

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 6522 of 2015

Date of Decision : 15.02.2018

M/s Jindal Auto Distributors and others

....Petitioners

Versus

Umesh Uppal

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rahul Sharma, Advocate
for the petitioners.

Mr. Vikas Bahl, Sr. Advocate with
Mr. Nitish Garg, Advocate
for the respondent.

Surinder Gupta, J.

Respondent-Umesh Uppal (landlord) filed petition under Section 13 of the East Punjab Urban Rent Restriction Act for eviction of petitioners from ground floor of SCF No. 609, Motor Market, Manimajra, U.T. Chandigarh, on the ground of his personal *bona fide* necessity to start his business of paints and auto parts. Learned Rent Controller upheld the plea of *bona fide* need of respondent-landlord and also held that the petition filed by a co-owner seeking ejectment of tenant is maintainable. However, ejectment petition was dismissed with the observation that the respondent-landlord has not approached the Court with clean hands as he has not disclosed in his petition that first and second floor of the premises had been let out to a tenant and the same were not suitable for his business.

2. Against findings of learned Rent Controller that need of respondent-landlord is *bona fide* and petition is maintainable, petitioners-

tenants did not file any appeal or cross-objections, while respondent-landlord filed appeal before the Appellate Authority, Chandigarh, which reversed the finding of learned Rent Controller regarding concealment of fact by landlord-respondent with the observations as follows:-

“.....Moreover, in this case very clear case of petitioner is that he wanted to start his own business of paints for which he required basement for storing the articles and ground floor for opening a showroom. Even if first floor and second floor were lying vacant before filing of present petition, such first floor and second floor are not suitable to open a showroom. Moreover, the property is shop-cum-flat and first and second floor cannot be used for the purpose of opening of showroom. The requirement of appellant is basement and ground floor. It is clearly pleaded by him that basement is in possession of some other tenant against which another eviction petition has been filed and ground floor is in possession of tenants hereby respondents. Law is well settled by various authorities of Hon'ble High Court and Hon'ble Supreme Court of India that landlord is best judge of his needs and he has to see where to run his business. Tenant or even Court cannot dictate the terms where and how to run the business. Opening of showroom is not suitable at first and second floor. No evidence has been brought on record by respondents that petitioner has any other premises in his possession or he has vacated the same where such business can be started. As regards other findings, the learned trial Court has already positively returned the findings in favour of landlord. Only on two points, one that there are no proper pleadings under Section 13(3)(a) and appellant has concealed the material facts regarding letting out first and second floor before filing of present petition. In my view, the observations and findings

of learned trial Court are not as per pleadings, evidence and the law. Hence, the same are not sustainable on both these points. I hereby reverse the same.”

3. Not satisfied, petitioners-tenants have filed this revision petition. As learned counsel for the petitioners has assailed the judgments of Courts below on legal grounds only, detailed facts of the case are being skipped for the sake of brevity.

4. Learned counsel for the petitioners-tenants has argued that respondent-landlord was not competent to file ejectment petition as he does not fall within the definition of landlord. He is one of the co-owners of the property in question but not the landlord as tenants were paying rent to Smt. Lata Uppal, the other co-owner. There is no relationship of landlord and tenant between the parties, as such, the petition under Section 13 of the Rent Act is not maintainable. In support of his contention, he has relied upon judgments passed in cases of **Mohinder Singh vs. Ram Nath**, 1985 (1) RCR (Rent) 642, **Om Parkash Rohila vs. Sat Pal**, 1992 (2) RCR (Rent) 680, **Sant Lal vs. Prem Chandel (Smt.)**, 1996 (1) RCR (Rent) 322, **Smt. Ram Piari vs. M/s Delhi Fruit Company**, 1980 (1) RCR (Rent) 512, **Ram Lal vs. Gurbaksh Singh**, 1984 (2) RCR (Rent) 14, **Radha Boparai vs. Atma Ram Kundra**, 1987 (2) RCR (Rent) 178, **Assa Singh vs. Charanjiv Singh Gulati**, 2004 (2) RCR (Rent) 660, **K.D. Dewan vs. Harbhajan S. Parihar**, 2002 (1) RCR (Rent) 214, **M.M. Quasim vs. Manohar Lal Sharma**, 1981 (2) RCR (Rent) 74, **Swaran vs. Gram Panchayat, Malikpur**, 1998 (3) RCR (Civil) 46, **State of Haryana vs. Vinod Tayal**, 2011 (2) PLR 70, **Jatinder Kaur vs. S.K. Dhaliwal**, 2015 (4) RCR (Civil) 135, **Dia Lal vs. Kesar**

Dass, 1981 (1) RCR (Rent) 751, Susheela vs. Balakrishnan 2014 (30) RCR (Civil) 412, Vijay Kumar vs. Durga Ashram Charitable Trust, 2002 (2) RCR (Rent) 87, Hiralal Vallabram vs. Sheth Knsturbhai Lalbhai AIR 1967 SC 1853, National Textile Corporation Ltd. vs. Naresh Kumar Badrikumar Jagad, 2011 (2) RCR (Rent) 293, Rai Chand Jain vs. Miss Chandra Kanta Khosla, AIR 1991 SC 744.

