

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

CR No.5722 of 2018 (O&M)

Date of Decision:07.09.2018

Navyug Goods Carrier

...Petitioner

Versus

Manpreet Singh and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Divanshu Jain, Advocate for the petitioner.

ANIL KSHETARPAL, J.

The tenant petitioner is in the revision petition against the order of eviction passed by the learned Rent Controlloer, affirmed in the appeal by the appellate authority.

The point for determination is whether landlords bonafidely require the premises for their son or not”?

The landlords are husband and wife, who have sought eviction of the tenant from the premises in dispute in order to settle their son Hargun, who has done his Graduation in Business Administration and was previously working when his father was into a joint family business but now has started his own independent work under the name of Hargun Tea Company and he requires the premises for godown to run Tea business.

The tenant contested the petition by pleading that the landlords have other godown in their possession and they are more than 25 rooms on the first floor of the tenanted premises out of which many rooms are vacant.

In the rejoinder, it was pleaded by the landlords that they have

no other suitable building and have not vacated any other building without sufficient cause within the urban area of Amritsar. It was further asserted that other godowns as referred by the tenant in the reply do not belong to the landlords and 25 rooms as alleged are only temporary sheds for accommodating the labourers and these alleged rooms cannot be used for storing purposes.

In order to prove bonafide requirement, Manpreet Singh, one of the landlord, appeared in evidence as AW-1. The tenant was given opportunity to cross-examine the landlord. In the cross-examination, landlord/respondent No.1 also stated that his son is not the owner of any other property in the urban area of Amritsar. Hargun, son of landlord-respondent No.1, also appeared in the evidence and cross-examined by learned counsel for the tenant. It was clarified by the son that his father is running a firm in partnership under the name of M/s Mool Singh Bhajan Singh. In the cross-examination, he did state that at present he is doing the business from a vacant space which is covered by walls of three sides and one old shutter.

As noted, the Rent Controller as well as the Appellate Authority ordered eviction, which is subject matter of challenge before this Court in the revision petition.

This Court has heard the learned counsel for the petitioner at length.

Learned counsel for the petitioner has submitted that there is concealment of facts by the landlords. He has further submitted that son of the respondents is also carrying on a business under the name of Hargun

Tea Company since 2009. He has next submitted that the landlord/respondent No.1, while appeared in the witness box, has admitted that there is a godown available having area of 400 square yards. He has further submitted that Hargun has also admitted that he is doing his business from a vacant space covered by three walls of three sides and old shutter.

This Court has considered the submissions, however, finds no substance therein.

The space which is alleged to be available with the landlords is belonging to a partnership firm where landlord-father is working with other partners. On careful reading of the cross-examination, it is apparent that the landlord when stepped into the witness box, has stated that he is working in the partnership i.e. M/s Mool Singh Bhajan Singh along with his brother. It has further been stated that the disputed property is 3 kms away from where the firm M/s Mool Singh Bhajan Singh is working. No doubt, it has been stated that M/s Mool Singh Bhajan Singh is having an office at Karta Ahliwalia, Niwa Bazar, Amritsar and a godown at Ghee Mandi. It is also admitted that M/s Mool Singh Bhajan Singh is operating from the first floor and there is a shed, which is also used as a godown. The property which is owned and used by the partnership firm cannot be treated as a property available for use by the son of one of the partner unless other partners give consent for the same.

In the present case, requirement of the son is with respect to a godown. Attention of the Court was not drawn to any evidence to prove that any vacant godown is at the disposal of the landlords. Similarly, the alleged admission of Hargun is only to the extent that he is doing the

business from a vacant space, which is covered by walls of three sides and one old shutter. However, there is no admission that the aforesaid space is fit and suitable to be used as a godown. If a tenant wants to defeat the right of landlord, it is the duty of the tenant to prove that the landlord does not bonafidely require the premises in question. The evidence should be led by the tenant which clearly establish that the requirement as pleaded is not genuine. No doubt, during the cross-examination, the counsel is entitled to extract certain information but if a party wants that court should treat that information as admission, then such information has to be clear, specific, categoric, unequivocal, comprehensive and do not suffer from any vagueness. In this case, this Court does not find that Hargun Singh, when appeared in the evidence, has made any admission that a godown is available with him.

