

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

Civil Revision No. 1373 of 2007 (O&M)

Date of decision : January 30, 2019

M/s Dua Traders and othersPetitioners

Versus

Ram DulariRespondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Amit Jain, Advocate
for the petitioners.

Mr. Ajaivir Singh, Advocate
for the respondent.

LISA GILL, J.

Petitioner – tenant is aggrieved of judgment dated 16.12.2006 passed by the learned Appellate Authority, Jalandhar whereby judgment dated 18.10.2002 passed by the learned Rent Controller, Jalandhar has been set aside and eviction of the petitioner has been ordered from the premises in question.

At the outset, it is brought to my notice that vacant possession of the premises in question have been handed over to the respondent in the course of execution proceedings as the mesne profits, arrears of rent, as directed, were not deposited by the petitioners within the prescribed period.

Learned counsel for the petitioner, however, submits that he has instructions to argue the matter on merits as in case this petition is allowed he has a right to restoration of possession of the demised premises.

Brief facts necessary for adjudication of the case are that a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short - 'the Act') was filed by the landlady – Ram Dulari

(respondent in this petition). She sought eviction of the petitioner from the

premises in question on the ground of non-payment of arrears of rent as well as on the ground of requirement of premises for personal bona fide necessity. It was pleaded that the landlady was the owner in possession of the premises i.e. a shop-cum-flat as detailed in the petition. The petitioner was stated to be in occupation of the said premises which comprised of two rooms and one veranda with a platform. It was stated that the present petitioners took possession of the premises as licensee and agreed to vacate the property in view of agreement dated 09.04.1992. However, they did not abide by the terms and conditions of the said agreement. Civil suit for permanent injunction was filed by the petitioners wherein they have been held to be tenants under the landlady. Hari Chand a partner of the firm died during the pendency of the suit and was represented by his widow Kaushalya Devi i.e. petitioner No. 4 in this case. It was pleaded that there existed a relationship of landlady and tenant as held in the civil suit. Tenants were liable to be evicted from the premises in dispute on the ground of arrears of rent from 06.10.1992 till the filing of the petition as well as non-payment of house tax besides requirement of the landlady for personal use and occupation of the premises for starting her own business of *Bardana*. It is further stated that the premises in dispute was the only non-residential premises in Jalandhar where the landlady could start her business and she had not vacated any such building in the concerned area after the commencement of the Act, neither she owned, possessed and occupied any such building. Ejectment of the present petitioner was sought who resisted the same. It was stated that the landlady herself avoided acceptance of rent. It was, however, admitted that they were tenants under the landlady at a monthly rent of ₹1,100/-. Agreement dated 09.04.1992 was denied while

stating that the agreement of tenancy was dated 06.04.1992. It was denied that the premises were required by the landlady for her personal use and occupation. Dismissal of the petition was prayed for.

Rejoinder was filed.

Following issues were framed by the learned Rent Controller:-

1. Whether the tender made by the respondents is valid one? OPR
2. Whether the petitioner bona fide requires the premises in dispute for her personal use and necessity? OPA
3. Relief.

Learned Rent Controller dismissed the petition filed by the landlady while concluding that the ground of non-payment of arrears of rent did not survive. Furthermore, the landlady it was held, failed to prove her personal bona fide necessity for the personal use of premises in question. Appeal filed by the landlady was, however, allowed by the learned appellate Authority, Jalandhar vide judgment dated 16.12.2006.

Aggrieved therefrom, present petition has been filed.

Learned counsel for the petitioner contends that the contradictory stand taken by the landlady, AW1 and her brother Dharampal who deposed as AW2 is clearly reflective of lack of bona fide personal necessity. Moreover, the respondent – landlady in her deposition before the learned Rent Controller has gone to the extent of stating that she is not even aware of the contents of the petition seeking eviction. It is further argued that as many as two other petitions seeking eviction of the petitioner were subsequently filed by the landlady. One of the said petitions was dismissed in default. Second one is stated to be pending, though learned counsel for the respondent, on instructions from the brother of the respondent, who is

present in Court, submits that no proceedings are, as on date, pending before any other court in respect to the premises in question. It is further submitted by learned counsel for the petitioners that the landlady in fact, has no desire or intention to start any business on the premises in question. Bona fide necessity is not proved on record. He relies upon the judgements of the Hon'ble Supreme Court in **Raghunath G. Panhale versus M/s Chaganlal Sundarjit and Co.** 1999(8) SCC 1, **Sri Kempaiah versus Lingaiah** 2002 (1) RCR (Rent) 532 and of this Court in **Mehtab Singh versus Shri Tilak Raj Arora and another** 1988 (1) PLR 269.