5. Second submission made by learned counsel for petitioners is that the ejectment petition is bad on account of non-pleading of ingredients as per provisions of Section 13 (3) (i) (a).

6. Firstly, I take citation in case of ***Ram Piari (supra)*** as referred by learned counsel for petitioners-tenant, wherein a single Bench of this Court has observed as follows:-

“7. After hearing the learned counsel for the parties at great length, I find force in the contention of the learned counsel for the petitioner. Under Section 13 of the Act, a landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. When such an application is filed on behalf of the landlord on the ground that he bonafide requires the premises for his own occupation, then it will be the need of the owner and not of the person who was there only to realise the rent, through he comes within the definition of the word 'landlord'. Even the opening words of Section 2 of the Act provide that in this Act unless there is anything repugnant in the subject or context” and then the definition of the word ‘landlord’ has been given. Thus whenever an application for ejectment of the tenant is filed under section 13 of the Act, it will not be the person who inducted the tenant and was thus entitled to receive

rent in respect of the rented premises, but rather the owner of the property who will be the landlord for the purposes of the Act, because he is the person who is entitled to receive the rent for the time being though somebody on his behalf is receiving the same. It may be that in case the rent has been paid to the person who inducted the tenant in the rented premises, any payment made to him will be good payment and the tenant cannot be ejected on the ground of non-payment of rent to the owner of the property because the person to whom the rent has been paid was entitled to receive the same for the time being and thus he was the landlord to that extent.....”

7. The above observation demolished the case of petitioners-tenants that respondent-landlord being co-owner of the demised premises was not competent to file the present petition.

8. Hon'ble Apex Court in case of **FGP Ltd. vs. Saleh Hooseini Doctor & another**, 2009 (10) SCC 223 has observed that a co-owner can always maintain a suit for eviction of the tenant.

9. Learned counsel for the petitioners-tenant has argued that the landlord as defined under the Rent Act can seek eviction of tenant but if the owner has to eject the tenant he should have filed the ejectment petition by impleading the landlord.

10. On giving a careful consideration to submissions of learned counsel for petitioners-tenants, I find that the same, if accepted can create an anomalous situation. Suppose, a person living abroad, has let out a premises through his friend or relative and at later stage his friend/relative collude with tenant and tenant stops paying rent, in that

event as per submissions of learned counsel for petitioners-tenants, the owner being not the landlord cannot file the petition under the Rent Act, claiming arrears of rent or on any other ground. Argument of learned counsel for petitioner are contrary to settled canons of law on the point and are rejected.

11. Learned counsel for petitioners-tenant has placed reliance on the observations in case of ***K.D. Dewan (supra)*** and has relied on observations in para 8 of the judgment, which reads as follows:-

“8.To be a landlord within the meaning of clause (c) of section 2 a person need not necessarily be the owner; in a vast majority of cases an owner will be a landlord but in many cases a person other than an owner may as well be a landlord. It may be that in a given case the landlord is also an owner but a landlord under the Act need not be the owner. It may be noted that for purposes of the act the legislature has made a distinction between an owner of a premises and a landlord. The Act deals with the rights and obligations of a landlord only as defined therein. Ownership of a premises is immaterial for purposes of the Act.

12. In the above case, Hon'ble Apex Court has nowhere stated that owner of a premises is not competent to maintain petition for ejectment of the tenant. In that case tenant had denied his tenancy. It was in these circumstances that observation was made that the landlord will not become owner by operation of law. In view of clear law laid down by Hon'ble Apex Court, I need not to go through all the citations referred by learned counsel for petitioners-tenants in detail.

13. There is another aspect in this case which proves relationship of landlord and tenant between the parties. In his reply, revision-petitioners have admitted that the premises was let out to them by S.K. Uppal and Ramrax Pal Uppal. After death of Ramrax Pal Uppal, respondent-landlord being his son has stepped into his shoes and has attained the status of landlord qua petitioners-tenants, who stand debarred from challenging his status as landlord. The first argument advanced by learned counsel for petitioners-tenants, as such, has no merit and is rejected.

14. So far as second submission of learned counsel for petitioners-tenant is concerned, respondent-landlord in para 6 (a) of the petition has specifically stated that he is not in possession or vacated any other non-residential premises in urban area of Chandigarh. The vague plea was taken by respondent-Umesh Uppal that other commercial properties within the area of Chandigarh are in his possession. However, this plea was not substantiated by giving any detail of those properties. He further took the plea that Lata Uppal represented herself to be owner of the property of Ramrax Pal Uppal and alongwith S.K. Uppal let out first and second floor of SCF No. 609, Motor Market, Manimajra, Chandigarh to Bharat Bhushan Marwaha, M/s Chandigarh Medicine Traders, M/s Servo Care Life Sciences and others. In replication, respondent-landlord explained that Lata Uppal has let out first floor of the building to some tenants. The question, which arises for consideration is, as to whether revision-petitioners have been able to prove that respondent-landlord was occupying another residential building in urban

area or has vacated such building without sufficient cause? Even if some building is in possession of co-owner and is let out by him, respondent was not required to plead or prove this fact.

15. As a sequel of my above discussion, I find no merit in this revision petition and the same is dismissed.

February 15, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No