

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

CR No.2891 of 2016 (O&M)

Date of Decision: December 20, 2019

Inderjit Singh

...Petitioner

Versus

Darshan Kumar and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rahul Rampal, Advocate
for the petitioner.

Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Naveen Gupta, Advocate
for respondent No.1.

JAISHREE THAKUR, J. (Oral)

1. This is a civil revision that has been filed by the petitioner-tenant seeking to challenge the order dated 09.09.2014 passed by the Rent Controller, Ludhiana whereby the eviction petition filed by respondent No.1-landlord was allowed, as well as order dated 14.03.2016 passed by the Appellate Authority, Ludhiana whereby the appeal filed by the petitioner-tenant was dismissed.

2. In brief, the facts of the case are that respondent No.1-landlord herein filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act (for short 'the Act') averring therein that the father of the petitioner and respondents No.3 to 6 and husband of respondent No.2 herein

namely Joginder Singh took the tenanted premises on rent from respondent No.1-landlord for running his business at a monthly rent of ₹ 500/- per month and ₹ 100/- per month as house tax. It was submitted that said Joginder Singh, unfortunately expired on 26.04.2009 and after his death, the petitioner herein started running the business in the tenanted premises. It was alleged that the petitioner did not prove to be a good tenant and stopped making the payment of rent and thus was liable to be ejected on the ground of non-payment of rent along with house tax, as well as on the ground that the tenanted premises is required by respondent No.1 for personal necessity of his son and daughter-in-law, who are BHMS and further doing M.D. It was further averred that both the son and daughter-in-law of respondent No.1 want to open their own clinic in the tenanted premises. It was stated that adjoining shop with the tenanted premises is already with respondent No.1 and by removing the intervening wall, both the shops shall be used for the purpose of clinic as well as testing lab. It was submitted that the shop in possession of respondent No.1 is insufficient for opening the clinic and there are bright chances to run the clinic in the tenanted premises.

3. Upon notice, petitioner-tenant appeared and contested the petition by filing his written statement, in which preliminary objections were taken as to maintainability of the petition and that the petition is bad for non-joinder and misjoinder of necessary parties, as respondent No.2 to 6 have no right, title or interest in the tenanted premises. Respondents No.2 to 6 did not turn up before the Rent Controller and they were proceeded against ex parte by an order dated 15.03.2014.

4. Replication was filed. From the pleadings of the parties, issues

were framed and evidence was led by both the parties. On the issue of rent, the Rent Controller held that since the petitioner-tenant has tendered the provisionally assessed rent @ ₹ 500/- per month w.e.f. 01.05.2009 to 30.04.2013, as such, the ground was rendered infructuous. The Rent Controller further held that the tenanted premises is required by respondent No.1 to settle his son and daughter-in-law, which need is bona fide, as such, directed the petitioner-tenant to vacate and hand over the possession of the tenanted premises within two months. Feeling aggrieved, the petitioner-tenant challenged the order passed by the Rent Controller in appeal, however, the Appellate Authority dismissed the appeal, while affirming the findings returned by the Rent Controller. Now, both the orders passed by the courts below have been assailed in this civil revision.

5. Mr. Rahul Rampal, learned counsel appearing on behalf of the petitioner-tenant argues that the courts below have failed to consider that respondent No.1-landlord had failed to plead the necessary ingredients as envisaged under Section 13 of the Act, as there is no pleading to the effect that son and daughter-in-law for whom the tenanted premises is required, do not own and possess any property within the urban limits of the city or have not vacated any property after coming into force of the Act. It is contended that the courts below have failed to consider that two shops belonging to respondent No.1-landlord are lying vacant and the said shops are never being used. It is also submitted that both the courts below have failed to consider that adjoining to the tenanted premises, respondent No.1-landlord owns a property measuring 180 sq. yards, but the same was never used for starting of any clinic. It is also contended that both the courts below have

misread the evidence, which clearly shows that the need of respondent No.1-landlord is fanciful. In support of his arguments, learned counsel relied upon judgments as rendered in ***Shankar Lal vs. Madan Lal and others, 2011(1) RCR (Rent) 139, Manmohan Lal vs. Shanti Parkash Jain, CR No.2320 of 2014, decided on 11.08.2014, Jatinder Kaur vs. S.K. Dhaliwal, 2015(4) RCR (Civil) 135 and Pritam Singh Bakshi vs. Mrs. Sukhdev Kaur and others, 2014(2) RCR (Civil) 625.***

