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

**CR-5595-2015 (O&M)**

**Date of Decision: September 18, 2019**

Devinder Singh and others

.....Petitioners

Versus

M/s Society Jewellers & another

.....Respondents

**CORAM: HON'BLE MS.JUSTICE NIRMALJIT KAUR**

Present: Mr.Kanwaljit Singh, Sr.Advocate with  
Mr.Ajaivir Singh, Advocate  
for the petitioners.

Mr.Dinesh Gupta and  
Mr.Ankur Gupta, Advocates  
for the respondents.

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**NIRMALJIT KAUR, J.**

The present revision petition is filed against the order dated 16.09.2014 passed by the Rent Controller, Chandigarh, vide which the rent petition of the petitioners-landlord was dismissed on the ground of principle of *res judicata* and the appeal against the order of the Rent Controller was also dismissed vide order dated 20.07.2015.

Certain facts are very necessary for adjudication of the matter. A rent petition was filed in 1997 by co-owners of SCO No.55-56, Sector 17-C, Chandigarh qua the ground floor submitting that they require the ground floor for personal necessity to run a departmental store and the minimum area required was 2300 sq.ft. The said rent petition was tried and vide Annexure P-2 dated 20.09.2002, the ld. Rent Controller passed the eviction order against the respondent. Thereafter, an appeal was preferred by the respondents-tenant. During pendency of the appeal, on 07.11.2002 a

notification was issued, whereby the civil suit became competent and building having rent of Rs.1700 was taken out of the purview of the rent Act.

The petitioners-landlord under the *bonafide* belief that the civil suit was required to be filed, made a statement that a civil suit was competent. Accordingly, the said appeal was allowed on the statement of the petitioners-landlord vide order dated 13.08.2004. However, the notification dated 07.11.2002 was quashed by the Hon'ble Supreme Court. Thereafter, again the rent proceedings became available and the civil suit was accordingly withdrawn vide Annexure P-5 dated 12.02.2007. After the withdrawal of the civil suit, the present rent petition has been filed on 11.04.2009 submitting therein that the need has become different as now the entire building is required to run the departmental store in the shopping Centre of Sector 17. This time, the respondents-tenant moved an application, dated 21.08.2010 to treat the issue of *res judicata* as the preliminary issue. Another application for dismissal of the suit under Order 23 Rule 4(b) CPC was also filed. The Rent Controller allowed the said application vide order dated 16.09.2014, thereby dismissing the rent petition. A detailed appeal was preferred before the Appellate Court by the petitioners-landlord. However, the said appeal was also dismissed on 20.07.2015 forcing the petitioners-landlord to file the present revision petition against the impugned orders dated 16.09.2014 passed by the Rent Controller and dated 20.07.2015 passed by the Appellate Authority.

While vehemently opposing the present revision petition, learned counsel for the respondents-tenant submitted that the petitioners are seeking to claim change in circumstances by virtue of the notification dated

07.11.2002. This notification is of no help to the petitioners as on the date of the notification, the Rent Controller had already passed judgment dated 20.09.2002 accepting the petition on the same very ground on which another petition was later filed by them. This judgment did not become a nullity or became infructuous or incapable of being enforced under the law by virtue of the notification. The notification could not have been retrospective in nature and nor it was so. It was by virtue thereof that the respondents could file an appeal, challenging the order dated 20.09.2002. The petitioners had already got an order of eviction, it could not have availed any other remedy, it being on the same subject matter and as well as on the same cause of action. Thus, the civil suit itself, which was later on filed, could not have been filed under the law and it cannot be said that another remedy had become available to the petitioners. The subsequent filing of the suit being in respect of the same subject matter and on the same cause was impermissible under the law. The same was also hit by the provisions of *res judicata*. Since the appeal was accepted by the petitioners by making a categorical statement without reserving any right to file a fresh one and there being no occasion for the court to grant the same, the same even if granted, would have been against the law. Any subsequent suit or petition on the same subject matter between the same parties was impermissible. Reliance was placed on Dadu Dayalu Mahasabha vs Mahant Ram Niwas, 2008 (2) RCR (Civil) 936 S.C., Kishan Singh vs Sucha Singh, in RSA No.1565 of 1984, decided on 17.09.2007, Dharamvir vs Mansa Ram, 1999 (2) RCR (Civil) 287, and Sardari Lal Jain vs Smt.Dhanwanti Devi 2002(2) RCR (Civil) 296 to contend that *res judicata* debars a Court from exercising jurisdiction to determine an issue, which has attained finality between the

parties and in case ejectment petition is dismissed as withdrawn without permission of the Rent Controller to file a fresh one on the same ground, the second petition based on the same cause of action would not be maintainable in view of Order 23 Rule 1 CPC.

