

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

CR No. 2572 of 2018

Date of Decision:21.02.2019

City MRI Centre Private Limited and another

.....Petitioners

Versus

Amarjeet Singh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vijay K. Jindal, Sr. Advocate
with Mr. Akshay, Advocate and
Mr. Gopal Soni, Advocate
for the petitioners.

Mr. Vikas Bahl, Sr. Advocate
with Mr. Munish Behl, Advocate and
Mr. Nitin Garg, Advocate and
Ms. Aarzoo B.Garewal, Advocate,
for the respondents.

LISA GILL, J.

Petitioners/tenants are aggrieved of decision dated 18.12.2015, passed by the learned Rent Controller, Faridabad, whereby petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short 'Act') has been allowed as well as judgement dated 28.02.2018 passed by the learned Appellate Authority, Faridabad, whereby appeal preferred by the petitioners, has been dismissed.

Brief facts as pleaded in the petition under Section 13 of the Act filed by the respondents-landlords are that they claimed to be owners of the properties/tenanted premises as detailed in the petition. It was pleaded that

the landlords rented out the tenanted premises to the tenants (petitioners) vide lease agreement dated 03.03.2004, which was duly registered in the office of Sub-Registrar, Faridabad on 03.03.2004. Premises were claimed to be rented out to the tenants for a period of five years i.e. till 02.03.2009. Details of the lease money was duly mentioned besides the percentage of periodic increase of the lease amount. It was pleaded that the lease came to an end on 02.03.2009 and was not extended. The tenants however refused to vacate the premises and occupied the same illegally and unlawfully thereafter. Legal notice dated 14.04.2009, was served on the tenants whereby the lease was determined and terminated, calling upon the tenants to pay a sum of ₹1,52,746/- per month as compensation/damages for illegal use and occupation of the premises in question. Eviction of the tenants was sought on the ground of nonpayment of arrears of rent as well as personal *bona fide* necessity of the landlords. It was pleaded that the landlords required the premises for its use by Jasjeet Singh, who had completed his masters of business in finance and wanted to run a finance company on the premises in question. It was further stated that the landlords had not vacated any such premises anywhere in the urban area concerned, from the commencement of the Act without any sufficient cause and reason. Eviction of the tenants was sought.

Petition was resisted by the tenants (present petitioners). Various preliminary objections were taken in the written statement. Averments on merits were controverted. It was stated that all the landlords had let out their independent premises to the tenants separately at the rate of ₹6300/- per month w.e.f., 03.03.2004 for a period of 12 years ending on

02.03.2016, though one rent agreement was executed collectively by the landlords. Huge amount had been spent by the tenants in establishing the MRI centre on the premises in question. It was denied that the arrears of rent were due towards the landlords. It was denied that the premises were required for personal *bona fide* necessity of the petitioners or that the tenant was liable to be evicted from the premises in question on any of the grounds raised by the landlords. Dismissal of the petition was prayed for.

Following issues were framed by the learned Rent Controller:-

1. Whether the petitioner is entitled for order of ejectment of the premises in question, on the grounds mentioned in the petition, as prayed for?OPP
2. Whether the petitioners have no locus standi and cause of action to file the present eviction petition?OPR
3. Whether the petitioners are estopped by their own act and conduct to file the present petition?OPR
4. Whether the petition has not been filed in accordance with provisions of Haryana Urban (Control of Rent & Eviction) Act, 1973 and is liable to be dismissed?OPR
5. Whether the petitioners have not come with clean hands and suppressed material facts from this Court?OPR
6. Relief.

Evidence was led by both the parties in respect of their respective claims/stands.

Learned Rent Controller, Faridabad, on considering the facts and circumstances as well as the evidence on record rejected the ground of non-payment of rent as the provisional rent claimed by the landlords was tendered by the respondents along with interest and cost as assessed by the Court. However, eviction of the petitioners was ordered on the ground of

personal *bona fide* necessity of the landlords.

Appeal preferred by the present petitioners was dismissed by the learned Appellate Authority, Faridabad, vide judgment dated 28.02.2018.

Aggrieved therefrom, present revision petition has been filed by the petitioner-tenants.

Learned senior counsel for the petitioners vehemently argued that both the learned Courts below have grossly erred in allowing the rent petition filed by the respondent-landlords. Findings returned by the learned Courts below are perverse and opposed to the evidence on record, therefore liable to be set aside. First and foremost, it is argued that all the landlords could not prefer a petition seeking eviction of the tenants on the ground of personal *bona fide* necessity of one of the landlord only. It is contended that the *bona fide* necessity of Jasjeet Singh son of Smt. Surjeet Kaur (respondent no.4 before the learned Courts below) was pleaded. As all the landlords hold the property separately, therefore the petition in question seeking eviction of the petitioners on the ground of personal *bona fide* necessity of one or two of the landlords was not maintainable. The necessity of one landlord cannot be treated to be necessity of the others. It is only when all the landlords require the premises in question that the question of their personal *bona fide* necessity would arise. In the same vein, it is argued that all the landlords are separate owners of different parcels of the property. It was vehemently argued that all the landlords became owners of the property in question vide separate sale deeds. They cannot be treated as joint owners.