6. Per contra, Mr. S.K. Garg Narwana, learned Senior Counsel appearing on behalf of respondent No.1-landlord, assisted by Mr. Naveen Gupta, Advocate submits that the arguments so advanced by learned counsel for the petitioner-tenant have already been dealt with in detail by the courts below and there are current finding of facts returned by both the courts below that the tenanted premises is required by respondent No.1, as such, no ground is made to interfere with the same. It was also submitted that the plea of non-compliance of pleading the necessary ingredients as envisaged, should have been taken up in the written statement and cannot be pleaded in the revision petition. In support of his arguments, learned Senior counsel relied upon judgments rendered in ***Arun Kumar vs. Des Raj Tandon (since deceased) through his LR, 2018(2) RCR (Rent) 491, Gurbaj Singh vs. Parshotam Singh and others, 2011(2) RCR (Rent) 349, Sunita Rani vs. Ramesh Chander, 2008(2) RCR (Rent) 169 and Joginder Pal vs. Naval Kishore Behal, 2002(1) RCR (Rent) 582.***

7. I have heard learned counsel for the parties and with their assistance have gone through the case file and the authorities relied upon.

8. In the present case, respondent No-1-landlord sought eviction

of the petitioner-tenant on the ground that his son and daughter-in-law are BHMS and both are further doing M.D. and after completing the said course, they both want to open their own clinic in the tenanted premises. As per respondent No.1, the adjoining shop with the tenanted premises is already with him and by removing the intervening wall, both these shops shall be used for the purpose of clinic as well as testing lab. Respondent No.1-landlord Darshan Kumar stepped into the witness box as PW1 and deposed to this effect. Mohit Goel, son of respondent No.1-landlord, stepped into the witness box as PW2 and deposed to the effect that he and his wife Sonal Chauhan are BHMS and they both were doing M.D. at the time of filing of the petition.

9. An argument has been raised that the eviction petition is not maintainable as essential ingredients under Section 13(3)(a)(i) of the Act have not been pleaded. It is true that a Full Bench in ***Banke Ram vs. Smt. Saraswati Devi, 1977(1)RCR (Rent) 595*** has held that "*it is mandatory to plead the essential ingredients that he requires the demised premises for his own personal need and that he had not vacated any house in the municipal area where the demised premises is situated and to plead that he was not occupying any other premises in the area, but the petitioner herein did not raise any objection thereto in his written statement*". But in the judgment rendered in ***Sat Prakash Chaudhry v. Kewal Krishan Malhotra, 2010(4) PLR 622*** it has been held that, "*there is no dispute to the proposition of law as enunciated in the Full Bench judgment relied upon by the learned counsel for the petitioner. But, at the same time, the Court cannot be oblivious to the fact that mere non-pleading of a fact, which is enshrined in*

the statute, can always be rectified if a relevant objection is taken at the initial stage. The petitioner failed to take any such objection in his reply to the petition. The pleadings have to be considered broadly in a rent petition where it is not captive to the strict law of interpretation which may be the situation in a civil suit. In rent proceedings, the Rent Controller is merely obliged to hold an inquiry to look into the averments which have been made in the petition." This view has been followed in a subsequent case ***Gurbaj Singh v. Parshotam Singh (2011) 3 PLR 653***. The argument that the respondent failed to plead or state the necessary ingredients of Section 13 of the Act would loose significance since there was no objection taken either in the written statement nor were any issues framed. Moreover, the petitioner was not caught unaware and did put the landlord all relevant questions in this regard. There is substantial evidence on the record to establish that the ingredients of Section 13 (3) (a) (i) of the Act have been complied with insofar as evidence has been led and the tenant is not caught unaware. Reliance in this regard may be placed upon the judgment rendered in ***M/s Bhatia Cloth House v. Dr. Raj Kumar Gupta, 2008 (4) RCR(Civil) 250*** and ***Raj Kumar v. Budha Mal 2011(2) RCR (Rent) 60***, wherein it has been held that *"it is consistent position of law that ambiguity in pleadings regarding the ingredients set out in Section 13(3)a of the Act have made good of the evidence as sufficient compliance of the statutory provisions"*. The same view has been taken in the judgment rendered in ***S.S. Maan v. A.K. Sharma reported in 2013(4)RCR(Civil) 154*** wherein para 8 it has been held that *"It is cardinal principle of law that technicalities are handmaids of justice and they should not be hindrance in imparting*