As regards the assertion that Hargun Tea Company is operating since 2009, it may be noticed that in the petition, it is mentioned that it is working since 2010, whereas in the evidence, witness has stated that it is working since 2009. In the considered view of this Court, such little variation in the pleadings and the evidence does not make much difference.

Learned counsel for the petitioner has further submitted that the ingredients of Section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the 1949 Act') have not been pleaded with respect to the son for whose requirement eviction is being sought and therefore the rent petition is liable to be dismissed. However, on being pointed out, learned counsel for the petitioner has admitted that the tenant,

while filing the written statement, did not take this objection. It will be noted that in the replication, the landlords had pleaded that they do not have any other building in their godown or they have not vacated any other building without sufficient cause within the urban area of Amritsar. As per Section 13 (3)(a)(i) of the 1949 Act, the landlord before becomes entitled to decree of eviction, is to prove and fulfill three requirements, i.e. (i) requires the premises for own occupation; (ii) not occupying any other building and (iii) has not vacated any such building without sufficient cause after the commencement of the 1949 Act. It is nowhere provided in the Act that the pleadings have to be any specific format wherein these three requirements must be pleaded. No doubt, a Full Bench of this Court in **Banke Ram Vs. Shrimati Sarasvati Devi, 1977(1) RCR (Rent) 595** had held that such requirements have to be fulfilled by the landlord. However, it is apparent that thereafter the aforesaid Full Bench judgment has been diluted and it has been held that if during evidence, even in the absence of any pleadings, it is proved that the landlord fulfills the requirements of the statute, the petition filed by the landlord would not be dismissed. Reference in this regard can be made to the judgments passed by this Court in **Gurbaj Singh Vs. Parshotam Singh and others, 2011 (3) PLR 653, M/s Bhatia Cloth House Vs. Dr. Raj Kumar Gupta and another, 2008(4) RCR (Civil) 250, Karnail Singh Vs. Vidya Devi, 1980 (2) RCJ 188** and many other decisions of this Court.

However, the learned counsel for the petitioner, while relying upon the judgment passed by the Hon'ble Supreme Court in the case of **Ajit Singh and another Vs. Jit Ram and another, 2008(9) SCC 699**, has

submitted that it is necessary to plead all the ingredients with respect to the dependent for whom the eviction is being sought. It will be noted that the Act uses the words “for his own use”. These words were interpreted by the Hon’ble Supreme Court in the case of **Ajit Singh** (supra) in the following manner:-

XXX XXX XXX XXX XXX
 XXX XXX XXX XXX

(2)The expression - landlord requires for "his own use" is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord himself but also of the normal "emanations" of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on a variety of factors such as interrelationship and interdependence - economic or otherwise, between the landlord and such person in the background of social, socio- religious and local customs and obligations of the society or region to which they belong.”

In the case of **Ajit Singh** (supra) cited by the learned counsel for the petitioner, father and son had filed eviction petition. It was pleaded in the petition that in a family partition, the property had fallen to the share of son, who was appellant No.1 before the Hon’ble Supreme Court. In that context, Hon’ble the Supreme Court held that the ingredients as required with regard to son are to be pleaded, because the son is the landlord. In the case of **Ajit Singh** (supra), the landlord was in the appeal before Hon’ble the Supreme Court and his appeal was allowed.

A judgment passed by the Hon’ble Supreme Court is no doubt

binding under the Article 142 of the Constitution on all the Courts. However, the judgment passed by the Court with greatest respect, has to be read in the context it has been delivered. The judgment passed by the Hon'ble Supreme Court cannot be read as a statute. It is *ratio decidendi* in a judgment which is binding not each word or sentence.

Learned counsel for the petitioner further drew attention of the Court on two judgments of this Court in the cases of **Manmohan Lal Vs. Shanti Parkash Jain, 2014 (5) RCR (Civil) 667** and **Rajiv Gupta Vs. Jiwan Ram, 2015 1 RCR (Civil) 762** to contend that it has been held that it is necessary to incorporate the pleadings with respect to the dependent in the petition itself.

