

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

CR No.660 of 2011 (O&M)
Date of decision : 21.08.2018

Rajnish Kumar

...Petitioner

Versus

Raghubir Chopra

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

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

Mr. Harsh Aggarwal, Advocate for the respondent.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment is being released.

Landlord-petitioner is in the revision petition against the order passed by the Rent Controller affirmed by the Appellate Authority dismissing his petition for seeking eviction of the respondent-tenant under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as “the Act of 1949”)?

The question which is required to be answered is “whether in the absence of specific denial by the tenant to the assertions made by the landlord pleading necessary ingredients of Section 13(3)(a)(i) of the Act of 1949, is it necessary that the landlord while appearing in the witness-box

must depose about the ingredients of Section 13(3)(a)(i) of the Act of 1949?”

As per the Act of 1949, the landlord is required to plead three following facts:-

- (i) He requires it for his own occupation.
- (ii) He is not occupying any other building in the urban area concerned.
- (iii) He has not vacated such a building without sufficient cause after the commencement of this Act in the said urban area.

Section 13(3)(a)(i) of the Act of 1949 is extracted as under:-

“13. Eviction of tenants:- (1) xxx xxx

(2) xxx xxx

(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 provision 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.”

In the present case, the landlord did plead all the three requirements as would be clear from the reading of the petition. Reference in this regard can be made to paras 2 and 3 of the petition. While filing the reply, the respondent-tenant gave detailed reply to the assertions made in para 2(i), however, while replying to para 3, only assertion made was that para 3 of the application is wrong and denied.

When landlord appeared in the evidence, he deposed as under:-

“I have not having any place to display the manufacture items as well as I do not have proper office to attend the customers. I want to use the shop in question to display the manufactured items as well as for the purpose of office to attend the customers. Therefore, I require the shop in question bonafide for my use and occupation.”

It may be significant to note here that the landlord-petitioner had specifically asserted that he had started the business of manufacturing iron items like gates and grills in a portion of his house in 1988 and thereafter he purchased the property in 1995. Immediately after purchase, he shifted his business in the premises in question and started doing his business. The shop in question is on the front of the aforesaid premises. The landlord wants to expand its business and requires the premises for having proper display of the manufactured items. The front of the premises

is situated on Jalandhar-Hoshiarpur Road.

Learned Rent Controller after finding the requirement of the landlord to be bona fide, dismissed the petition on the ground that no doubt the landlord has pleaded the necessary ingredients, however, while appearing in evidence, he has failed to lead evidence qua those necessary ingredients. The Appellate Authority also upheld the order by adding a ground that on examination of the electricity bills and other documents like Income Tax Returns, it is not proved on the file that the business of the landlord is flourishing and the premises is required for expansion.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the petitioner-landlord has submitted that the landlord is only required to plead the ingredients of Section 13(3)(a)(i) of the Act of 1949. He further submitted that unless there is a specific denial to the facts pleaded or it is proved on the file otherwise, the landlord is not required to further lead any evidence in this regard. He further submitted that the First Appellate Court had erred while returning a finding that the business of the landlord is not flourishing. He submitted that the business would flourish only if the landlord gets the possession of the premises and he has space for proper display of the items being manufactured by him. He submitted that it is not being disputed that the landlord is carrying on manufacturing/fabrication in the remaining part of the property except a shop in question which is under tenancy.

On the other hand, learned counsel for the respondent-tenant has submitted that the landlord is not only required to plead but he is also required to prove the necessary ingredients. He submitted that in absence of the evidence, pleadings cannot be said to have been proved. Hence, the Courts have rightly dismissed the petition.

This Court has analyzed the arguments of the learned counsel for the parties. While applying for eviction, a landlord is required to disclose in his petition three facts as noticed above. Admittedly, these three facts have been pleaded. First fact is that he requires the premises for his own occupation which has been pleaded in detail. With regard to remaining two requirements, as per Clause b and c, the landlord has specifically pleaded the facts as required. In reply, the aforesaid pleadings have just been denied. It is nowhere pleaded in the written statement by the tenant that facts as pleaded by the landlord, as regards requirements of Clause b and Clause c are factually incorrect or the landlord is in occupation of any other building in the urban area concerned or he without sufficient cause has vacated such a building in the urban area concerned. Once that is the position, merely because the landlord in evidence has not specifically deposed about the aforesaid two requirements, the petition filed by the landlord could not be dismissed. The landlord has already deposed that he does not have any place to display the manufactured items and he does not have proper office to attend the customers. While cross-examining the landlord, no suggestion has been given to him that he is occupying any other building in the urban area concerned or he has

vacated any such building without sufficient cause after the commencement of the Act in the urban area concerned.