substantial justice. In the present case, it has not been shown by learned Counsel for the tenant as to how any prejudice has been caused to him by non-pleading of the ingredients as referred by him in his arguments. No doubt, the pleading of all the ingredients are necessary for any person to seek relief, but at the same time if the party leads positive evidence to prove a certain ingredient, although not pleaded then the Court cannot throw him away on mere technicalities, if it is otherwise proved that no prejudice has been caused to him". The judgments as relied upon by the petitioner would not be relevant in the facts of the instant case.

10. Moreover, a copy of the rent petition filed by respondent No.1-landlord is available on record as Annexure R-1 and in para 4(b) of the petition, respondent No.1-landlord has specifically pleaded about the personal necessity of his son and daughter-in-law as well as that one shop, adjoining to the tenanted premises, is in his possession and after removing the intervening wall, both the shops shall be used for the purpose of clinic as well as testing lab. Respondent No.1-landlord specifically pleaded in the petition that *"The petitioner has not got vacated any premises after the commencement of East Punjab Urban Rent Restriction Act, 1949. The petitioner does not own any other property in the urban limits of Municipal Corporation, Ludhiana or elsewhere except the property in question."* The written statement filed by the petitioner-tenant to the rent petition is available on record as Annexure R-4 and a perusal of the same goes on to show that no such objection has been taken therein as regards non-pleading the necessary ingredients of Section 13 of the Act, as argued by counsel for the petitioner-tenant. In reply to para 4(b) of the rent petition, the petitioner-

tenant apart from denying the pleadings by saying it either wrong or incorrect, submitted that respondent No.1-landlord has sufficient accommodation for himself as well as for his son and daughter-in-law, while alleging that respondent No.1-landlord is in possession of two shops, out of total five shops, which shops were got vacated 10 years back and thereafter, did not use the said shops.

11. In the judgment rendered in *Joginder Pal's case (supra)*, the Hon'ble Supreme Court in para 24 has held as under:-

“We are of the opinion that the expression 'for his own use' as occurring in Section 13(3)(a)(ii) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove we have found the pari materia provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependents and kith and kin in the requirement of landlord as "his" or "his own" requirement and user. Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with

him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire : (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close inter-relation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act.”

Thereafter, the Hon'ble Supreme Court in para 33 crystalized its conclusions, which are as under:-

“33. Our conclusions are crystalised as under:

(i) the words 'for his own use' as occurring in Section 13 (3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 must receive a wide, liberal and useful meaning

rather than a strict or narrow construction.

(ii) 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.

(iii) The tests to be applied are : (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement? and, (ii) Whether on the facts and in the circumstances of a given case actual occupation and user by a person other than the landlord would be deemed by the landlord as 'his own' occupation or user? The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as 'his own' and the person who would actually use the premises; (ii) the circumstances in which the claim arises and is put forward, and (iii) the intrinsic tenability of the claim. The Court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.

(iv) While casting its judicial verdict, the Court shall adopt a practical and meaningful approach guided by the

realities of life.

(v) In the present case, the requirement of landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord 'for his own use' within the meaning of Section 13(3)(a)(ii). ”

12. Keeping in view the ratio of law settled in ***Joginder Pal's case*** (*supra*) it is clear that in Section 13(3)(a)(ii) of the Act the words “for his own use” must receive a wide, liberal and useful meaning rather than a strict or narrow construction. In the case in hand, respondent No.1-landlord has specifically pleaded the ingredients of Section 13 of the Act in his rent petition (as reproduced above) apart from specifying his need that the tenanted premises is required by him for his son and daughter-in-law, who wanted to start their clinic as well as laboratory. It was also specified by respondent No.1-landlord that the adjoining shop with the tenanted premises is lying vacant, which will be used for the said purpose, after removing the intervening wall. Though in his written statement, the petitioner-tenant has taken the stand that there are total five shops in the demised premises and respondent No.1-landlord is in possession of two shops, but the Rent Controller, in its order, has observed that during his cross-examination RW1-Inderjit Singh has admitted that the shop in dispute is a corner shop, which opens from the side and there is one shop, which is in possession of the petitioner (respondent No.1 herein). During the course of proceedings pending before this Court, Mohit Goyal son of respondent No.1-landlord and Sonal Chauhan wife of Mohit Goyal (daughter-in-law of respondent No.1-landlord) filed their duly sworn affidavits on the record as Annexure R-3 and Annexure R-4 respectively, which are to the effect that *they do not*