Moreover, requirement of Section 13 (3) (a) of the East Punjab

Urban Rent Restriction Act, 1949 (for short 'Rent Act'), it is urged has not been complied with. There is no pleading to the extent that the property in question is required by all the landlords for their separate personal *bona fide* necessity. It is submitted that all of them are separate owners of specific portions and they are not joint owners of the whole of the property. It was also incumbent upon Jasjeet Singh son of Smt. Surjeet Kaur wife of J.S.Chalwa, to have specifically deposed about his personal necessity, but he has not testified before the learned Rent Controller. Moreover, PW-1-Surjit Kaur and PW-2-Hardeep Singh in their statements have stated that they were not aware of the properties, if any, owned by the other landlords. Furthermore, Jasjeet Singh is admitted to have gone to Australia, where he is pursuing his vocation, therefore it cannot be said that he is in need of the tenanted premises for running the business of finance consultancy. Both the learned Courts below have wrongly held that non-pleading of the ingredients of Section 13(3)(a)(i) of the Rent Act, is not fatal to the case of the landlords. Learned counsel for the petitioners relies upon the judgment of Full Bench of this Court in **Banke Ram Vs. Shrimati Sarasvati Devi, 1977(1) R.C.R. (Rent) 595** to contend that fulfillment of the conditions as laid down in Section 13(1) of the Rent Act are a prerequisite for any order of ejectment. The landlord must state all the facts specifically and expressly in his pleadings before entering evidence. Evidence beyond pleadings can never be looked into. Reliance is also placed on the judgment of the Hon'ble Supreme Court in **Ajit Singh and Anr. Vs. Jit Ram and Anr. 2008 (4) R.C.R (Civil) 390** to submit that when the landlords sought to evict the tenant for the purpose of use of the premises for his son, it was

mandatory for the son to plead and prove that he was not occupying any other such building and has not vacated such building without sufficient cause. Learned senior counsel for the petitioners further relies upon the judgment of the Hon'ble Supreme Court in **Sri Ram Pasricha Vs. Jagannath and others (1976) 4 SCC** to buttress his arguments. It is thus prayed that this petition be allowed and the impugned judgments dated 18.12.2015 and 28.02.2018, passed by the learned Courts below be set aside. Consequently, petition u/s 13 of the Act filed by the respondent-landlords be dismissed throughout.

Per contra, learned counsel for the respondents refuted the arguments as raised by learned counsel for the petitioners while referring to the rent note/agreement Ex.D-1. It is submitted that the premises in question were let out by all the landlords collectively to the tenants namely City M.R.I. Centre (Pvt.) Ltd., GF-6, (A to E), Rama Place, Ajronda Chowk, Sector-20-B, Faridabad. Rate of rent was fixed at ₹31,500/- per month. Percentage of increase was duly mentioned in clause 2 of the rent agreement. Merely because the mode of payment was specifically mentioned in clause 20 of the agreement wherein specific amounts have been mentioned to be paid to the landlords, cannot in any manner mean that they are separate and distinct tenancies which were created by all the landlords in favour of the tenants. Moreover, once the petitioners has accepted the respondents to be the landlords, there is no question of raising any plea regarding the landlords not being co-owners or being separate owners of the property in question. Mandatory provisions of the Rent Act have been duly complied with. There are specific pleadings as envisaged under the statute in the petition

filed by the landlords.

Learned senior counsel for the respondents further submitted that in the written statement filed by the tenants, no such objection was raised regarding the absence of pleadings to the effect that Jasjit Singh was not occupying any such building in the urban area concerned or had not vacated such building without any sufficient cause after commencement of the Act. Moreover, PW-1 and PW-2, have specifically deposed in this regard, in their testimonies. There is thus no concealment on the part of the landlords in respect to any other property of which they may be owners of or in occupation thereof. Learned senior counsel for the respondents relies upon the judgments of this Court in **Sham Lal Vs. Asha Rani and others, C.R No. 3714 of 2010, d/o 08.08.2018, Hukam Chand Vs. Saroj Rani 2018(1) PLR 381 and Gurbaj Singh Vs. Parshotam Singh and others 2011(4) R.C.R (Civil) 518** to contend that personal *bona fide* necessity of the landlord would include the use of the premises for the son of the landlord as well and it is not necessary that the son should be separately examined. It is thus prayed that this petition be dismissed and the impugned judgements of the learned Courts below be upheld.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

