

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

CR No.7125 of 2015(O&M)

Date of decision:27.3.2019

Angoori Devi

.....Petitioner

VERSUS

Surinder Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rahul Sharma-I, Advocate for the petitioner.

Mr. Amit Jain, Advocate for the respondent.

REKHA MITTAL, J.

The present petition directs challenge against order dated 09.09.2015 passed by the Appellate Authority, Chandigarh whereby appeal preferred by respondent/tenant against eviction order dated 15.12.2014 on the ground of personal necessity passed by the Rent Controller was accepted, eviction order was set aside and application filed by the appellant/landlady for eviction from half portion of ground floor of SCF No.155, Sector 26, Grain Market, Chandigarh was dismissed.

Indisputably, the tenancy premises was rented out to Sh. Nawab Rai, late father of respondent vide rent agreement dated 12.10.1999. After death of late Sh. Nawab Rai, tenancy rights were inherited by respondent by virtue of Will dated 07.12.2005. As per plea of the petitioner, respondent agreed to increase the rent after expiry of each year and he is in arrears of rent w.e.f. 01.09.2008 onwards at the rate of Rs.5200/- per month. The tenanted premises is required by the petitioner

for the need of her grandson namely Ankit Goyal and daughter in law Suman Goyal. It is averred that Ankit Goyal has become major and is interested to expand his business along with his mother. He has sufficient experience as he has been running his own proprietorship firm in Grain Market, Sector 26, Chandigarh. At present, Ankit is forced to run his business from one small room on the first floor. The petitioner's family has sufficient funds to enable Ankit and his mother to start their business.

Respondent/tenant filed reply resisting claim of the petitioner. He raised preliminary objections that earlier the petitioner filed eviction application against father of the respondent on the same ground which was dismissed in default. On merits, it is alleged that there is no personal necessity of the petitioner and the petition has been filed just to harass him. It is denied that the tenanted premises is required by Ankit Goyal and Suman Goyal for their personal need. Ankit Goyal is already working in a firm and looking after the business. The rate of rent to the tune of Rs.5200/- per month excluding water and electricity charges is admitted.

The petitioner filed rejoinder and reiterated her stand taken in the eviction application.

The Rent Controller framed the following issues:-

1. Whether the respondent is in arrears of rent? OPP
2. Whether the petitioners require the premises in question for their personal use and occupation? OPP
3. Relief.

To prove her case, Angoori Devi appeared in the witness box and examined Ankit Goyal, her grandson PW-2. To rebut evidence of the petitioner, Surinder Kumar – respondent appeared as his own witness.

The Rent Controller decided issue No.2 in favour of the petitioner on the basis whereof the eviction application was allowed and the respondent was directed to hand over vacant possession of demised premises to the petitioner within two months. As has been noticed hereinbefore, appeal preferred by respondent Surinder Kumar was allowed and findings of the Rent Controller on issue No.2 with regard to personal necessity were set aside.

Counsel for the petitioner has submitted that the Appellate Authority set aside findings of the Rent Controller on the premise of eviction application being barred under Order 23 Rule 1 of the Code of Civil Procedure, 1908 (in short 'CPC') in the light of earlier eviction application filed against father of the respondent being dismissed in default, by relying upon Division Bench judgment of this Court **Mehtab Singh, Advocate Vs. Tilak Raj Arora, 1988 (1) Punjab Law Reporter 269** and Single Bench judgment of this Court **Sardari Lal Jain Vs. Smt. Dhanwanti Devi, 2002(2) RCR 296**. It is argued with vehemence that in both the referred cases, the previous eviction application was dismissed as withdrawn without permission of the Court to file a fresh petition on the same cause of action and in those circumstances, it was held that the subsequent petition filed on the very same cause of action is not maintainable under Order 23 Rule 1 CPC. It is argued with vehemence that in the instant case, the previous application was dismissed in default even before the respondent therein was served and rather report was

received on the summons that the respondent therein (father of the present respondent) has since passed away. It is further argued that the petitioner had the option either to get that petition restored and proceed with the case after impleading the legal representatives of tenant (since deceased) or could file a fresh petition against legal representatives of the deceased – tenant. It is further argued that the respondent has failed to prove as to what prejudice has been caused to him because of filing of fresh petition in place of getting the earlier petition restored and proceeded, in accordance with law. In addition, it is argued that bona fide requirement or non-payment of rent is recurring cause, therefore, landlord is not precluded from instituting fresh proceedings. For this purpose, reliance has been placed upon judgment of Hon'ble the Supreme Court **N.R. Narayan Swamy Vs. B. Francis Jagan, 2001 (6) SCC 473.**

