being used by the respondent as such. Eviction therefrom is also being sought to use the same as a shop. Thus eviction could be sought for its use for non-residential

purposes.

The last contention of Mr. Gupta regarding the bona fide necessity of the petitioners being not proved is also without substance. The Courts below have on the basis of evidence upheld the bona fide need of petitioners No. 1 and 2 and of Taranjot Singh and Jaspreet Singh the sons of petitioners No. 1 and 3. It has also come in evidence that shop No. 6 which was vacated after the institution of the eviction petition was very small in size and could not alone be used for any business purposes. This fact was also admitted in the cross examination of RW-1 Jarnail Singh who also stated that presently tools of Charanjit Singh are lying in shop no.6 . Thus it is not a case where the need of the petitioners has been totally eclipsed by shop No. 6 having been vacated after the filing of the eviction petition.

The Chabbaras were admittedly being used by the petitioner for residential purposes. This fact was also admitted by RW-1 Jarnail Singh who stated that petitioner no.1 and 2 and his family members are residing in the remaining portion of the building in question. It is not open to the respondent to contend that the shop can be located in the chabara. The fact that the petitioners had not decided as yet as to which shop is to be used for what purpose also does not disprove the bona fide need of the petitioners.

In view of above, there is no merit in the petitions. Accordingly, the same are dismissed.

October 12, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No