

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.3373 of 2017(O&M)
Date of Decision: 02.07.2019.

M/s S.B.Hammers and others

.....Petitioners

Versus

Rudramani Walia and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

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

Mr. Puneet Jindal, Sr. Advocate
with Ms. Neha Anand, Advocate
for the respondents.

LISA GILL, J(Oral).

Petitioners (tenants), are aggrieved of order dated 11.09.2015, passed by the learned Rent Controller, Jalandhar, as well as order dated 16.03.2017, passed by the learned Appellate Authority. Jalandhar, whereby the petitioners ejection from the demised premises has been ordered.

Brief facts necessary for the adjudication of the case are that petition under Section 13 of the East Punjab Urban Rent Restriction Act, (for short 'Act') was filed by the respondents-landlords seeking eviction of the present petitioners from the part of property no. 15 as detailed in the petition. It is pleaded that the respondents-landlords are the owner of property no. 15 as detailed in the petition. Premises, which are non-residential in nature, were given on rent to the present petitioners about six years prior to the filing of the petition. Eviction of the present petitioners was sought on the ground of non-payment of arrears of rent as well as personal *bona fide* necessity of the respondents-landlords inasmuch as the part of the property let out to the petitioners, was required by respondent no.1 for storing raw material, casting etc. It is stated that respondent no.1 was running a hand tool accessories manufacturing unit, under the name and style of M/s Apex

Industries, which is located about 100 yards from the demised premises in building no. 54, Dada Colony, Jalandhar. It is further stated that the remaining portion of property/building no. 15, which is admittedly in possession of the landlord and not let out on rent, was being used by respondent no.1 for the same purpose, but the same was inadequate and insufficient for meeting his requirements. Hence the petition was filed.

Petition was resisted by the present petitioners (respondents-tenants). Various preliminary objections were raised and averments on merits were denied. It is denied that the petitioners were in arrears of rent or that the landlords, had any personal *bona fide* necessity *qua* the demised premises. They claimed to have invested huge capital and were running a hammer and entire machinery had been installed therein. Landlords, it is stated had not revealed the details of the other properties owned by them. Dismissal of the petition was prayed for.

Rejoinder was filed. From the pleadings of the parties, following issues were framed by the learned Rent Controller, Jalandhar:-

1. Whether the respondent is in arrears of rent as prayed for and is liable to be vacated from the demised premises?
OPP
2. Whether the petitioner requires the demised premises for his own use and occupation and is liable to be vacated from the demised premises?OPP
3. Whether the present petition is not maintainable?OPR
4. Whether the petitioner has not come to the Court with clean hands?OPR
5. Relief.

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

Learned Rent Controller, Jalandhar, on appreciation of the evidence on record and considering the facts and circumstances of the case, concluded that the present petitioners were in arrears of rent for period

starting from June 2013 and were liable to pay a sum of ₹2,58,854/-. However, a sum of ₹34,945/- already stood tendered by the petitioners in the Court. The present petitioners were directed to deposit the rest of the amount within one month of passing of the impugned order. Personal *bona fide* necessity of the respondents-landlords was found to be proved on record. Petition was accordingly allowed by the learned Rent Controller, Jalandhar.

Appeal filed by the petitioners has been dismissed by the learned Appellate Authority, Jalandhar vide decision dated 16.03.2017. Learned Appellate Authority, Jalandhar, negated the plea of concealment of material facts or absence of personal *bona fide* necessity of the landlord and upheld the judgement dated 11.09.2015, passed by the learned Rent Controller, Jalandhar.

