

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

CR No.7149 of 2017 (O&M)
Date of decision : 07.09.2018

Arun Kumar

...Petitioner

Versus

Des Raj Tandon (since deceased) through his LR

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Bhanu Pratap Singh, Advocate for the petitioner.

Mr. Manjul Sud, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The tenant-petitioner is in the revision petition against the orders passed by the learned Rent Controller, affirmed in appeal by the Appellate Authority.

The respondent-landlord filed a petition claiming bona fide necessity of the premises for her unmarried sister who was 38 years old at the time of filing of the rent petition. It was pleaded that she wishes to open a boutique of garments in the aforesaid tenanted premises. The landlord while filing the petition had pleaded as under:-

“11. That the applicant has never got vacated any shop within the Municipal area of Municipal Council Hoshiarpur for personal use and occupation of his sister Savita Tandan nor the applicant and his sister has never got vacated any shop within the municipal area of Hoshiarpur. The applicant

does not own the possess any other commercial building in the urban area of Hoshiarpur city.”

The tenant contested the petition and pleaded that there is another shop in possession of the landlord near his house. It was further pleaded that previously sister was working as a Teacher and, therefore, she is not unemployed.

Both the Courts after examining the evidence have found that the requirement of the landlord is bona fide.

Learned counsel for the petitioner while filing the revision petition has in the index disclosed following information, to assert that some similar cases are pending:-

“(a) “Ram Parkash Puri Vs. Dayal Chand and other” bearing Civil Revision No.1013 of 2014.

(b) “Ratinder Kumar Vs. Smt. Balbir Kaur” bearing Civil Revision No.6994 of 2015.

(c) “Rajinder Kumar Thapar Vs. Smt. Balbir Kaur” bearing Civil Revision No.7002 of 2015.

(d) “Ashwani Kumar Vs. Kuldeep Singh” bearing Civil Revision No.5219 of 2017.”

At the time of arguments, learned counsel for the petitioner has relied upon the order dated 11.12.2014 passed in CR No.6187 of 2014 by the Coordinate Bench wherein while admitting a revision petition, the following questions were framed:-

“1. Whether it was incumbent upon the landlord to make an averment about the bonafide necessity of the dependent in terms of Section 13(3)(a)(i)?

2. The non-averment of the requirement in the eviction petition would be fatal if sufficient cogent evidence has been

led by the landlord in regard to the personal necessity of the dependent?

3. *Whether the landlord has to prove the dependency of the dependent on her for the purpose of seeking eviction?*

4. *Whether the tenant is required to raise an objection with regard to the non-averment of the provisions of Section 13(3) (a)(i) in regard to the dependents?*

5. *Whether the order passed by this Court in CR No. 7609 of 2011 would suggest that the Appellate Court could reverse the finding on personal necessity even after dismissing the application for additional evidence filed by the landlord?"*

At the time of the arguments, learned counsel for the petitioner has submitted that the landlord has concealed the material facts from the Court. He has submitted that in cross-examination, sister for whom the eviction has been sought, has admitted that she is working as a part time Teacher on salary of ₹500/- per month, therefore, assertion that the sister is unemployed is factually incorrect. He further submitted that the landlord has concealed the fact that he is not in possession of any other building as there are three shops, two are at Vakilan Bazar and one adjoining the residence. He further submitted that the ingredients of Section 13(3)(a)(i) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as "the Act of 1949") have not been pleaded with regard to the sister for whose necessity eviction petition has been filed.

It may be noticed that the words used in the Act are that the landlord is entitled to evict tenant 'for his own occupation'. Hon'ble the Supreme Court while giving meaningful expression to the words 'his own occupation' has held that word 'own occupation' would include not only the

personal requirement of the landlord himself but also of the normal “emanations” of the landlord. The expression has been explained by Hon'ble the Supreme Court in the case of **Joginder Pal Vs. Naval Kishore Bahal, (2002) 5 SCC 397**, while dealing with the case arising from the Act of 1949, the Act in question in the present case also, has concluded as under:-

“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 inter-relationship and inter-dependence - 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.”