To assail findings of the Appellate Authority with regard to failure of the petitioner to comply with the provisions of Section 13(3) (ii) (b) of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') in view of enunciation laid down in **Ajit Singh and another Vs. Jit Ram and another, 2008(2) RCR (Rent) 328,** it is argued that testimony of Angoori Devi by way of affidavit filed in examination in chief is more than sufficient to comply with requirements of aforesaid provisions. She had categorically stated in para 7 of her affidavit, to the following effect:-

"That the grandson and daughter-in-law of the deponent do not own and possess any other suitable non-residential (commercial) building in the Urban Area of Chandigarh and grandson and daughter-in-law of the deponent have not vacated any such commercial building without sufficient

cause after the commencement of the East Punjab Urban Rent Restriction Act, in Urban Area of Chandigarh."

It is argued that with regard to Ankit Goyal doing the business in a room on the first floor of the shop-cum-flat in question, the averments made in the application in this regard are reiterated in sub para (ii) of para 4 of the affidavit filed by way of examination in chief. According to counsel, it has been held in various judgments that if necessary compliance of the aforesaid requirements is made by way of evidence, non-pleading thereof cannot be a ground to reject the application on technical consideration. It is further argued that even the Appellate Authority has not so held that a prejudice has been caused to the respondent on account of failure of the petitioner to implead the ingredients in the eviction application. It is argued that since the respondent in the course of cross examination of Angoori Devi has not assailed her version recorded in para 7 of the affidavit, failure of Ankit Goyal to make a statement in this regard is of no consequence.

Counsel for the petitioner would further argue that landlord is the best judge to decide as to how the need of his family can be satisfied or what premises is suitable to him or his family for satisfying their need use and occupation. It is further argued that entire family of Smt. Angoori Devi including her two sons and their families are residing jointly and they are joint in mess. Angoori Devi has raised a categoric plea that her grandson Ankit Goyal along with his mother wants to expand business which is being carried on in a small room on the first floor of the SCF in question. Angoori Devi and Ankit Goyal have corroborated each other with regard to bona fide personal necessity of the tenancy premises for

expansion of business of Ankit Goyal and he would be assisted by his mother Suman Goyal. It is further argued that findings recorded by the Appellate Authority rejecting bona fide need are not based upon correct appreciation of factual and legal aspects of the case. According to counsel, this is none of the requirement in law that the person for whose necessity the eviction has been sought should be financially dependent upon the landlord or he should not have source of income to become eligible to occupy the tenanted premises after vacation. For this purpose, reliance has been placed upon judgment of Hon'ble the Supreme Court **Joginder Pal Vs. Naval Kishore Bahal, 2002(1) RCR (Rent) 582.**

Counsel representing the respondent/tenant has supported judgment passed by the Appellate Authority whereby the eviction order passed by the Rent Controller has been set aside in view of its findings on three important aspects involved in the case. To refute contention of the petitioner with regard to the eviction application being not barred under Order 23 Rule 1 CPC, it is argued that the provisions of Order 23 Rule 1 CPC are applicable even to the rent proceedings. For this purpose, reference has been made to Division Bench judgment of this Court **Tirlok Singh Anand Vs. M/s Prem Chand and Sons and others, 2013(1) RCR (Civil) 488.** Counsel would argue that the earlier eviction application though was dismissed in default but the same would amount to abandonment of the claim, therefore, the second petition on the same very cause of action with regard to personal necessity of Ankit Goyal and Suman Goyal is barred, as has been so held by the Appellate Authority. In this context, reliance has been placed upon judgment of Hon'ble the Supreme Court **Nitin Gunwant Shah Vs. Indian Bank and others,**

2012(4) RCR (Civil) 362. Further reference has been made to judgment of this Court **Smt. Biran Vs. Gurmukh Singh, 1991 (1) RCR (Rent) 95.**

Counsel would argue that neither in the eviction application nor in the testimony of Ankit Goyal, there is reference to facts in compliance with the provisions of Section 13(3)(ii)(b) of the Act and as such the Appellate Authority has rightly held that eviction application is liable to be dismissed on this score.

