

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

CR No.3807 of 2016 (O&M)

Date of decision : 10.12.2019

Sukhdev

....Petitioner

versus

Raj Kumar Mahajan (now deceased) through his LRs

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Raman Goklaney, Advocate, for the petitioner.

Mr. Rai Singh Chauhan, Advocate, for the respondent.

Nirmaljit Kaur, J.

The present revision is filed against the order dated 23.10.2015 passed by the learned Rent Controller, Pathankot as well as against the order dated 16.5.2016 passed by the learned Appellate Authority, Pathankot, vide which, the petition filed by the respondent-landlord for eviction under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short, 'the Act'), was allowed and the appeal against the said order was dismissed.

While praying for setting aside the orders by the Courts below, learned counsel for the petitioner, raised twofold arguments. Firstly the averments made in the rent petition were not in consonance with the mandatory provisions of the Act. As per Section 13-A of the Act, in case the landlord is pleading a bonafide requirement of shop on behalf of his son, it is mandatory to mention that the requirement of his son is genuine and bonafide and his son is not occupying any other non-residential building in the urban area concerned and nor owns any such non-residential building and since the respondent-landlord in the present case has not mentioned the said fact, the eviction petition does not satisfy the mandatory ingredients of

Section-13 of the Act. Secondly, the respondent-landlord could not prove bonafide need because the respondent-landlord even as per their own showing is owner of at least two shops and moreover, his son, for whom the personal necessity is being pleaded is duly employed and earning well. Reliance was also placed on the judgment of Hon'ble the Apex Court in the case of Ajit Singh and another vs. Jit Ram and another, 2008(4) RCR (Civil) 390; and the judgments of this Court in the cases of Rajiv Gupta vs. Jeewan Ram, 2015(1) RCR (Civil) 762, Sukhdev Singh vs. Lajwanti passed in CR-5156-2015 decided on 1.12.2018; Brij Bhushan and another vs. Sanjay Harjal and another, 2015(2) RCR (Civil) 68; and Babli vs. Kumari Ruchi Bansal, 2017(1) RCR (Civil) 152 to contend that in a case where the landlord seeks eviction of the tenant from the non-residential premises for the use of his son for business, it would be mandatory for the son to plead and prove that he was not occupying any such building and has not vacated such building without sufficient cause.

Learned counsel for the parties heard at length.

After hearing learned counsel for the parties and going through the orders passed by the Courts below as well as the record, it is evident that the need of the respondent-landlord was indeed bonafide. Learned counsel for the petitioner-tenant has not been able to rebut that the son of the respondent-landlord, namely, Vinay Mahajan was a computer literate and unemployed.

With respect to the first argument that the pleadings are not in consonance with the mandatory requirement of the Act, it is necessary to peruse para 3 (c) of the application for ejectment, which is as under:-

“3 (c) That the younger son of the applicant is computer

literate who is at present unemployed and for the purpose of setting his younger son-Vinay Mahajan, the applicant requires the shop in dispute for setting up the business of selling of computers and computers accessories along with Hardware and Software, for which the applicant son-Vinay Mahajan has got full knowledge and expertise to handle the business and moreover the applicant does not have other vacant shop for setting his son Vinay Mahajan.”

From the above lines which are underlined, it is evident that the respondent-landlord specifically stated that there is no other vacant shop for setting up the business for his son. Therefore, it cannot be said that the landlord did not mention or state in his pleadings about having any other property. The petitioner-tenant was not able to show either by way of evidence or by way of cross-examination anything to the contrary.

There is no dispute with the judgment relied on by the learned counsel for the petitioner. However, each case depends on its own facts. As per the judgment rendered in the case of Gurbaj Singh Vs. Parshotam Singh and others, 2011 (4) RCR (Civil) 518, learned Single Bench of this Court, after referring and relying on the judgment rendered in the case of Ajit Singh's case (supra), as also relied on by learned counsel for the petitioner, answered the question i.e. “Whether son of the landlord, for whose benefit the non-residential premises is sought to be got vacated, if not the landlord or the owner himself, is also required to plead the ingredients of Section 13 (3)(a)(i) of the Act in the eviction petition?” 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. Hence, the second question is also answered accordingly.”

Another learned Single Bench of this Court in the case of Harpreet Singh Chahal vs. Gopal Gupta, 2016(1) RCR (Rent) 131, while referring the judgment rendered in the case Ajit Singh (supra) held that the basic object of pleadings is that there is no vagueness left as to what the parties have to prove when the issues are framed and once, the landlord is able to satisfy the bonafide need and it is proved that there is no other property, which is vacant, ejectment cannot be refused on the nature of the pleading for bonafide requirement once the parties are able to go on trial and prove the bonafide need and there is nothing contrary to show that the landlord had another property, which was vacant. Para nos.12 and 13 of the said judgment read as under:-

“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.”

Thus, in case pleadings qua the ingredients mentioned in under Sections 13 (3) (a) (i) and 13 (3) (a) (ii) of the East Punjab Urban Rent Restriction Act, 1949, are missing, then the same can be held as satisfied, in case, the landlord is able to lead the evidence to the said effect.

Here, the respondent-landlord besides stating in his pleadings, appeared as AW-1 and his son Vinay Mahajan too appeared as AW-3 and both came forward and stated that Vinay Mahajan was a computer literate and unemployed and the shop was needed to setup the business for him of computers, computer accessories and software as well as hardware and further there was no other vacant shop to set him up. No suggestion was put to him as to whether he owns any other shop or not, which shows that the petitioner-tenant knew fully well that there is no shop either in occupation of the son of the respondent or owned by the son.

The second argument that need was not bonafide as another shop was available has no merit. The second shop is admittedly occupied by his second son who is already running his business from the same. This is evident from the evidence produced on record. Further, the landlord

specifically stated that there is no other shop available with him to set up his son. No question was put to Vinay Mahajan, the son of the landlord, when he appeared as AW-3 as to whether he owns any other shop or not. In fact, the son stated that there is no other shop available for accommodating him. No evidence to the contrary is on record. Hence, the only conclusion that can be drawn is that, there was no alternative premises or vacant shop available for the use of the son of the respondent-landlord. Having proved the same by way of evidence led during the trial, the evidence cannot be refused on account of some minor discrepancy in the pleadings. Thus applying the test laid down in the above mentioned judgment in the case of Gurbaj Singh (supra), the provision laid down in under Sections 13 (3) (a) (i) of the Act stands satisfied.

In view of the above, the present revision is dismissed being devoid of merit.

(NIRMALJIT KAUR)
JUDGE

10.12.2019

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Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No