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

Learned counsel for the petitioner vehemently argues that there is active concealment of material facts by the respondents-landlords. There is a stark violation of the provision of Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short Act). The necessary ingredients have not been pleaded, put-forth or proved by the respondents-landlords. It is contended that no mention has been made of property no.52, owned by the landlord in the surrounding area and neither is there a mention of plot no. 60 which was purchased by the respondents-landlords on 16.09.2014. Reference is made to the affidavit of respondent-landlord no.1 as well as his cross-examination which is attached with the present petition as well, to submit that the said respondent-landlord has admitted the ownership of plot no.52 as well as plot no. 60 which proves concealment of material facts. It is further contended that *bona fide* personal necessity of the landlords, in any

case, does not exist. This is apparent from the fact that despite having purchased plot no. 60, the said premises were not used. Rather, the said plot was sold on 03.08.2016. Learned counsel for the petitioners further argues that the stand of the respondents-landlords that they require the demised premises for storing of raw material, casting etc., for his factory, is negated by their act of using the part of the vacant area of plot no. 15 in their possession for office purposes. Learned counsel for the petitioners has placed reliance upon cases **Ajit Singh and another Vs. Jit Ram and another 2008 (09) SCC 699, Ram Pal Saini Vs. Surinder Singh, 2016(2) R.C.R (Civil) 655**. It is thus prayed that this petition be allowed and judgments passed by the learned Courts below, be set aside.

Per contra, learned senior counsel for the respondents-landlords refutes the contentions that there is any concealment on the part of the respondents-landlords. It is submitted that personal *bona fide* necessity pleaded in the petition, was that the tenanted premises were required for storing of raw material, casting etc. Reference is made to plot no. 54, Dada Colony, Jalandhar for the reason that the landlords wanted to show that their manufacturing unit is present at that particular spot and it is convenient for them to use the demised premises being located nearby. It is further contended that reference to plot no. 52 was not made as an industrial unit is admittedly being run at the said premises and the same cannot be used as sought by the landlords. Moreover, the entire facts have been clearly narrated in the testimony of respondent no.1. Therefore, there is no concealment on the part of the respondents-landlords. It is further contended that the purchase and subsequent sale of plot no. 60 meant for a manufacturing unit can have no bearing on the case set up by the respondents, for the simple reason that apart from the same being a plot for

setting up a manufacturing unit, it was admittedly a vacant plot. There was no construction raised on the said plot. Therefore, it could not have been used by the respondents-landlords in the manner required. It is further contended that merely using the adjoining part of the property no. 15, which is in possession of the respondents for an office, cannot detract from the case of the respondents-landlords. Moreover, learned Rent Controller, Jalandhar, has rightly observed that subsequent purchase of plot no. 60, Dada Colony, Jalandhar, would not detract from the *bona fide* requirement of the landlords. The said property was for a manufacturing unit and was a vacant plot without any construction. It is thus prayed that the present revision petition being devoid of any merit be dismissed and the judgements passed by the learned Court below be upheld.

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

It is a matter of record that in the petition filed by the respondents-landlords, it is mentioned that respondent no.1 was running a hand tool accessories manufacturing unit under the name and style of M/s Apex Industries, which is located in building no. 54, Dada Colony, which is less than 100 yards away from the tenanted premises. It is specifically mentioned that the tenanted premises is required by petitioner no.1 for storing raw material, casting etc., for his factory. Part of property no. 15 as depicted in the site plan attached with the petition, was in possession of respondent no.1, but it was inadequate and insufficient for his needs and he required the entire property no. 15 for the said purpose. It is further stated that the respondents were not occupying for such purpose, any other similar building nor had they vacated without sufficient cause any such building in the urban area of Jalandhar city.

Learned counsel for the petitioners vehemently argued that the respondents-landlords did not reveal that they are also running their business in building no. 52, Dada Colony. There is a company under the name and style of M/s Apex Industries Private Limited, of which respondent no.1 is one of the managing director. It is further argued that purchase of property no. 60 in Dada Colony, during the pendency of the petition and its subsequent sale thereafter also reflects the absence of personal *bona fide* necessity. It may, at best, be a mere whim, fancy or desire of the landlord but cannot be made the basis of eviction of the tenants. Though, attractive at first flush, I do not find any merit in the abovesaid arguments. It is not denied that the respondents-landlords have sought eviction of the tenants on the ground that they require the premises for user thereof in relation to their industrial unit set up in building no. 54, which is less than 100 yards away from the tenanted premises. Mere fact, that a part of the demised premises (which is with the landlord) were being used as an office and not for storage purpose as mentioned in the petition, during pendency, cannot in any manner detract from credibility of the case set up by the landlords. The landlords have successfully pleaded and proved that the demised premises are required for their personal *bona fide* necessity. Industrial unit of the landlords is admittedly being run in building no. 54 which is less than 100 yards away from the demised premises. There is no evidence on record to indicate that the landlords do not require these premises in connection with the operations run in building no. 54. In his cross-examination, AW-1-Rudramani Walia, respondent no.1, has specifically revealed the details regarding the running of M/s Apex Industries Private Limited at building no. 52, Dada Colony, Jalandhar. Running of the unit at building no. 52, Dada Colony, Jalandhar, not being mentioned in the pleadings cannot, in any manner, be said to be