Further argued that Suman Goyal did not appear in the witness box for whose necessity the eviction has been claimed and an adverse inference is liable to be drawn that premises is not required for necessity of Suman Goyal. In support of his contention, he has relied upon judgment of this Court **Manmohan Lal Vs. Shanti Parkash Jain, 2014(5) RCR (Civil) 667.** It is argued that Ankit Goyal in his testimony has candidly admitted that he is running business on the first floor of the SCF in question and is an income tax assessee. According to counsel, as Ankit Goyal is not dependent upon the petitioner in any manner whatever, petitioner is not entitle to seek eviction on the ground of personal necessity of Ankit Goyal by deriving benefit of judgment of Hon'ble the Supreme Court in **Joginder Pal's case** (supra). For this purpose, reference has been made to judgment of this Court **Naresh Kumar and another Vs. Krishan Lal Kohli, 2009(4) RCR (Civil) 28.**

Counsel has submitted that Angoori Devi in her cross examination dated 18.09.2013 had stated that she had partitioned shop No.155 between her two sons and a writing to this effect was made. On the basis of said writing, Pawan Kumar has got the portion mutated in his favour and another portion is mutated in favour of Suresh Kumar, her other

son. It is argued with vehemence that since Suresh Kumar father of Ankit Goyal has become owner of the portion in occupation of the respondent and Ankit Goyal, at best, can be said to be dependent upon his father for need of additional accommodation, petitioner cannot maintain a plea that the demised premises is required for bona fide use and occupation of Ankit Goyal and his mother.

I have heard counsel for the parties, perused the paper-book and records.

Indisputably, the petitioner filed eviction application Ex.RX qua tenancy premises against Nawab Rai, father of the respondent on the same ground of personal necessity of Ankit Goyal and Suman Goyal in September 2009. The eviction application was dismissed for non-prosecution on 08.01.2010 vide order Ex.RY. There is no denial that the said eviction application was dismissed in default even before a notice was served upon Nawab Rai – respondent therein. Counsel for the respondent has not disputed that in those proceedings, a report was received on the summons that Nawab Rai has since passed away.

The question for consideration is whether dismissal of the earlier eviction application in default would create a bar against filing of fresh eviction application on the same ground/cause of action for personal necessity of Ankit Goyal and Suman Goyal. Counsel for the petitioner has not disputed that the general principles of Order 23 Rule 1 CPC are applicable to rent proceedings as has been held by Division Bench of this Court in **Mehtab Singh Advocate's case** (supra).

Rule 1 of Order 23 CPC deals with withdrawal of suit or abandonment of part of claim. Sub-Rule 4 of Rule 1 says "where the

plaintiff (a) abandons any suit or part of claim under sub-rule (1), or (b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim". Admittedly, in the case at hand, the previous petition for eviction was not withdrawn by the petitioner. The Appellate Authority despite knowing fully well that the earlier eviction application was not dismissed as withdrawn rather has been dismissed in default for non-prosecution has still applied the judgments in **Mehtab Singh Advocate's case** (supra) and **Sardari Lal's case** (supra) that deals with Order 23 in the context of earlier eviction application being dismissed as withdrawn. In this view of the matter, findings of the Appellate Authority by reversal of Rent Controller's findings with regard to maintainability of the eviction application by relying upon the aforesaid judgments is the result of gross error, therefore, unsustainable. In **Mehtab Singh Advocate's case** (supra), a Division Bench of this Court by relying upon judgment in **Lal Chand's case** (supra) has held that even though the Code of Civil Procedure is not applicable as even to the proceedings before the Rent Controller, but the general principles contained in the Code, including the one noticed in para 6 which are based on justice, equity and good conscience would govern those proceedings, which require that no one should be vexed twice on the same cause of action. Since in the present case, the earlier eviction application was dismissed for non-prosecution even before notice of the petition was served upon the respondent therein who was reported to have passed away, where was the occasion of respondent or his LRs being vexed twice on the same cause of

action in view of fresh eviction application having been filed on the same ground.

