

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

CR No.7092 of 2015(O&M)

Date of decision: 2.7.2018

Hans Raj

....Petitioner

VERSUS

Swaran Sood and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate for the petitioner.

Mr. Sunil Chadha, Senior Advocate with
Mr. Maneet Kumar Arya, Advocate for the respondents.

REKHA MITTAL, J.

The tenant is in revision against concurrent findings of fact by both the Courts whereby eviction of the petitioner has been ordered on the ground of personal necessity of the landlord.

The petition for eviction was filed by the landlords on the ground of non-payment of rent, change of user and personal necessity of respondent/petitioner Dr. Rakesh Sood. However, on consideration of pleadings of the parties and evidence on record, the Rent Controller accepted the same only on the ground of personal necessity. The Appellate Authority upheld the order passed by the Rent Controller ordering eviction of the petitioner/tenant.

I have heard counsel for the parties and perused the records.

Counsel for the petitioner primarily raised an issue that the petition filed by the respondents/landlords was liable to be dismissed on the ground of concealment of material facts and also on account of non-disclosure of necessary ingredients of Section 13 (3) (a) (i), (b) and (c) of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') in the petition for eviction. To bring home his contention, counsel has two-fold submissions to make. It is argued that the respondents/landlords have concealed that they are in occupation of shop mark-D shown in the photograph Ex.AW1/X2, a part of the building in question in which the petitioner is running the business of readymade garments under the name and style of Vishal Garments in one of the shops (tenancy premises). It is further argued that plea of the respondents in the replication that the same is under tenancy gets falsified and belied in view of cross examination of Dr. Rakesh Sood AW1 wherein he has admitted that the said shop is vacant and closed.

Another submission made by counsel is that the respondents have failed to disclose that they are in occupation of one hall and rooms on the first and second floor of the building in question that were brought into light in the cross examination of Dr. Rakesh Sood AW1 and Dr. Suraj Sood AW2 (petitioners No.2 and 4 therein). It is vehemently argued that as the respondent had failed to disclose about occupation of the shop mark-D on the ground floor and accommodation on the first and second floor of the building in question, the application for eviction is liable to be dismissed on this score alone. In support of his contention, he has relied upon Full Bench decision of this Court **Banke Ram Vs. Shrimati Sarasvati Devi, 1977(1) RCR (Rent), 595.** Further reference has been

made to judgment of Single Bench of this Court **Shankar Lal Vs. Madan Lal and others, 2011(1) RCR (Rent) 139.**

Counsel would argue that a landlord is entitled to evict a tenant from non-residential premises not only for the landlord himself but also of the normal emanations of the landlord. For example, if a landlord seeks eviction of a tenant from non-residential premises for use of his son for business, it would be mandatory for son to plead and prove that he was not occupying any other such building and has not vacated such building without sufficient cause. Reliance in this context has been placed upon judgment of Hon'ble the Supreme Court **Ajit Singh and another Vs. Jit Ram and another, 2008(4) RCR (Civil) 390.**

Counsel representing the respondents would argue that the landlords have pleaded the basic facts in the petition that respondent No.2 does not own or possess any other suitable accommodation nor he has got vacated same in the recent past any such accommodation within the municipal limits of Ludhiana. With regard to the shop marked D in the photograph Ex.AW1/X2, it has been duly explained in the replication that the said shop is under tenancy. It is further argued that much water has flown since the judgment in **Banke Ram's case** (supra) was passed by the Full Bench of this Court in December, 1976. If there is any flaw in the pleadings to strictly comply with the requirements of Section 13 (3)(a) (i), (b) and (c) of the Act but the requirements are satisfied during the course of evidence, the same cannot be fatal to the cause of landlord in whose favour the Courts have consistently recorded findings for eviction on the ground of bona fide personal necessity. In support of his contention, he has relied upon judgments of this Court **Vishal Garg Vs. Kanwaljit Kaur**

and others, 2011(1) RCR (Rent) 389 and Sat Parkash Chaudhary Vs. Kewal Krishan Malhotra, 2011(2) RCR (Civil) 828.