concealment of material facts. It is not the case of the petitioners that the said premises were available for the use as projected by the landlords or that the said premises were vacant and available with the landlords for the user. Respondents have clearly stated that they were not occupying for such purpose any other similar building and neither had they vacated any such building without sufficient cause. Clearly, there is sufficient compliance of the provisions of Section 13 (3) of the Act.

This Court in **Jugal Kishore Ahuja versus Surinder Kaur 2017 (2) RCR (Civil) 508** while dealing with the fulfillment of the basic ingredients of Section 13 (3) of the Act, referred to earlier decisions of this Court in para 9A which reads as under:-

9A. This Court in CR No.4773 of 2015 titled as Babli and others Versus Kumari Ruchi Bansal and another, decided on 29.08.2016, while dealing with the judgment in **Banke Ram's case (supra)**, had culled out the law with reference to Section 13 of the Rent Act in paras 16 and 17 thereof, which read as follows:-

“16. No doubt, the Full Bench judgment of this Court in **Banke Ram's case (supra)** has held that it is imperative to the landlord to specifically plead all the ingredients as required under the statute that he is not occupying another residential/non-residential building and has not vacated such a building without sufficient cause but this was for the reason that the tenant was not taken by surprise if there is no pleading in this regard. The specific averments were required to be made by the landlord so that no prejudice is ensued to the tenant.

17. In **Banwari Lal Vs. Ram Parkash & another, 2009 (2) R.C.R.. (Rent) 160**, it has been held that a landlord can always plead the ingredients of Section 13 (3) of the Act in evidence and if it is shown that no prejudice is caused to the tenant on account of nonpleading of the ingredients of the said Section, then petition cannot be rejected. The strict preposition of

pleading of the ingredients in ejectment petition has been diluted to a larger extent and that too based upon the principle of no prejudice to any of the parties because of non-pleading/disclosure of the said fact. It may not be out of way to mention here that there is no form given under the 1973 Act and therefore, it is always open to the parties to plead the ingredients of Section 13 (3). The only guiding principle is that there should not be a prejudice caused to the tenant because of non-pleading of the ingredients by the landlord. Therefore, each case would be dependent not only upon the pleadings but the evidence led by the parties with obviously governing principle being the tenant having been taken by surprise and the prejudice, if any, likely to ensue to the tenant”.

Similarly in **Ram Paul versus Vijay Kumar and others 2013 (4) RCR (Civil) 649** it has been held that even if necessary ingredients of Section 13(3) of the Act have not been pleaded strictly, it would not be fatal to the landlord's case as long as the parties were aware of each others case. It was observed as under:-

10. At this stage, it may also be noticed that even if the necessary ingredients of Section 13(3)(a)(i) of the East Punjab Urban Rent Restriction Act, 1949 have not been pleaded strictly, the same is not fatal to the decision of the case as both the parties knew the case of each other and led the evidence accordingly. This view finds support from the judgment of the Hon’ble the Supreme Court and this High Court in ‘**M/s Bhatia Cloth House v. Dr. Raj Kumar Gupta and another**’ 2008(4) RCR(Civil) 250, wherein it has been held as under:

“It is consistent position in law that ambiguity in pleadings regarding the ingredients, set out in Section 13(3)(a) of the Act, if made good in the evidence, is sufficient compliance of the statutory provisions.”