Counsel for the respondent has failed to cite any judgment rendered even in a civil suit upholding that dismissal of suit in default under Order 9 Rule 2 or 3 CPC amounts to abandonment of a claim either in whole or in part, as has been envisaged in Rule 1 (4) of Order 23 CPC. Counsel for the respondent made an attempt to derive aid from judgment of Hon'ble the Supreme Court in Nitin Gunwant Shah's case (supra) wherein the earlier suit was dismissed for non-prosecution on 19.02.1993 and the petitioner filed fresh suit 13 years later. No such preposition of law has been laid down that dismissal of earlier suit amounts to abandonment of claim and the subsequent suit is barred under Order 23 Rule 1 sub rule (4) of CPC. The Court in para 44 of judgment rather held that the said question will no doubt be considered when the second suit is taken up for hearing but the same has a definite bearing on the grant of interim order as prayed for by the petitioner. In para 47, it has been held that on account of such lapse on the part of all concerned, the relief sought by the Bank against the petitioner for declaration of his status vis-a-vis the suit property and his eviction therefrom, remained undecided. The petitioner, who abandoned his suit for declaration that he was a tenant of the suit premises, cannot at this stage of the proceedings, be allowed to take advantage of such lapse, in view of the provisions of Sub-rule (4) of Order 23 Rule 1 Civil Procedure Code and one of the Judges (J. Altamas Kabir) while concurring with the judgment authored by Hon'ble Justice Chelameswar agreed with the Hon'ble Judge that no interference is called for in the judgment under scrutiny. Keeping in view the observations

recorded in para 44 of the judgment, it is difficult to accept contention of the respondent that since the earlier eviction application was dismissed for non-prosecution in 2010 and the present eviction application on the same cause of action was filed in February 2011, the instant eviction application is barred in view of the provisions of sub rule (4) Rule 1 of Order 23 CPC. Similarly, respondent cannot derive any advantage to his contention from the judgment in **Smt. Biran's case** (supra) wherein this Court has held the second eviction application to be barred under Order 9 CPC by relying upon judgment in **Mehtab Singh Advocate's case** (supra). Counsel for the respondent has failed to cite any judgment by a Larger Bench of this Court or Hon'ble the Supreme Court to fortify his contention that if the application for eviction is dismissed in default under Order 9 Rule 2 or 3 CPC, subsequent application can be said to be barred under Order 23 CPC. This apart, if the contention of the respondent is accepted, it would amount to adding something to the provisions of CPC particularly order 9 Rule 4 thereof that enables a plaintiff to bring a fresh suit where a suit is dismissed for want of issuance of summons in consequence of plaintiff's failure to pay costs under Rule 2 of Order 9 or dismissed in default where neither party appears under Rule 3 thereof.

In view of the above, findings recorded by the Appellate Authority that the instant eviction application is not maintainable in view of the provisions of Order 23 CPC are patently erroneous rather suffer from perversity, thus, untenable.

Coming to the second question with regard to non-compliance of Section 13(3) (ii) (b) of the Act, in the eviction application, it has been specifically averred in para 7 that grandson and daughter in law of the

petitioner did not own and possess any other suitable non-residential (commercial) building in the urban area of Chandigarh and they have not vacated any such commercial building without sufficient cause after commencement of the Act in the urban area of Chandigarh. Averments to the similar effect with regard to possession of any other commercial premises or vacation of any such commercial premises by the petitioner have been raised in para 5 of the eviction application. Angoori Devi when appeared in the witness box has reiterated the same averments in para 5 and 7 of her affidavit Ex.PW1/A filed by way of examination in chief. It is surprising rather shocking that the Appellate Authority without adverting to the clear and categoric plea of the petitioner both in the eviction application and testimony on oath has held that she did not prove the essentials of Section 13(3) (ii) (b) of the Act. The factum of Ankit Goyal doing the business in one room on the first floor of the property in question also finds specific reference both in the eviction application and testimonies of the petitioner and Ankit Goyal. Counsel for the respondent has failed to point out if either the petitioner or Ankit Goyal or Suman Goyal is either in possession of any other commercial premises or had vacated the same after commencement of the Act. Since the respondent failed to challenge correctness of the averments raised by the petitioner in paras 5 and 7 of the petition in compliance with the aforesaid provisions of the Act, failure of Ankit Goyal to reiterate the said fact in his testimony would be of no avail for the respondent. In this view of the matter, findings of the Appellate Authority on this aspect of the matter are patently false and cannot be allowed to sustain. The manner in which the Appellate Authority has proceeded to record the findings certainly gives an inkling

that the Appellate Authority ignored the materials on record for the reasons best known.