On the basis of the aforesaid interpretation, petitions are being filed in the Courts for requirements of family members. In the present case, the petitioner while filing the petition had specifically stated about the requirement of his sister Savita Tandan and had specifically mentioned that the applicant has never got vacated any shop for personal use and occupation of his sister nor the applicant owns any other commercial building in the urban area concerned. Para 11 of the application has been extracted above which can be referred to for facility of reference. Obviously, the requirement is of sister and, therefore, the pleadings are with reference to the sister.

Now let us deal with the arguments of the learned counsel for the petitioner.

The employment of the sister is only part time at the salary of ₹500/- per month only. It has nowhere come in evidence that on the day the petition was filed, she was in employment. If a tenant wishes to defeat the right of the landlord, he has to specifically come up with specific instance of concealment of the fact. A temporary employment can be abandoned/left at any point of time. An educated lady cannot be expected to sit idle and wait for eviction order which may be passed after number of years like in the present case, the petition for eviction was filed on 06.02.2010 and till date, the landlord has not been able to get the possession thereof. Hence, the Court does not find any substance in the argument of the learned counsel for the petitioner.

Second ground of concealment is the availability of three shops.

Learned counsel for the respondent has pointed out that two shops in occupation of the landlord Late Sh. Desraj Tandan were on tenancy. Those shops are not available for the sister. The requirement of the Act has to be read in the context of need pleaded for the family members. The requirement of the Act cannot be read in a manner which would defeat the very purpose of providing limited rights available to the landlord to seek eviction.

As regards the availability of 3rd shop which is adjoining to the house, it has been explained by the landlord as well as his sister, who have stepped into the witness-box, that that room is a part of their residence and

is being used as godown and for storing the electricity generator. No evidence has been led by the tenant to prove that the aforesaid accommodation is suitable for running a boutique. In absence thereof, this Court does not find that there is any concealment of material fact which should be fatal to the case of the landlord.

Next submission of the learned counsel is with regard to the absence of pleadings of ingredients, as required in the Act. Para 11 of the petition has been extracted above. There are only following three requirements of the Act:-

1. Requires the premises for own occupation.
2. Not occupying any other building.
3. Has not vacated any such building without sufficient cause after the commencement of the Act.

The ingredients have to be read in the context of requirement pleaded because Hon'ble the Supreme Court has held that the requirement i.e. own use is to be read to include not only the landlord but also of the normal emanations. In such a situation, the ingredients as provided have to be read in the context of Miss Savita Tandon for whose requirement the eviction was sought.

Learned counsel for the petitioner while relying upon the judgment passed by Hon'ble the Supreme Court in (2008) 9 SCC 699, Ajit Singh and another Vs. Jit Ram and another, has pleaded that the requirements of the Act have to be pleaded not only with respect to the landlord but also with respect to the family members for whom the eviction is being sought. It may be noticed that in the aforesaid case, two persons had

filed petitions for eviction, one was father and second was son. It was the positive case of the landlords that in a family settlement dated 26.08.1998, property has fallen to the share of son. In that context, Hon'ble the Supreme Court held that the ingredients as required under Section 13 of the Act of 1949 have to be pleaded with respect to the son because he was the landlord and eviction was being sought by the landlord for his personal use. In the present case, the facts are entirely different.

This Court would be failing in its duty if the questions which have been framed and relied upon by the learned counsel for the petitioner are not answered.

Although, in the questions of law, the word dependent has been used by the Hon'ble Coordinate Bench, however, that is neither provided for in the Act nor in the judgment passed by Hon'ble the Supreme Court. The words used in the Joginder Pal's case (Supra), are also of the normal "emanations" of the landlord. The "emanations" cannot be interpreted to mean that it is only restricted to dependent.