It has been argued that as the existence of shop on the ground floor and accommodation on the first and second floor of the building in question was so evident to the tenant as he himself is occupying the demised shop, a part of the building in question, it cannot be said that the respondents/landlords have concealed any fact. Further argued that the shop mark-D and accommodation on the first and second floor of the building in question would not have any prejudicial effect upon the respondents when the case is examined in the light of material averments constituting bona fide necessity of the shop in question for running clinic by Dr. Rakesh Sood who is physically handicapped because of shortening of one of his lower limbs by four inches. In addition, it is argued that assuming that shop mark-D is in occupation of the respondents but as the same is less than half of the size of the shop in question, therefore, not sufficient to satisfy the requirements of respondent No.2 though otherwise the landlord is the best judge of his need and a tenant is nobody to suggest that he can use another accommodation for the purpose for which the eviction has been sought from the tenancy premises. For this purpose, reliance has been placed upon judgment of this Court **Krishan Lal and another Vs. Harvinder Singh and another, 2004(2) RCR (Rent) 550.**

Counsel for the petitioner, in reply, would argue that as the respondents have concealed that they are in occupation of the shop mark-D and plea of the respondent in the replication that the said shop is under tenancy gets demolished in view of candid admission made by Dr. Rakesh Sood highlighted hereinbefore, it is not open for the respondents to give

any explanation that the said premises is not suitable for the purpose of clinic of Dr. Rakesh Sood. In this context, reference has been made to judgment of this Court **Jaspreet Takhar wife of Mr. Kultar Singh Nat Vs. Ghai Enterprises and others, 2013(1) RCR (Rent) 469.**

Before advertng to the submissions made by counsel for the parties, it is appropriate to notice the averments qua personal necessity and a relevant extract from sub-para (c) of para 2 of the eviction application is quoted thus:-

“c) That the shop in question is bona fide required by petitioner No.2 who is Ayurvedic Doctor, B.A.M.S. Degree Holder and is running his clinic from the rented shop which is of very small size and his landlord has also asked him to vacate the same. The other petitioners being the mother and brothers of Dr. Rakesh Sood, the petitioner No.2 have also consented to the need of Dr. Rakesh Sood who wants to open his own clinic in the shop in question. With the passage of time his practice has also increased and the rented shop in his possession is not now sufficient for his need and he requires the shop in question for running his own clinic and being situated on main road the shop in question is more suitable for the clinic of Dr. Rakesh Sood, petitioner No.2. The petitioner No.2 is handicapped person. He has permanent disability in one leg which is 4 inch short than the other and he needs a spacious place for taking rest at intervals and a separate portion can be constructed in the shop in question for that purpose which is two side open and is thus more suitable for

petitioner No.2. The shop in question is bona fide required by petitioner No.2 for his own needs for running his own clinic in the said shop. The petitioner No.2 does not own or possess any other suitable accommodation nor he has got vacated the same in the recent past any such accommodation within the Municipal Limits of Ludhiana.”

A plain reading of the aforesaid extract makes it evident that the respondents have pressed into service need of the shop in question for clinic of Dr. Rakesh Sood on the premise that the same is more suitable for the following reasons:-

- (i) The rented shop, at present, in his possession is not sufficient for his need as his practice has increased.
- (ii) The shop in question is situated on main road and more suitable for the clinic of respondent No.2.
- (iii) Dr. Rakesh Sood needs a spacious place for taking rest at intervals as he has permanent disability in one leg which is 4 inch short.
- (iv) A separate portion can be constructed in the shop for taking rest by Dr. Rakesh Sood as the shop opens on two sides, thus, more suitable.

Counsel for the petitioner has not disputed most of the factual averments raised in sub para (c) of para 2 of the application for eviction. It has been established on record that Dr. Rakesh Sood is doing practice as a B.A.M.S. Doctor since 1997 from a rented shop which was in occupation of his father Dr. Mahesh Sood, a practitioner in Ayurveda, since 1973.

The respondents have also placed on record disability certificate of Dr.

Rakesh Sood. As has been rightly argued by counsel for the respondents, landlord is the best judge of his need and the tenant is no one to dictate as to how an alternative accommodation can be used to satisfy his need, in order to protect possession of tenanted premises.

The question that calls for consideration is that even if plea of the respondents that shop mark-D is under tenancy is negated, can it be said that occupation of shop mark-D by the respondents would be prejudicial much less fatal to the cause of respondents seeking eviction or to say can constitute a ground to set aside the concurrent findings recorded by the Courts below, in exercise of limited revisional jurisdiction.

Indisputably, in the application for eviction, there is no reference to other two shops in the building in question. One of the shops marked B in Ex.AW1/X2 is in occupation of a tenant doing the business under the name and style of Gurdev Tailors. As the shop mark-D is a part of the same building in which the demised shop is located and there is hardly any distance between the shop in question and shop mark-D, it is difficult to hold that the respondents are guilty of concealing a fact. This Court in **Krishan Lal and another case** (supra) has held that the fact of room on the shop was so evident that it could not be concealed. This apart, along with eviction application, the respondents placed on record site plan Ex.P2. In the site plan, the shop in question which opens on Basti Jodhewal Road has been shown in red colour whereas the shops mark-B in occupation of Gurdev Tailors and mark-D and staircase mark-C have been clearly depicted. The shop of Gurdev Tailors mark-B, staircase mark-C and closed shop mark-D open in the street which is towards eastern side of the aforesaid as well as the shop in question. However, the shop in