It is submitted that though the possession of the premises in question have been handed over to the respondent – landlady during the pendency of this petition in execution proceedings as the mesne profits, arrears of rent etc. were not deposited in time, it does not preclude the petitioner from seeking restoration of the possession in case it is found that there is merit in the present petition. It is, thus, prayed that this petition be allowed.

Learned counsel for the respondent on the other hand refutes the arguments as above and submits that personal bona fide necessity is proved on record. The landlady in all probabilities was not able to set forth the facts with clarity as was required while testifying before the learned Rent Controller. The Court, it is submitted, is not to assume that the necessity of the landlady is not bona fide and to proceed on the said assumption. Respondent – landlady has succeeded in proving her personal bona fide necessity. Sons of the landlady were employed. One of them is abroad. The premises in question are within the grain market. It is the categorical case of the respondent – landlady that she wishes to use the

premises for the business of Bardana. Subsequent petitions filed by the landlady do not in any case reflect separate or different grounds being taken. Moreover, none of the other proceedings are pending between the parties and it is the present petition which was the first one to be filed by the landlady, which stands decided and is before this Court. No evidence has been led by the petitioner – tenant to rebut the case of the landlady for personal necessity. It is, thus, prayed that this revision petition be dismissed and judgment dated 16.12.2006 passed by the learned Appellate Authority, Jalandhar be upheld.

Heard, learned counsel for the parties and have gone through the file with their able assistance.

It is not in dispute that during the pendency of the present petition, the landlady filed another petition on 24.05.2001 (Annexure P-2). Ejectment of the present petitioners was sought on the same grounds as in the present petition with an addition of the ground of material alteration and addition in the property in dispute. This petition was dismissed in default and for want of prosecution by the learned Rent Controller on 28.01.2005. Another petition (Annexure P-4) was filed on the ground of arrears of rent and personal bona fide necessity. Though learned counsel for the petitioner has argued that the said petition is pending, there is a categorical statement on behalf of the respondent that no such proceedings are pending between the parties. Filing of the said subsequent petitions cannot detract from the case of the respondent. It is a matter of record that said petitions no longer survive. Moreover, identical grounds were taken for ejectment of the petitioners in the said petitions. Therefore, argument that filing of multiple petitions are the ground for dismissal of the petition under Section 13 of the

Act filed by the respondent prior in time is untenable, in the facts of the present case as it is a matter of record that the instant is not a scenario where the landlord's petition had been earlier dismissed and thereafter successive petitions were filed subsequently. The judgment of Division Bench of this Court in **Mehtab Singh's** case (supra) relied upon by the learned counsel for the petitioner is not applicable to the facts and circumstances of the case. In **Mehtab's case** (supra), the landlady had withdrawn the first petition without liberty to file afresh. In this situation it was held by the Division Bench of this Court that a fresh petition by the landlord is barred by principal of res judicata. It was observed as under:-

“ If the various provisions noticed above are held to be not applicable to the proceedings before the Rent Controller, it would necessarily result in the violation of the maxim that no man should be vexed twice over the same cause of action and the landlord or the tenant as the case may be, would be able to harass time and again on the same cause of action and for the same relief. For example, a landlord after the full trial of his petition for ejectment at the stage of arguments feeling that the petition is likely to fail, would get it dismissed as withdrawn and institute a fresh one again on the same cause of action. He would be able to repeat the same process time and again if the principles underlying the provisions of Order 23, Rule 1(4) are held to be not applicable to the proceedings before the Rent Controller. Similarly if the provisions of Order 2, Rule 2 of the C.P.C. are held to be not applicable, a landlord would be able to file ejectment application on one ground although many other grounds may be available for the same relief at a given time. After having failed on that ground till the highest Court, he would be able to institute another petition on the second ground and thus go on fighting litigation and harassing the opposite party. Same would be the situation with regard to the provisions of Order 9, Rule 9 of the C.P.C. and the landlord