Learned counsel for the respondent has relied upon the judgment passed by Hon'ble Full Bench of this Court in the case of **Banke Ram Vs. Shrimati Sarasvati Devi, 1977(1) RCR (Rent) 595**. He, while referring to para 8 of the judgment, has submitted that the landlord was also required to lead evidence in support of his pleadings on this aspect.

This Court has carefully read the judgment passed by the Hon'ble Full Bench. The question which was referred by the learned Single Judge has been reproduced by the Full Bench of this Court, which is extracted as under:-

“Whether a landlord applying for the eviction of his tenant on the ground contained in sub-paragraphs (b) and (c) of paragraph (i) of Section 13 (3) (a) of the East Punjab Urban Rent Restriction Act, 1949, (hereinafter called the Act), i. e. for his own use and occupation, has or has not to specifically plead in his application the contents of sub-paragraphs (b) and (c) aforesaid, which put a rider on the right of the landlord to get the eviction of his tenant from the premises even for his own use unless he succeeds in proving that he was not in occupation of another residential building in the same urban area and that he had not vacated any such building after the commencement of the Act without any sufficient cause ”

On the reading of the aforesaid question, it is apparent that the Hon'ble Full Bench was answering the question in the context of requirement of pleadings.

The judgment passed by the Court is to be read in the context it is delivered. The judgment passed by the Larger Bench is on the question of law. It is to be read in the context of answering that question. The judgment passed by the Court is not to be read as a statute. Hon'ble Full Bench answered the question and held that the necessary ingredients have to be pleaded. No doubt, in para 8, Hon'ble Full Bench has held as under:-

“Once it is so held, there is no escape from the proposition of law that these ingredients have to be pleaded before any evidence is led on the same.”

However, the aforesaid sentence has to be read in the context it has been made. This would be further clear from para 12 of the judgment which is extracted as under:-

“12. In the present case, we are concerned only with the question as a principle of law as to whether it is essential to plead in an eviction application the ingredients of Sub-clauses (b) and (c) and not the question that if in a particular case these ingredients are not pleaded, but the parties have led evidence with regard to them, what will be the effect? In any given case, where facts have not been averred in the pleading, a number of questions can arise as to whether proper evidence has been adduced by the landlord regarding those facts which do not find place in the pleadings and secondly whether such evidence will be admissible or not and lastly, whether the tenant was taken by surprise or not and had led evidence with full knowledge of the requisite contentions raised by the landlord and whether the tenant has in those circumstances been prejudiced or not. The Court would be required to give full consideration to the contentions raised

by the respective parties and the facts and circumstances of each case before giving its decision in favour of the landlord or the tenant, but the decisions of the High Courts or the Supreme Court, in this regard, cannot be of any avail to detract from the validity of the proposition that it is necessary for the landlord to make averments regarding the ingredients of Sub-clauses (b) and (c). However, it may be made clear that when it is held that it is essential to plead the ingredients of Sub-clauses (b) and (c) in the eviction application by the landlord, it should not be understood that under no circumstances, in the absence of pleadings, the evidence regarding the ingredients envisaged in Sub-clauses, (b) and (c) can be looked into. This is not peculiar to the eviction applications. Similar considerations come into operation even in the case of suits which are governed by the specific and detailed provisions of the Code of Civil Procedure regarding pleadings.”

In view of the aforesaid, it is held that once the necessary ingredients have been pleaded unless it is specifically disputed by the tenant, petition filed by the landlord cannot be dismissed on the ground that such requirements have not been stated in evidence by the landlord particularly when the tenant has neither factually controverted those facts pleaded while pleadings the ingredients nor led any evidence to the contrary.

The finding of the Appellate Authority with regard to the landlord failing to prove his flourishing business is perverse. Where a business is flourishing or not, is dependent on so many factors in the case of eviction. Once bona fide requirement of the landlord has been pleaded

and proved, the Courts are merely to examine that whether the requirement is bona fide or not. How much electricity is being consumed by the landlord or how much income he is deriving from the business and disclosing in the income tax records, would not be a relevant factors particularly when admittedly the landlord is carrying on manufacturing activity and is wanting to expand his business by having a proper place for display of manufactured items.

Keeping in view the aforesaid, the present revision petition is allowed. The orders passed by the Authorities below are set aside.

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

21.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No