question opens towards north side. As the respondents have placed on record the site plan Ex.P2 showing the other two shops in the building in question coupled with that existence of shop mark-D was so evident to the tenant, it is difficult to accept contention of the petitioner that the respondents are guilty of concealing a fact which would have prejudicial affect particularly when the case is examined in the light of averments in detail, reproduced hereinbefore (sub para (c) of para 2 of the eviction application). I would hasten to add that the petitioner has not challenged correctness of the site plan Ex.P2. On the contrary, Dr. Rakesh Sood was confronted with the site plan and asked certain questions in regard thereto. In the site plan Ex.P2, area of the shop in question is shown as 14 ft. x 20 ft. A close look at the site plan makes it evident that length of the two shops plus staircase (mark-B to D) is equal to length of the demised shop i.e. 20 ft. I get fortified in my observations that in both the shops, it is mentioned as 8 ft. Meaning thereby that width of each of the three shops is 14 ft. whereas length of the shop in question is 20 ft., one occupied by Gurdev Tailors 8 ft. and mark-D also 8 ft. and the remaining 4 ft. would be staircase on which door mark-C has been fixed. Even if it is taken as correct that the respondents are in occupation of the shop mark-D (so admitted by Dr. Rakesh Sood AW1) it is difficult to accept contention of the petitioner that occupation of shop mark-D by the respondents would be a ground to negate claim of the respondents qua personal necessity. The matter would have been different if shop mark-D had the same locational and area-wise advantage viz-a-viz the demised shop. Further, the shop in question opens on Basti Jodhewal Road toward north and there is a street on its east. The other two shops mark-B and D open towards street on the

east. The plea of the respondents that the shop in question can have opening on two sides gets proved from site plan Ex.P2. There cannot be any dispute about the settled position in law that while exercising jurisdiction under Section 15(5) of the Act, this Court cannot re-appreciate evidence in order to reach a conclusion different than the one concurrently recorded by the Courts. Hon'ble the Supreme Court in the cases **Ram Dass Vs. Ishwar Chander, 1988(3) SCC 131, M/s Nihal Chand Rameshwar Dass and another Vs. Vinod Rastogi, 1994(2) RCR (Rent) 540, Vaneet Jain Vs. Jagjit Singh, 2000(1) RCR (Rent) 507** and **Mohinder Singh Vs. Madan Lal Sharma, 2002(1) SCC 676** has gone to the extent of observing that even if the principal facts have been proved and inferential facts have been assumed by the Courts below, it would not be possible for the High Court to exercise revisional jurisdiction under Section 15(5) of the Act. In view of the above, I do not find an error much less illegality in the consistent findings of the Courts below warranting intervention.

This brings the Court to the second aspect qua accommodation on the first and second floor of the building in question. As has been discussed hereinbefore but for the sake of repetition, accommodation on the first and second floor of the building was so evident to the petitioner but he did not raise an issue, in this regard, in the written statement. There is no material on record that accommodation on the first and second floor is viable for commercial exploitation or otherwise permissible to be used for running a clinic etc. Counsel for the petitioner has not pointed out anything on record that the adjoining buildings or buildings in the area in question are being used for commercial activities so

far as the first and second floors are concerned. This apart, as respondent No.2 is physically impaired due to shortening of one of his lower limbs, neither the petitioner nor can the Court persuade him to use the accommodation on the first / second floor of the building to save eviction of the petitioner. In this view of the matter, petitioner cannot derive any advantage to his contention from the factum of accommodation being available on the first and second floor of the building in question. Analyzed from another angle, as the accommodation on the first and second floor cannot be equated with a shop, the respondents cannot be held guilty of non-disclosing of that accommodation. In the light of discussion made hereinabove, the petitioner cannot derive any advantage to his contention from the judgment in **Jaspreet Takhar's case** (supra) wherein this Court dealt with a revision petition filed against concurrent findings recorded by the Courts below, dismissing the application for eviction on the ground of personal necessity. In the said case, landlady concealed the factum of possession of premises in some other building and this Court refused to entertain contention of counsel that the said premises is not suitable for the new venture intended to be started in the demised premises.

So far as plea of the petitioner with regard to requirements of Section 13(3)(a) (i), (b) and (c) of the Act, counsel for the petitioner has not disputed that if these requirements are satisfied during the course of evidence, any flaw in pleadings, in this context, cannot be fatal to the case of a landlord.

No other point has been raised.

For the reasons mentioned above, I do not find any merit in the petition. Accordingly, the same is dismissed leaving the parties to bear their own costs.

JULY 2nd, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no