There is no dispute with the law laid in the judgments relied upon by the learned counsel for the respondents, but they will not help him in the peculiar facts and situation as in the present case. Each case depends on its own facts.

After having gone through the facts and after hearing learned counsel for the parties, it is apparent on the fact of it that there could not have been a more hard case vis-a-vis the landlord where he is still fighting the battle in spite of having got a decree of ejectment in his favour due to his mis-judgment and misunderstanding occurred only on account of issuance of the notification, which was subsequently quashed by the Supreme Court. The whole matter revolves around the question as to whether the filing of the present eviction petition amounts to *res judicata* or not? As already noticed in the facts, narrated above, at the risk of repetition, it is necessary to reproduce some of the events in chronological order:-

- “1. The rent petition was filed way back on 30.08.1997. The same was allowed on 20.09.2002. The tenant-respondents filed appeal against the said order.
2. A notification was issued on 07.11.2002 during pendency of the appeal exempting the building from operation of the Rent Act;
3. The petitioners made a statement that since the suit was maintainable and, therefore, chose to get the order of the ejectment set aside and proceeded to file a suit for eviction in view of the notification dated

07.11.2002.

4. During pendency of the suit, the notification dated 07.11.2002 was quashed by the Supreme Court. Hence, the petitioners-landlord withdrew the suit accordingly to file the rent petition afresh.

5. An application was moved in the said rent petition by the respondents-tenant under Order 23 Rule 4 CPC to dismiss the same on the ground of *res judicata*

6. The application was allowed and the rent petition is dismissed on 16.09.2014.

7. The petitioners-landlord filed the appeal, which too was dismissed vide impugned order dated 20.07.2015. Hence, the present revision petition.

A perusal of the impugned orders show that application of the respondents-landlord was allowed on the grounds, (i) that the ejection reason in the previous petition and the present petition was the same, i.e. the personal necessity of the landlord for starting the business of the departmental store; (ii) there was no change in the circumstances in the present petition which distinguished it from earlier rent petition and ;(iii) the ejection petition was got dismissed as withdrawn without permission to file afresh.

Both judgments, dated 16.09.2014 and 20.07.2015 have erred not only in recording the facts but also on law. The earlier rent petition was filed in the year 1997 qua the ground floor for a minimum area of 2300 sq.ft, whereas, the present rent petition is filed for eviction of the entire building. It is not understood as to how it could have been said that the issue is materially and substantially the same. In order to show eviction for a larger area, the petitioners-landlord would have to show his requirement and need accordingly.

Neither of the two Courts understood or noted the fact that the statement was made by the petitioners for allowing of the appeal in favour of the tenant only on account of notification dated 07.11.2002, which exempted the building from operation of the Rent Act, as the monthly rent of the same was more than Rs.1500/-. No doubt, the petitioners-landlord made an error in making the statement as the said order of eviction had been passed much prior to the coming of the notification dated 07.11.2002, but the same was his *bona fide* mis-judgment and thereafter, the innocent landlord, in all his innocence, proceeded to file the suit in spite of having succeeded in the eviction petition. During pendency of the suit, the said notification was struck down by the Apex Court on 07.11.2006 and under these circumstances, the petitioners had to once again withdraw the suit to file the present rent petition. In these circumstances, it cannot be more unjust and unfair to say that the petitioners cannot now pursue the eviction petition as the same amounts to *res judicata*. This will render the landlord without any remedy. The principle of *res judicata* will therefore not be applicable to a subsequent rent petition filed on account of change of law.

In any case, the argument that the petitioners-landlord did not take any permission while withdrawing the suit to file a fresh one is also incorrect, inasmuch as, the said suit was dismissed as withdrawn on the basis of the statement. The statement and order read as under:-

“Statement of Ms.Rekha Kant, counsel for the plaintiff.

In view of the judgment of Hon'ble Supreme Court I am unable to pursue the case, so the same may be dismissed as withdrawn.”

Order of the trial Court dated 12.02.2007

“Ld. Counsel for plaintiff has made a statement recorded

separately for withdrawal of the suit. Heard. In view of the statement, the present suit is hereby dismissed as withdrawn. File be consigned to record room.”

From the above, it makes crystal clear that the suit was withdrawn in view of the statement and the statement specifically stated that he was doing so in view of the judgment of the Apex Court. As per the judgment of the Apex Court, the notification was set aside leaving it open to the petitioners to once again pursue his remedy under the Rent Control Act. He had never given up his claim or his right to seek eviction of the tenant. It was simply by way of operation of law that the statement had to be made in the civil suit. Thereafter, the suit had to be withdrawn to enable him to file eviction petition once again in view of the change in the operation of law.