would be able to get his petition dismissed in default at any stage of the proceedings and file a fresh one on the same cause of action resulting in the abuse of the process of the Court and harassment of the opposite party. All these principles as held in Lal Chand's case (AIR 1977 SC 789) (supra), are conceived in the larger public interest and founded on equity, justice and good conscience, which require that no man should be vexed twice on the same cause of action. We are, therefore, of the considered view that even though the Code of Civil Procedure is not applicable as such to the proceedings before the Rent Controller; but the general principles contained in the Code, including the one noticed above which are based on justice, equity and good conscience would govern those proceedings and the two decisions relied upon by the learned counsel for the respondents in [Ram Parkash v. Nathu Ram](#), 1984 Cur LJ (Civ & Cri) 96 and Raghbir Kaur v. Gurmej Singh, (1985) 87 Pun LR 266 are, accordingly overruled.”

In the present case, the first petition which was filed by the landlady is the present one. She has continued to proceed with this matter. Therefore, it cannot be said that this petition under Section 13 of the Act though instituted earlier to the subsequent petitions which were dismissed in default or withdrawn, should be dismissed on this ground.

Learned counsel for the petitioner has vehemently argued that personal bona fide necessity of the landlady for use and occupation of the premises in question is not proved by the evidence on record. It is a mere whim and fancy of the landlady. Therefore, ejectment of the petitioners has been wrongly directed by the learned appellate authority while setting aside the well reasoned and logical judgment dated 18.10.2002 passed by the learned Rent Controller.

I have perused the statement of the landlady who deposed as

AW1 and her brother Dharampal who testified as AW2. Her husband it is stated had passed away and she required the premises to start her own business. In her examination-in-chief AW1 Ram Dulari has specifically deposed that she is the landlady-owner of the shops in question and she requires premises for her own personal use. She specifically deposed that she did not own any other such property, neither had vacated any such premises within the municipal area concerned. AW1 has doubtlessly stated that the shops were given on licence. However, this by itself cannot lead to the acceptance of the argument by learned counsel for the petitioner that she has not accepted the petitioners to be the tenants under her, therefore, petition is not maintainable. In the civil suit for permanent injunction filed by the petitioners claiming to be tenants under the landlady, it was specifically concluded that the relation of tenant and landlord existed between the parties. It is thereafter that the present petition for eviction was filed by the landlady.

The contradiction in the testimonies of AW1 and AW2 to the extent that AW1 stated she had not conducted any business earlier while AW2 stated that the landlady was the sole proprietor of the firm Pandit Ganda Ram is not a factor to detract from the case of the landlady. It is a matter of record that at an earlier point of time when a suit for permanent injunction was filed by the petitioners, the landlady had taken a specific plea that the petitioners were licensees under her and were not paying the licence fee. When the said suit was decided in favour of the petitioners, the landlady filed the present proceedings seeking eviction of the petitioners. This fact does not in any manner reflect absence of personal bona fide need or requirement of the landlady. It is a settled position that bona fide need and

requirement does not mean a mere wish or desire but at the same time the Court is not to proceed on a presumption of the need of the landlord not being bona fide. Requirement of the landlord has to be seen from his perspective. Landlord is indeed the best judge of his or her requirement. There is merit in the argument raised by learned counsel for the respondent that the shop in question is situated within the grain market and the landlady seeks to start the business of *Bardana* herself in the shop. It is rightly held by the learned Appellate authority that the age of landlady cannot be held against her. It cannot be presumed that merely on account of her being a lady and that too elderly, she cannot start her business. Doubtlessly, the landlord cannot be non-suited only because specific steps taken for start of business have not been proved on record. Moreover, the tenant has specific remedies under the Act for restoration of the possession, in case, the landlord does not use the premises as is urged.

No other argument has been raised.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or error of law in the impugned judgment dated judgment dated 16.12.2006 passed by the learned Appellate Authority, Jalandhar, which calls for interference in exercise of revisional jurisdiction by this Court.

No order need to be passed in any of the pending miscellaneous applications, if any, as the main petition stands decided.

Present petition is, accordingly, dismissed.

(Lisa Gill)
Judge

January 30, 2019
rts

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No