It is not in dispute that as per Ex.P-1, rent agreement dated 03.03.2004, premises in question i.e., GF-6, (A to E), Rama Place, Ajronda Chowk, Sector-20-B, Faridabad, were let out on rent to petitioner no.1 for a sum of ₹31,500/- per month. It is mentioned in Clause 18 of the said agreement that “the lease agreement should conclude

with definite terms regarding the option of the lessee to get the lease extended maximum up to the period of 12 years. However in case lessee opts not to extend the lease after 5 years, the agreement clause no.11 regarding 2 months notice to the lesser will be applicable”. Clause 11 reads as under:-

“11. That party of 2nd part shall be entitled to terminate the agreement by giving two months notice to the party of the first part during the subsistence of this agreement. In that case Tenant shall handover the vacant and peaceful possession of the said premises to the Landlord.”

The mode and manner of the payment was detailed in the said rent agreement. It is a matter of record that on execution of this document Ex.D-1, the petitioners accepted all the respondents to be its landlords. Therefore, argument raised by learned senior counsel for the petitioners that there are different tenancies which were created by the said document Ex.D-1, is devoid of any merit. Merely, because the sale deeds in favour of the different landlords are separate and in respect to the specific shops, it cannot be presumed that separate tenancies were created. The entire commercial premises comprising of GF-6, (A to E), Rama Place, Ajronda Chowk, Sector-20-B, Faridabad, was admittedly given out on rent to the petitioners by all the landlords vide Ex.D-1. The entire area is stated to be measuring approximately 1527.46 sq. ft., on the ground floor of the building. The judgement of the Hon'ble Supreme Court in **Sri Ram Pasricha's (Supra)** is of no avail to the petitioners. In-fact, in **Sri Ram Pasricha's case (Supra)**, it has been held that a petition by one of the co-owner can also succeed. Argument raised on behalf of the petitioners is that by virtue of the landlords

having purchased the property vide separate sale deeds the property stands partitioned, therefore separate tenancies are deemed to be created and personal necessity of one or two of the landlords cannot be termed as personal necessity of all the landlords. It is relevant to note at this stage that in the present case, one rent agreement, Ex.D-1 was admittedly executed by all the landlords. Eviction petition has been filed by all the landlords. Therefore, though attractive at first flush, this argument raised by learned counsel for the petitioners, is not tenable, hence rejected.

Learned counsel for the petitioners vehemently argued that the mandatory provisions of Section 13 (3) (a) (i) of the Rent Act have not been complied with. Section 13 (3) (a) (i) of the Act reads as under:-

“(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.”

It is specifically pleaded in the petition under Section 13 of the Act in para no.5 (iv) that the landlords have not vacated any such premises any where in the concerned urban area from the commencement of the rent act, without any sufficient cause and reasons. It is mentioned in para no.5 (iii) that the landlords require the leased premises in question for the *bona fide* requirement of Shri Jasjeet Singh s/o Jasbir Singh Chawla, who has done Masters of business in finance and wants to run a finance company from the demised premises. Jasjeet Singh is the son of Smt. Surjeet Kaur wife of Jasbir Singh Chawla (respondent no.4 before the learned Courts below) and

other respondents are admittedly the landlords of the petitioners.

The said averments have been denied by the petitioner-tenants in their written statement while stating that Jasjeet Singh did not wish to run any finance company and there is no *bona fide* requirement of the premises in dispute. Landlords were claimed to have vast properties in Faridabad and at Gurgaon. PW-1 and PW-2, in their testimonies have clearly mentioned that they as well as other landlords do not own any properties in the said urban area and neither had they vacated any such premisses in the concerned urban area from the commencement of the Act without any sufficient cause or reason.

Learned counsel for the petitioners is unable to deny that there is no evidence on record to indicate that the landlords are in possession of any other commercial premises in the concerned urban area or have vacated any such premises from the commencement of the Act without any sufficient cause or reason. Mere reference to the cross-examination of PW-1 and PW-2 to the effect that they have expressed their ignorance about the properties which may be held by the other landlords, in the peculiar facts and circumstances of the case, is not sufficient to non-suit the respondent-landlords. There is indeed no evidence on record to show that the landlords or Jasjeet Singh have vacated any such premises in the concerned urban area. Objection raised by petitioners that there is no pleading to the fact of Jasjeet Singh not having vacated any such premises clearly fades into insignificance. It has been held by the Full Bench of this Court in **Banke Ram's** case (Supra) that one of the main objects of the Act is to protect the tenant from the caprice and whim of the landlord to eject him without any

valid and sufficient reason. Therefore, the landlord as well as the tenant must state all the facts specifically and expressly in their pleadings before they enter on evidence. However, it was clarified that while holding that it is essential to plead the ingredients of Sub-clauses (b) and (c) of the Rent Act in the eviction application by the landlord, it should not be understood that under no circumstances, in the absence of pleadings, the evidence regarding the ingredients envisaged in Sub-clauses, (b) and (c) of the Rent Act can be looked into. This observation was made while taking note of the fact that where the parties went to trial fully knowing the rival case and led all the evidence, the suit could not be dismissed on such ground.