More over, it is a settled principal of law that the ground of personal requirement and non-payment of rent does not operate as *res judicata*, as it is a recurring cause. The Apex Court in the case of **N.R.Narayan Swamy vs B.Francis Jagan**, 2001(2) RCR (Rent) 169 answered the said question as under:-

“In our view, the High Court ought to have considered the fact that in eviction proceedings under the Rent Act the ground of *bona fide* requirement or non payment of rent is a recurring cause and, therefore, landlord is not precluded from instituting fresh proceeding. In an eviction suit on the ground of *bona fide* requirement the genuineness of the said ground is to be decided on the basis of requirement on the date of the suit. Further, even if a suit for eviction on the ground of bona fide requirement is filed and is dismissed it cannot be held that once a question of necessity is decided against the landlord he will not have a bona fide and genuine necessity ever in future. In the subsequent proceedings, if such claim is established by cogent evidence adduced by the

landlord, decree for possession could be passed. [Re: **K.S. Sundararaju Chettiar vs. M.R. Ramachandra Naidu** [(1994) 5 SCC 14 (para 10)] and **Surajmal vs. Radhe Shyam** [(1988) 3 SCC 18].

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The aforesaid rule would have no application in a proceeding initiated for recovering the suit premises on the ground of *bona fide* requirement which is a recurring cause. Order 23, Rule 1 (4)(b) precludes the plaintiff from instituting any fresh suit in respect of such subject matter of such part of the claim which the plaintiff has withdrawn. In a suit for eviction of a tenant under the Rent Act on the ground of *bona fide* requirement even though the premises remains the same, the subject matter which is cause of action may be different. The ground for eviction in the subsequent proceedings is based upon requirement on the date of the said suit even though it relates to the same property. Dealing with similar contention in **Vallabh Das vs Dr.Madanlal and others** (1970) 1 SCC 761, this Court observed thus:-

The expression subject-matter is not defined in the Civil Procedure Code. It does not mean property. That expression has a reference to a right in the property which the plaintiff seeks to enforce.”

The same was followed by the learned Single Judge of Rajasthan High Court (Jaipur Bench) in the case of **Khandaka Brothers vs Salimudin**, 2006(10) RCR (Civil) 901, wherein a similar question has arisen as to whether a second suit on the ground of *bona fide* need can be debarred by principle of *res judicata* and the learned Single Judge held that suit for eviction of premises cannot be barred even if the question of necessity has been decided against the landlord on a previous occasion. In the case of **The Guhla Primary Agricultural Cooperative Society Ltd., Guhla vs Jagdish Singh**, 2010(1) RCR (Rent) 112, it was held in para 12 as under:-

“Faced with this, learned counsel for the petitioner pleaded for the remand of the case to enable the petitioner-Society to lead additional evidence. No such plea can, however, be entertained at this stage. Suffice it to observe that the principle of *res judicata* is not attracted *stricto-senso* to the eviction proceedings based upon plea of personal necessity of a landlord, if the afresh such proceedings are based upon changed circumstances. In other words, it is open to the landlord to file a fresh petition provided that the later events justify the requirement of additional accommodation. In this view of the matter, the Society shall be at liberty to file a fresh petition, if so required, to prove that during the pendency of the eviction proceedings, the circumstances have changed and keeping in view the later events, it requires the tenanted premises for its personal use and occupation. Needless to say that the tenant shall always be at liberty to refute such plea and prove otherwise.”

Another learned Single Bench of this Court too after considering the various judgment rendered in the case of **Om Parkash Mehta vs Gurdial Mal Sharma** 2017(2) RCR (Rent) 321, held that there was no bar of filing of subsequent application for eviction of tenant on the ground of personal necessity, which was recurring cause of action.

The case of the petitioners is even better. In fact, he had succeeded in the eviction petition filed earlier.

Hence, the landlord cannot be debarred from proceeding with the eviction petition both on account of circumstances and law. In the present case, it was a totally absurd situation that resulted in firstly allowing the appeal against an order of eviction, then the suit and thereafter successive eviction petition. Admittedly, the petitioners had never given up

his claim. Therefore, the petitioners cannot be precluded for instituting the fresh proceedings in the present set of circumstances, narrated above.

In view of the above, the present revision petition is allowed and both the orders, dated 16.09.2014 and 20.07.2015, passed by the Rent Controller, Chandigarh and the Appellate Authority, Chandigarh, respectively, are set aside. The eviction petition shall now be decided on merits. Taking into account the circumstances in the present case, the said rent petition shall be decided as expeditiously as possible.

September 18, 2019  
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**( NIRMALJIT KAUR )**  
**JUDGE**

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|--------------------------------|--------|
| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ?        | Yes/No |