

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

101

**CR No.7985 of 2014 (O&M)
Date of Decision : 31.05.2018**

Suresh Chand Goyal

..... Petitioner

Versus

Kali Charan and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Divjyot S.Sandhu, Advocate
for the petitioner.

Mr. Suman Jain, Advocate
for the respondents.

AJAY TEWARI, J. (Oral)

This petition has been filed against the judgment of the appellate authority reversing that of the trial Court and ordering the eviction of the petitioner.

The respondents No.1 had filed the petition for vacation of the premises in the occupation of the petitioner on the ground that he required it for his personal use in so much as his son had to start a business in the demised premises. In his petition he has asserted that he had neither vacated nor had in his possession any such premises in the urban area concerned. Both respondent No.1 and his son for whom he had set up the requirement appeared to give testimony. In the cross examination of the

son of respondent No.1 who appeared as PW-I the petitioner asked him about various other properties which as per the property assessment record of the Municipal Committee were in the ownership of respondent No.1 and PW-I had explained that property No.1606 was being occupied by them as a house and as a godown. Property No.1664 was also hold by his father but there his younger brother live. In property No.1871 which was also owned by the father of PW-1, the 3rd brother live and worked. Property No.19-B also owned by the father of the petitioner which was on rent. Property No.176-A was in the name of his mother which was a chaubara. He also admitted that the property in possession of the petitioner was half share in the shop and the remaining half was being used by his father as godown.

The respondent No.1 appeared as PW-2 and in his affidavit he also stated that he neither had in his possession any shop nor had vacated any shop in the Municipal area of Palwal. In his cross examination also, he stated that the shop where he was doing his own business was on rent with him and the other properties (to which detailed reference was made by his son as PW-1) were not available/appropriate for setting up the business of his son. The Rent Controller dismissed the petition on the ground that the respondent No.1 had not disclosed that he owned the other premises and the same were got illicited from him (and his son) only in cross examination. The appellate authority however, held that since in the evidence the respondent No.1 had been able to explain that the other properties were either not in his possession or could not be used for starting a business and consequently held that he was entitled to an order of eviction.

Learned counsel for the petitioner has argued that non-

disclosure by the respondent No.1 was fatal and relied upon ***Ajit Singh and another Vs. Jit Ram and another-AIR 2009 SC 1999*** and on ***Manmohan Lal Vs. Shanti Parkash Jain-2014 (2) RCR (Rent) 222*** and has argued that in both these cases the Courts had held that non-disclosure of the ownership of other properties is a fatal law which must unnecessarily result in dismissal of the petition. Both these judgments were considered by this Court in CR No.201 of 2003 titled as ***Baldev Singh and others vs. Mohan Singh and others***, decided on 14.05.2018. This Court relied on CR No.4659 of 2006 titled as ***Brig. Harpreet Singh Chahal Vs. Gopal Gupta*** decided on 29.07.2015, wherein it has been held as follows :-

VIII. Nature of pleadings and practice in rent control proceedings

*12. The decision in **Ajit Singh** (supra) would alone require a proper understanding. If the Supreme Court was holding that the person who is seeking for ejectment “for his own use” actually for the need of anyone else in the family, the requirement of such other person must be spelt out under Section 13 (3)(ii) and must be understood in a proper context. It is a repeated theme in our courts and if I make an attempt to explain the Supreme Court's judgment, it is only to ensure that some clarity obtains in this grey area. It is still an issue in our courts where the petitions get to be drawn, redrawn, amended, challenged in appeal or revision only on issue of nature of pleading for bona fide requirement. The practice must stop somewhere. There is need to explain the Supreme Court judgment in **Ajit Singh** (supra). At a fundamental level, for me, the rules of pleadings must be reasonably flexible before any Tribunal. Tribunalization has come with several pluses and minuses. Wherever strict procedural in approaches were frowned upon as creating new obstacles for quick and*

efficacious disposal, Tribunals established through enactments invariably provide for respective Tribunals to set their own procedures for trial work. We have Tribunals that abound for determining compensation for motor accidents for recovery of amounts, for financial institutions for recoveries, and son. In each one of the enactments, the authorities are granted powers to frame their own procedures. The common thread in all these legislations is to provide for powers of summoning and enforcing attendance of witnesses as vested in a court under the Civil Procedure Code. If the Civil Procedure Code were to be applied in its full force, there is no necessity to even the limit of power to exercise of summoning of witnesses. In fact Section 16 of the Punjab Rent Restriction Act contains a similar provision giving the Rent Controller a power of a civil court under the Civil Procedure Code for summoning the enforcing agencies of witnesses. This provision would have been unnecessary and otiose, if the CPC were to be applied in all its full force for any other activity as well.

13. Pleadings are methods of ensuring that there is no vagueness left in what the parties have to prove and when issues are framed for establishing the landlord's personal need, there needs to be objective basis for assessment of that need. That basis is provided under the statutory provision in requiring the Rent Controller to examine that the landlord was not vacated any other premises and applies to a court for ejectment giving out a need for ejectment, such a landlord shall not also be a person who already has no other property vacant in the same urban area. It is, therefore, expected that a landlord sets out in the petitions or volunteers information about the fact that he owns no other building which is vacant or he has not vacated any other building only in order to claim ejectment. If the parties go to trial on all aspects relating to the bona fide need and it is brought out in evidence that there is no other property which is vacant or the landlord has not vacated

*any other property to claim ejectment, then that itself should be taken as proving the bona fides. I will, therefore, rest the judgment in **Ajit Singh** (supra) to be confined to secure proof of what the law requires and if that proof is available by parties joining that issue with all adequate materials at the trial, it ought to serve the ends of justice.”*

and then held further :-

*“At this stage it would also be profitable to trace out the jurisprudential development of the law relating to tenancy of urban properties in India. Most of the original Rent Restriction Acts were based on an analogous statute resorted to in war-torn England during the Second World War which was framed as a response to the acute housing shortage occasioned by it. For the first three decades, Courts in India viewed landlords and their cases with distaste, even with a hint of suspicion but thereafter the pendulum started swinging the other way. The Supreme Court recommended changes in the law to make it less landlord un-friendly but the legislation somehow never came about. The changing realities however could not be ignored and one of the first changes was when the Supreme Court recognized that bona-fide requirement would extend to non-residential properties also. The next tectonic shift came when a visionary appellate authority in Delhi held that an evicted tenant who wanted interim protection should have to pay for it. Ultimately this was upheld by the Supreme Court in **M/s Atma Ram Properties (P) Ltd. Vs. M/s Federal Motors Pvt. Ltd. 2005 (1) RCR (Rent)** then the Supreme Court held that when a landlord claimed bona-fide requirement the Court would presume that the case set up was correct and it would be for the tenant to rebut that presumption. In a parallel development Courts also explained that the pleadings in a rent petition could not reasonably be expected to be of the standard required in a civil suit. The realization came that the bar was*

against that landlord who either had in his possession suitable premises or had vacated such suitable premises after the coming into force of the Act and to insist that everything had to be specifically pleaded, all the i's had to be dotted and all the t's had to be crossed would ultimately result in mistaking the wood for the trees.”

In the present case also, what has come on the record is that the landlord-respondent No.1 does own other properties but he has explained that they are not suitable for the projected use. The petitioner has not led any positive evidence to show that this explanation is false. He has not shown that actually the premises which is claimed as a chaubara is a shop or that the other premises is not on rent or that the two other sons are not occupying those properties which are attributed to them.

Petition stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(**AJAY TEWARI**)
JUDGE

31.05.2018
Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No