It is a settled position that personal *bona fide* necessity of the landlord is to be viewed from the point of view of the landlord. Said need is not to be viewed by the Court by taint of suspicion. Reference in this respect can gainfully be made to the judgments of this Court in **M/s Bhatia Cloth House Vs. Dr. Raj Kumar Gupta and another 2008(4) R.C.R (Civil), Jugal Kishore Ahuja Vs. Surinder Kaur 2017 (2) R.C.R (Civil) 508, Ram Paul Vs. Vijay Kumar and others 2013 (4) R.C.R (Civil) 649 and Hans Raj Bhatia Vs. Vijay Kumar 2011 (2) PLR 256.**

A perusal of the judgment of the Hon'ble Supreme Court in **Ajit Singh's** case (supra) reveals that *bona fide* necessity of the landlord would include the necessity of his son as well. In Ajit Singh's case (supra), the landlords i.e., father and son had sought eviction of the tenant on the ground of *bona fide* requirement of personal use and occupation of one of the petitioners i.e. the son. Learned Rent Controller ordered eviction on the ground of subletting only. Appeal was preferred by the tenants. Cross

objections were filed by the landlords. Appellate Authority, directed the eviction of the respondent-tenants on the ground of personal necessity. Tenants, therein approached this Court by way of a revision petition which was allowed on the ground that averments in the eviction petition were in respect to the personal requirement of Ajit Singh only, but the pleading did not relate to the personal requirement of appellant no.2 therein, who was the landlord of the said shop. An SLP was filed against the said order of the High Court Court, which was ultimately allowed by the Hon'ble Supreme Court while setting aside the order of the High Court and restoring the order of the Appellate Authority.

In the present case, *bona fide* necessity of Jasjeet Singh son of Smt. Surjeet Kaur, is specifically pleaded. Merely because Jasjeet Singh himself has not stepped into the witness box cannot be a ground to set aside the impugned judgments or dismiss the petitions filed by the landlords. Reference can gainfully be made to the judgment of this Court in **Hukam Chand Vs. Saroj Rani 2018(1) PLR 381**. It is clearly held that non-examination and nonappearance of the son of the landlord in the witness box is not fatal to the action. In **Gurbaj Singh's** case (*supra*), the matter was discussed threadbare. It was observed as under:-

“Thus, a close reading of the decision of the Supreme Court in the case of Ajit Singh and another (*supra*) shows that the person who maintains an eviction petition on the ground of bona fide necessity, has to be a landlord and has to plead all the mandatory ingredients of Section 13(3)(a)(i) of the Act in the eviction petition and even if the premises is required by the landlord for use and occupation of his son, the son of the landlord is not required to plead all the ingredients of Section

13(3)(a)(i) of the Act if he himself is not the landlord of the premises.”

The Hon'ble Supreme Court in **Mehmooda Gulshan Vs. Javaid Hussain Mungloo 2017(1) RCR (Rent) 273**, specifically observed that requirement of the usage of the premises by the son of the landlord would necessarily cover the requirement of the words 'for his own use' by the landlord. Non examination of the son for whose benefit the premises were sought to be vacated, was not found to be a sound reason to non-suit the landlords.

Both the learned Courts below have rendered well reasoned and logical decisions on a sound appreciation of evidence on record. Learned counsel for the petitioners is unable to point out any illegality, perversity or error of law apparent on the face of it in the findings returned by both the learned courts below. It has been held by the Hon'ble Supreme Court in **Hindustan Petroleum Corporation Limited v. Dilbahar Singh, (2014) 9 SCC 378** that this Court while exercising revisional jurisdiction would normally not interfere in concurrent finding of fact until and unless it is shown that there is gross misreading of evidence or ignoring of material evidence on record which renders the finding of the courts below to be perverse.

Learned counsel for the petitioners is unable to point out any illegality, infirmity or perversity in the impugned orders dated 18.12.2015, passed by the learned Rent Controller, Faridabad and order dated 28.02.2018 passed by learned Appellate Authority, Faridabad, which calls for interference by this Court in exercise of revisional jurisdiction.

No other argument has been raised.

Petition is accordingly dismissed with no order as to cost.

Petitioners are however afforded two months to handover peaceful, vacant possession of the demised premises to the respondent-landlords.

21.02.2019

s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.