NOW THE STAGE IS SET FOR CONSIDERING THE QUESTION OF LAW FRAMED ABOVE:-

1. Whether it was incumbent upon the landlord to make an averment about the bonafide necessity of the dependent in terms of Section 13(3)(a) (i)?:-

As per the provisions of the Act of 1949, the landlord is required to fulfill three following requirements:-

1. He requires it for his own use.
2. He is not occupying in the urban area concerned any other building.

3. He has not vacated such 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.”

It may be noted that as per the Act of 1949, no format of the petition has been prescribed. However, Hon'ble Full Bench of this Court in the case of **Banke Ram Vs. Sarasti Devi, AIR 1977 P&H 158**, has held that it is necessary for the landlord to plead these three ingredients. It is also well

settled that after the judgment passed by the Hon'ble Full Bench, various judgments have been pronounced taking a view that once three ingredients as required have been proved on file, the petition would not be dismissed merely on the ground that the ingredients have not been pleaded in the pleadings. As noticed in the earlier part of the judgment, the expression “for his own occupation” has been interpreted to mean and include normal emanations of the landlord. The question which is required to be answered is whether it is incumbent upon the landlord to make assertion about the bona fide necessity of the dependent in terms of Section 13(3)(a)(i) of the Act of 1949. There is no dispute that the requirements of Section 13(3)(a)(i) of the Act of 1949 have to be pleaded with requisite respect to the landlord.

In the considered view of this Court, such requirement cannot be said to be pleaded necessary with respect to the relations for whom the eviction is being sought by the landlord who fall within the definition of the word “emanation” as interpreted by Hon'ble the Supreme Court. However, the tenant would be at liberty to bring to the notice of the Court that the person for whose necessity the eviction is being sought is either occupying another building or has vacated any such building without sufficient cause. The petitions cannot be dismissed only on account of the fact that there is no pleadings with respect to the relative of the landlord in terms of Section 13 of the Act of 1949. The Court would be required to examine in each case whether the landlord or the person for whose bona fide requirement eviction is pleaded fulfills the requirement of the Act or not. Therefore, as a abstract proposition of the law, it cannot be held that it is mandatory to plead in the petition all the three requirements of Section 13(3)(a)(i) of the Act of 1949.

If such interpretation is taken, it would even go against the well settled interpretation which is being followed by the Court even with regard to the landlord. The basic object under the Act is to test the bona fide requirement of the landlord or his normal emanations. A particular form of pleadings has neither been envisaged in the Act nor any particular format has been provided for. Accordingly, question No.1 is answered.

2. The non-averment of the requirement in the eviction petition would be fatal if sufficient cogent evidence has been led by the landlord in regard to the personal necessity of the dependent?:-

With regard to question No.2, it may be noted that once it is proved by leading cogent evidence that normal emanations of the landlord have a bona fide requirement, the petition cannot be dismissed. In fact, question No.2 is offshoot question No.1 only.

3. Whether the landlord has to prove the dependency of the dependent on her for the purpose of seeking eviction?:-

With respect to question No.3, it may be noticed that in the Act, there is no requirement that the landlord can seek eviction for bona fide requirement of the dependent only. Hon'ble the Supreme Court in Joginder Pal's case (supra), has held that the requirement not only of the landlord himself but also of the normal 'emanations' of the landlord is included therein. Normal emanations would obviously mean that those persons who are members of the family in normal course and landlord is under moral, social or legal responsibilities to look after their needs. However, it cannot be held that the landlord is first required to prove that the relative is dependent on the landlord. Accordingly, question No.3 is answered.

4. Whether the tenant is required to raise an objection with regard to

the non-averment of the provisions of Section 13(3) (a)(i) in regard to the dependents?

With regard to question No.4, it may be noticed that the tenant is required to raise the objections at the time of filing of written statement/reply, so that the landlord gets opportunity to fulfill the requirements of the Act. If the tenant does not specifically raise the objection, it would be deemed that he has waived that objections. This Court has already held that the pleadings with respect to the dependent is not provided in the statute. Accordingly, question No.4 is answered.

5. Whether the order passed by this Court in CR No. 7609 of 2011 would suggest that the Appellate Court could reverse the finding on personal necessity even after dismissing the application for additional evidence filed by the landlord?:-

Question No.5 is actually the question which arises in the peculiar facts of the aforesaid case. That question has no applicability in the facts of the present case. Hence, this question is not being answered.

In view of what has been observed above, the present revision petition is dismissed.

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

07.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No