

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

609

CR No.7250 of 2008 (O&M)

Date of Decision : 25.09.2018

S.Ajit Singh

..... Petitioner

Versus

Amarjit Singh

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Baldev Raj Mahajan, Senior Advocate with
Mr. Amit Sharma, Advocate and
Mr. Prateek Mahajan, Advocate
for the petitioner.

Mr. Veneet Sharma, Advocate
for the respondent.

AJAY TEWARI, J. (Oral)

This revision has been filed against the concurrent judgments of the Courts below dismissing a petition for eviction filed by the petitioner-landlord. The landlord had projected personal necessity to the effect that he was earlier doing the business of artificial jewelry by going from place to place but now he wanted to get the shop in dispute vacated so that he could do his business in the premises in dispute.

Both the Courts below held that about 8 years earlier (in 1997) the petitioner had filed a petition for eviction of the then tenant of the very same shop and there he had stated that his son had learnt the jewelry business and he required it for that purpose. That petition was decided in a

compromise and in the year 1999 that tenant had vacated the shop. However, instead of occupying the shop the petitioner let it out to the respondent. The Courts further held that this fact was not disclosed by the petitioner in the present rent petition. The third fact which the Courts noticed was that during the pendency of this petition another shop with another tenant was got vacated on 15.12.2006 and the petitioner could well have occupied that shop. The Courts also noticed that prior to the present petition the petitioner had filed a petition against the respondent for eviction on the ground of material impairment and they held that at that time also the ground of bona-fide personal requirement was available to the petitioner and since he did not take the same the present petition would be barred by Order 2 Rule 2 CPC. Assailing the judgment learned senior counsel for the petitioner has argued the following things in respect of the findings on the basis of the previous petition filed against the previous tenant.

*(i)As regards, the non disclosure he has relied upon the judgments of this Court passed in **CR No.4659 of 2006 titled as Brig. Harpreet Singh Chahal Vs. Gopal Gupta, decided on 29.07.2015** and **CR No.201 of 2003 titled as Baldev Singh and others Vs. Mohan Singh and others, decided on 14.05.2018** to contend that once the facts were before the Court the failure to specifically plead would not be fatal.*

(ii)Secondly he has argued that that petition was not decided on merits but was decided on the basis of compromise and at that time he had wanted it for the use of his son (even though it was mentioned as his personal necessity also) but his son did not start the business and since at that time he was satisfied with doing his business from place to place he let it out again. As per learned senior counsel for the petitioner however that position can not be taken to be frozen for all times to come and if the present petition

has been filed after 5 or 6 years that can not mean that the need now does not exist.

(iii)As regards the argument about the vacation of the other shop during the pendency of the petition he has drawn my attention to the site plan. Learned senior counsel for the petitioner has referred to the plan and showed that the premises which were got vacated was a factory which opened to the back street while the present shop open into the commercial area. He has stated that in his preliminary objection also the respondent had himself pleaded that the petitioner was enjoying the rent from a factory.

Counsel for the respondent on the other hand has defended the findings of the Courts below.

In my opinion, the arguments made by the senior counsel for the petitioner have more weight. No doubt the petitioner did not disclose in the present petition that he had earlier got possession of the property but this Court in ***Brig. Harpreet Singh Chahal's case supra*** wherein it has been held as follows :-

VIII. Nature of pleadings and practice in rent control proceedings

*12. The decision in **Ajit Singh and another Vs. Jit Ram and another-AIR 2009 SC 1999** would alone require a proper understanding. If the Supreme Court was holding that the person who is seeking for ejectment “for his own use” actually for the need of anyone else in the family, the requirement of such other person must be spelt out under Section 13 (3)(ii) and must be understood in a proper context. It is a repeated theme in our courts and if I make an attempt to explain the Supreme Court's judgment, it is only to ensure that some clarity obtains in this grey area. It is still an issue in our courts where the petitions get to be drawn, redrawn, amended, challenged in appeal or revision only on issue of nature of*

*pleading for bona fide requirement. The practice must stop somewhere. There is need to explain the Supreme Court judgment in **Ajit Singh** (supra). At a fundamental level, for me, the rules of pleadings must be reasonably flexible before any Tribunal. Tribunalization has come with several pluses and minuses. Wherever strict procedural in approaches were frowned upon as creating new obstacles for quick and efficacious disposal, Tribunals established through enactments invariably provide for respective Tribunals to set their own procedures for trial work. We have Tribunals that abound for determining compensation for motor accidents for recovery of amounts, for financial institutions for recoveries, and son. In each one of the enactments, the authorities are granted powers to frame their own procedures. The common thread in all these legislations is to provide for powers of summoning and enforcing attendance of witnesses as vested in a court under the Civil Procedure Code. If the Civil Procedure Code were to be applied in its full force, there is no necessity to even the limit of power to exercise of summoning of witnesses. In fact Section 16 of the Punjab Rent Restriction Act contains a similar provision giving the Rent Controller a power of a civil court under the Civil Procedure Code for summoning the enforcing agencies of witnesses. This provision would have been unnecessary and otiose, if the CPC were to be applied in all its full force for any other activity as well.*

13. Pleadings are methods of ensuring that there is no vagueness left in what the parties have to prove and when issues are framed for establishing the landlord's personal need, there needs to be objective basis for assessment of that need. That basis is provided under the statutory provision in requiring the Rent Controller to examine that the landlord was not vacated any other premises and applies to a court for ejectment giving out a need for ejectment, such a landlord shall not also be a person who already has no other property vacant

*in the same urban area. It is, therefore, expected that a landlord sets out in the petitions or volunteers information about the fact that he owns no other building which is vacant or he has not vacated any other building only in order to claim ejectment. If the parties go to trial on all aspects relating to the bona fide need and it is brought out in evidence that there is no other property which is vacant or the landlord has not vacated any other property to claim ejectment, then that itself should be taken as proving the bona fides. I will, therefore, rest the judgment in **Ajit Singh** (supra) to be confined to secure proof of what the law requires and if that proof is available by parties joining that issue with all adequate materials at the trial, it ought to serve the ends of justice.”*

As regards the argument that the present petition is barred by Order 2 Rule 2 CPC the full Bench of this Court in **Harnam Singh Vs. Surjit Singh, 1984(1) RCR (Rent) 247** clearly held that in such a case the ground of personal necessity requirement is a distinct and separate cause of action and consequently having not taken that ground would not attract the bar of constructive *res judicata*. As regards the argument that in 1999 the petitioner had obtained the premises and had again let them out learned senior counsel for the petitioner has relied upon a judgment titled as **Ramjidas Vs. Rambabu, 2000(1) Rent Law Reported 329 (SC)** where the Supreme Court has held that the past conduct in letting out a shop which had been got vacated would not be determinative but the fresh need has to be considered. To the similar effect is an earlier judgment of the Supreme Court in **N.R.Narayan Swamy Vs. B.Francis Jagan, 2001 (2) RCR (Rent) 169**; there also a previous petition was withdrawn but in a subsequent petition the Supreme Court held that “*in an eviction suit on the ground of*

bonafide requirement the genuineness of the said ground is to be decided on the basis of requirement on the date of the suit.”

As regards the next argument that the another premises have been got vacated, in my considered opinion those premises were admittedly a factory premises opening on the side street; and even otherwise there is now a catena of judgments that it is not for the tenant to force the landlord where he should start his business.

In the circumstances, the petition is allowed. The judgments of the Courts below are set aside. The tenant is ordered to be evicted. However, since the premises is a commercial premises, I deem it appropriate to grant him six months time from today.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(**AJAY TEWARI**)
JUDGE

25.09.2018

Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No