11. In ‘**Raj Kumar v. Budha Mal**’ 2011(2) RCR (Rent) 60, it was held that:

“Having perused the judgment in **Banke Ram’s case**

(supra), this Court is of the opinion that of course ingredients of sub-section (b) and (c) of Section 13(3) (a)(i) of the 1949 Act are to be necessarily pleaded in the eviction petition, however, as held by the Full Bench in paragraph 12 of the judgment, this Court is of the opinion that it should not be understood that under no circumstances, in the absence of pleadings, the evidence regarding the ingredients envisaged under sub-section (b) and (c) can be looked into. Hence, in the opinion of this Court, if parties were fully aware about the ingredients of sub-section (b) and (c) at the time of leading evidence and both the parties have led evidence on these issues, then petition cannot be thrown out merely because the landlord has failed to plead ingredients of sub-section (b) and (c) in the eviction petition.”

A perusal of the file reveals that the parties in this case, were well aware of the issues and have led evidence accordingly. No prejudice has been caused to the petitioner-tenant in any manner. Learned counsel for the petitioners is unable to persuade this Court to conclude that merely because the landlords have not revealed the running of a manufacturing unit in plot no. 52, in the plaint is sufficient to non-suit them.

Argument that purchase and subsequent sale of plot no. 60 in Dada Colony, Jalandhar, proves the absence of personal *bona fide* necessity is also untenable, hence rejected. It is not denied that the said property was a plot and no construction was raised on the said plot. Plot no. 60, Dada Colony, Jalandhar, was purchased on 16.09.2014 and sold on 03.08.2016. It would indeed be farfetched and unjustified to accept the contentions of the petitioners that it was open to the respondents-landlords to have raised construction thereon and use the said premises instead of having the present premises vacated. It is a settled position of law that the landlord is the best judge of his requirement and is not to be dictated by the tenant in this respect. Need of the landlord is not to be viewed by the Court with a taint of

suspicion. Reference in this respect can gainfully be made to the judgment of this Court in **M/s Bhatia Cloth House versus Dr. Raj Kumar Gupta and another 2008(4) RCR (Civil) 250, Jugal Kishore Ahuja versus Surinder Kaur 2017 (2) RCR (Civil) 508, Ram Paul versus Vijay Kumar and others 2013 (4) RCR (Civil) 649 and Hans Raj Bhatia versus Vijay Kumar 2011 (2) PLR 256.**

Judgement of the Hon'ble Supreme Court in **Ajit Singh's (Supra)**, relied upon by learned counsel for the petitioners does not come to his aid in any manner. The Hon'ble Supreme Court while referring to its earlier judgement in **Joginder Pal Vs. Naval Kishore Behal, 2002(5) SCC 397** has observed as under:-

“(1) 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.

(2) 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.

(3) 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.

(4) While casting its judicial verdict, the Court shall adopt a practical and meaningful approach guided by the realities of life.

(5) 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)."

In **Ram Pal Saini's** case (**Supra**), the landlord had some other shops vacated earlier and had rented them again to new tenants. It is on this ground that the landlord's petition on the ground of personal *bona fide* necessity was dismissed. The said judgements are clearly not applicable to the facts and circumstances of the case.

It has been held by the Hon'ble Supreme Court in **Hindustan Petroleum Corporation Limited versus Dilbahar Singh (2014) 9 SCC 378** that the scope of revisional jurisdiction is indeed a limited one. Pure findings of fact, until and unless perverse and opposed to the evidence on record should not be interfered with. It is specifically observed that:

"The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at

without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal.”

Learned counsel for the petitioners is unable to point out any illegality or infirmity in the impugned judgment 11.09.2015 passed by the learned Rent Controller, Jalandhar as well as order dated 16.03.2017 passed by the learned Appellate Authority, Jalandhar which calls for any interference in exercise of revisional jurisdiction by this Court.

No other argument has been raised.

Present petition is, accordingly, dismissed with no order as to costs.

02.07.2019
s.khan

[LISA GILL]
Judge

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