own or possess any other property or commercial premises within the urban area of Ludhiana, except the property in question. Under the facts and circumstances of the present case and keeping in view the ratio of law as held by the Hon'ble Supreme Court in ***Joginder Pal's case (supra)*** and in ***M/s Bhatia Cloth House v. Dr. Raj Kumar Gupta, 2008 (4) RCR(Civil) 250 and Raj Kumar v. Budha Mal 2011(2) RCR (Rent) 60***, the arguments advanced by learned counsel for the petitioner-tenant that respondent No.1-landlord had failed to plead the necessary ingredients as envisaged under Section 13 of the Act is not tenable. In the view of this court, respondent No.1-landlord in his pleadings as well as in his evidence has pleaded and proved all the necessary factors covering the ingredients as envisaged under Section 13 of the Act and both the courts below have rightly held so.

13. Learned counsel for the petitioner-tenant also argues that the son and daughter-in-law of respondent No.1-landlord has no intention to start the clinic in the tenanted premises. The attested copy of degree of Mohit Goyal, son of respondent No.1-landlord is produced on record as Ex.PW2/A and copy of receipt of admission fee in M.D. as Ex.PW2/B. Similarly, attested copy of degree of Sohan Chauhan, wife of Mohit Goyal (daughter-in-law of respondent No.1-landlord) is produced on record as Ex.PW2/C and copy of receipt of admission fee in M.D. as Ex.PW2/D. In this regard, this court is of the considered view that a bald statement has been made to this effect and both the courts below have rightly rejected this argument keeping in view the safeguards provided to the tenant under Section 13(4) of the Act whereby, the tenant may apply to the Rent Controller seeking restoration of possession, in case, the landlord fails to

occupy the premises for the continuous period of 12 months from the date of obtaining the possession or let it out again.

14. Learned counsel for the petitioner-tenant further contends that two shops belonging to respondent No.1-landlord are lying vacant, while also submitting that adjoining to the tenanted premises, respondent No.1-landlord own a property measuring 180 sq. yards, but the same never used for starting of any clinic. As rightly held by the Rent Controller, the petitioner-tenant cannot dictate terms to respondent No.1-landlord. The law is settled that need of the landlady/landlord has to be seen from the angle of the landlady/landlord and not from the view point of the tenant. Even if the landlord has alternative accommodation, even then it is for the landlord to determine the suitability of the accommodation for his requirement, which is to set up a clinic and laboratory for his son and daughter-in-law. Both the courts below have rightly appreciated the evidence produced by both the parties on the record.

15. The authorities relied upon learned counsel for the petitioner are distinguishable and cannot be applied to the peculiar facts and circumstances of the present case. In the case of ***Shankar Lal vs. Madan Lal and others (supra)*** the landlord owned another two shops, apart from the demised premises, which fact he concealed from the court, but it is not so in the present case. Similarly, in the case of ***Manmohan Lal vs. Shanti Parkash Jain (supra)*** the landlord has made concealment about the other shops owned and possessed by him, but that is not so in the instant case. In the case of ***Jatinder Kaur vs. S.K. Dhaliwal (supra)*** also the landlady had yet another property vacant in her possession at the time of filing the

petition, but she did not disclose the same, however, in the present case facts are totally different. So, this authority also cannot be applied in the present case. Similarly in the case of ***Pritam Singh Bakshi vs. Mrs. Sukhdev Kaur and others (supra)*** the landlord had concealed the fact that SCO Nos. 3003-04, Sector 22-D, Chandigarh owned by him was vacated and let out after the commencement of the Act, but this is not position in the present case.

16. Under the facts and circumstances of the present case, this court is of the considered opinion that the findings returned by both the courts below are well supported by the evidence led by the parties, which cannot be said to be perverse or illegal in any way.

17. In view of the foregoing discussion, the civil revision in hand is hereby dismissed.

18. Pending application, if any, stands disposed of accordingly.

December 20, 2019

vijay saini

(JAISHREE THAKUR)

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No