

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

CR No.968 of 2012 (O&M)
Date of decision : 14.08.2018

Harish Chander

...Petitioner

Versus

Vinod Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. Sandeep Khunger, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The tenant-petitioner is in the revision petition against the order of eviction passed on the ground of bona fide necessity by the Rent Controller affirmed by the Appellate Authority.

Although, in the reply, relationship was disputed, however, the Appellate Authority held that the relationship of landlord exists between the parties. The landlord sought the eviction on the ground that his sons i.e. Vishal and Vinay have become major and, therefore, he requires the premises for their purposes. The landlord has further pleaded that he is also at present running his business from the tenanted premises.

Learned counsel for the petitioner has submitted that ingredients of Section 13(3)(a) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as “the Act of 1949”), have not been

pleaded. He pleaded that as per Section 13(3)(a) of the Act of 1949, a landlord may apply to the Controller for an order directing the tenant to put the landlord in possession. Section 13(3)(a) 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.”

This Court has considered the submissions. However, finds no substance therein because of two reasons. Firstly, two ingredients according to this Court have been pleaded in para 9(ii) of the application filed under

Section 13 of the Act of 1949, which is extracted as under:-

*“9(ii) That the applicant requires the shop in dispute for the personal necessity of his sons Vishal Kumar and Viney Kumar. The applicant at present is running a small shop on rent in Azad Chowk, Ferozepur Cantt. The said shop was earlier a KHOKHA and earlier the rent was Rs.1500/- per month and now the KHOKHA has been converted into a shop by its owner Kashmiri Lal and rate of rent has been also enhanced to the tune of Rs.2000/- per month. The applicant and his sons are sitting on the said shop and doing the business of sale of PAN BIRI SIGRETS. The said shop under their tenancy is insufficient for the needs of the applicant and his sons. The sons of the applicant have studied upto +2, **but there are having no shop to run their independent business.** After the vacation of the shop in dispute, the sons of the applicant will run the shop for the sale of PAN BIRI SIGRETS for which they have experience. **The applicant has got no other shop in which the sons of the applicant can be adjusted.** The applicant has got shop No.234 in Main Bazar, Ferozepur Cantt, which is in possession of the sons of Hans Raj as tenants and **they have not vacated the said shop despite the repeated requests of the applicant.** Several proceedings are being initiated for vacation of the said shop. The applicant and their brothers have also got shop No.310-A in main bazar, Ferozepur Cantt, which is in possession of Ashok Kumar and Sunil Kumar brothers of the applicant, **except the said shop the applicant or his brothers or his sisters have got no other shop in their possession in the urban area of Ferozepur Cantt. The applicant or his brother and sisters have also not vacated any such shop in the urban area of Ferozepur Cantt after 1949 without any reasonable cause.** Thus, the shop in dispute is required by the applicant for personal*

necessity of his sons.”

Still further, it is not disputed that the tenant while filing the reply, did not object to the maintainability of the petition on the ground that the ingredients have not been pleaded enabling the landlord to amend the petition. In the considered view of this Court, tenant cannot take the landlord by surprise. This Court has also taken a similar view in case bearing **CR No.3714 of 2010, titled as Sham Lal Vs. Asha Rani and others, decided on 08.08.2018**. It has been held that once tenant fails to take objection while filing reply, he shall not be permitted to raise this objection, subsequently.

Secondly, the tenant has further submitted that in fact there is concealment of fact inasmuch as there is a shop No.310, which has not been disclosed.

On the other hand, learned counsel for the landlord has pointed out that the shop which has fallen to the share of the landlord is only shop No.310-A and not shop No.310. Shop No.310 was never owned by the landlord. Learned counsel for the respondent has drawn attention of the Court to the statement of the tenant where he himself is not sure whether shop No.310 was divided into two parts and only shop No.310-A had fallen to the share of the petitioner.

In such circumstances, the tenant cannot be given the benefit of the fact about which he is himself not sure.

Next argument of the learned counsel is that the previous petition filed was dismissed by the Court vide judgment dated 01.12.1998.

With the help of the learned counsel for the parties, this Court has gone

through the judgment which is Ex.R4 on the record. This petition was filed by Smt. Shanti Devi, Vinod Kumar, Ashok Kumar and Sunil Kumar for the necessity of Sunil Kumar and Ashok Kumar. In the present case, the necessity pleaded is with respect to Vishal and Vinay, who are sons of Vinod Kumar. The necessity of Vishal and Vinod Kumar was never in issue before the Rent Controller.

In view thereof, there is no ground to interfere.

Revision petition is dismissed.

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

14.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No