On careful reading of the aforesaid judgments, it is apparent that the Court has relied upon the case of **Ajit Singh** (supra). The facts of the case of **Ajit Singh** (supra) are entirely different. Still further, even with respect to the landlord, this Court after the judgment passed by the Full Bench, has taken a consistent view that the landlord is required to prove the ingredients, however, it is not necessary that those ingredients must be pleaded. Even if the requirements are not pleaded but those are proved by leading evidence, it is sufficient compliance of the 1949 Act. Although, the view on this aspect is consistent, however, reference can be made to a judgment in the case of **M/s Bhatia Cloth House Vs. Dr. Raj Kumar Gupta and another, 2008(4) RCR (Civil) 250** and para 16 thereof is extracted as under:-

“The first contention relates to the assertion by counsel for the petitioner that the respondents have failed to plead that they are not occupying any other building and have not

*vacated any such building without sufficient cause, within the urban area of Ambala City. A perusal of the ejectment petition discloses that in sub-para (b) of para 5 and para 6 of the ejectment petition, the landlords pleaded that they are not in possession of any other shop within the urban area of Ambala City. In the written statement, the aforementioned averment was not denied. Further more, it is consistent position in law that ambiguity in pleadings regarding the ingredients, set out in Section 13(3)(a) of the Act, if made good in the evidence, is sufficient compliance of the statutory provisions. Reference in this regard may be made to **Daulat Ram v. Girdhari Lal, 1980 (2) RCR(Rent) 108, Romesh v. Mukand Lal, 1982(2) RCR 66 and Baldev Raj v. Ram Lal, 2006(2) RCR(Rent) 193 : 2006(4) CCC 264.** Respondent No. 1 admittedly, does not occupy any shop within the urban area of Ambala City. He is in occupation of a residential premises. Ejectment in the instant petition has been sought from a shop. Requisite and necessary evidence has been led to establish that respondent No. 1 is not in occupation of any other shop in the Urban Area of Ambala City. The sale of the adjoining shop, initially occupied by respondent No. 1 for his clinic, would not adversely affect the merits in any manner. The shop was sold in the year 1994, whereas the ejectment petition was filed in the year 2001. Respondent No. 1 sold and vacated the shop housing his clinic on the bona fide belief that he could carry on his clinic at his house and in furtherance of his belief, opened a clinic at his residence. Respondent No. 1 has been compelled to pray for ejectment, as he faces an imminent threat of resumption of his house. The tenant has not denied, whether by pleadings or by evidence, that respondent No. 1 is not in occupation of any commercial premises in the Urban Area of Ambala City and, therefore, as the necessity pleaded is commercial in nature, and as the landlords are not in occupation of any commercial premises in the urban area of Ambala City and have not vacated any*

commercial premises without just cause, they have satisfied the ingredients of Section 13(3)(a) of the Act. The argument, raised with regard to the failure to comply with the statutory ingredients of the Act, must, therefore, fail and the concurrent findings, returned by the learned Courts below, must be upheld. An argument that as the landlords did not disclose the sale of the adjoining shop and other properties, while filing the ejectment petition, would merit dismissal of the ejectment petition for concealment of material facts, cannot be accepted. All material evidence, namely, with respect to the sale of the adjoining shops and the other properties, was adduced before the Rent Controller.”

If one carefully reads the judgments passed by the Court in the cases of **Manmohan Lal** (supra) and **Rajiv Gupta** (supra), it is apparent that the attention of the learned Judge was not drawn to the consistent view of this Court in the judgments referred to above.

As noticed earlier, the 1949 Act does not require any particular form of pleadings and there is no format of the rent petition provided under the 1949 Act. The Court is required to examine the pleadings and the evidence and then find out whether sufficient facts have come on record to prove that the landlord fulfills those ingredients.

In the present case, the petitioner-tenant cannot be heard on the ground of absence of specific pleadings of the ingredients of the Section 13 (3)(a)(ii) of the 1949 Act, because the tenant never took this objection while filing reply. The landlords still complied with the requirements of the 1949 Act, while filing replication. Still further, when the evidence was led, the landlords specifically stated that their son does not own any other property in the urban area concerned. Once in the reply no objection is taken by the

tenant, the landlord is deprived of opportunity to amend the pleading. Hence, this Court is of the view that the tenant is estopped from subsequently raising this plea once no objection to this effect has been taken in the reply.

In view of the aforesaid discussion, this Court does not find any ground to interfere. The present revision petition is hereby dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

07.09.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No