The Appellate Authority, in para 18 of the judgment, has made reference to judgment of Hon'ble the Supreme Court **Raghunath G. Panhale Vs. M/s Chaganlal Sundarji and Co., 1999(2) RCR 485** wherein the Court had laid down certain principles while interpreting the meaning of 'bona fide requirement'. There cannot be any quarrel with the principles laid down by Hon'ble the Supreme Court. The Appellate Authority has held that there is a serious flaw in the case of respondent/landlady (petitioner herein) in non-examination of daughter-in-law Suman Goyal and deposition of landlady and her grandson Ankit Goyal are highly sweeping. The Court has not made any observations as to on what basis depositions of landlady and Ankit Goyal have been branded as sweeping or highly sweeping. Nothing has been said by the Court as to how non-examination of Suman Goyal has caused prejudice to the respondent to counter plea of the petitioner with regard to personal necessity of Ankit Goyal and Suman Goyal. On due consideration of pleadings and evidence in the shape of testimony of the petitioner and Ankit Goyal, it leaves no manner of doubt that mainly the need projected is for use and occupation of Ankit Goyal who is already doing business in one of the rooms on the first floor of property in question. Suman Goyal is the mother of Ankit Goyal and she is to assist her son in the business to be carried in the tenancy premises by expanding the earlier business of Ankit Goyal. In the given circumstances, non-examination of Suman Goyal cannot be a circumstance that can be commented adversely against the petitioner.

Counsel for the respondent has referred to judgment of this Court **Manmohan Lal's case** (supra) wherein this Court has dealt with the question of non-examination of son of the landlord whose necessity was pleaded for seeking eviction. In **Manmohan Lal's case** (supra), this Court has held in para 22 that so far as non-examination of son of landlord whose personal necessity has also been claimed is concerned, authority titled **Mahesh Chand Vs. Firm Hindu Kahndan Mustarka Kripa Ram and Sons, 2006(1) Rent LR 708 (P&H)** cited by counsel for the respondent – landlord does not help him but the Court has further held that no doubt, if statement of landlord is all pervasive, complete and believable, there is no need for examination of the son but it is not the case. In the instant case, neither the Appellate Authority has held that statement of the petitioner/landlady is not complete and believable nor counsel for the respondent has advanced any such argument that statement of the landlady suffers from any flaw or the same required necessary corroboration from the testimony of daughter in law. Analyzed from any angle, non-examination of Suman Goyal cannot be taken fatal to case of the petitioner nor can an adverse inference be drawn against the petitioner for non-examination of Suman Goyal.

Ankit Goyal is admittedly doing business on the first floor and is an income tax assessee. Counsel for the respondent has failed to cite any judgment that if the tenancy premises is required for the need of a family member, the said family member must be financially dependent upon the landlord/landlady. Before advertng to the judgment in **Joginder Pal's case** (supra), I would like to deal with judgment in **Naresh Kumar and another case** (supra) cited by counsel for the respondent. In the said case,

the landlord sought eviction for the necessity of his nephew, son of his brother (since deceased). This Court set aside judgments of the Courts below by holding that the person for whose benefit the landlord sought eviction was neither a member of his own family or a person dependent on him. The use of the word 'or' indicates that either the person for whose necessity eviction has been sought should be a member of landlord's own family or a person who is dependent upon him. In the present case, it has been sufficiently proved that the petitioner along with her two sons and their families is residing jointly in the same house and the family is joint in mess. Meaning thereby that Ankit Goyal and Suman Goyal are the members of family of Smt. Angoori Devi. That being so, the respondent cannot derive any advantage to his contention from the judgment in **Naresh Kumar and another case** (supra).

Hon'ble the Supreme Court in **Joginder Pal's case** (supra) has interpreted the words "his own use" in regard to non-residential building. The Court has crystallized the principles 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)."

Perusal of extract aforesaid makes it evident that the requirement is not only of the landlord himself but also of the normal 'emanations' of the landlord is included in the expression "his own use". The Court has not laid down that if a member of the family is already doing business, thus, earning hand, the landlord cannot seek eviction for his need either to expand the business or shift to accommodation which is more suitable for doing the same business. In this view of the matter, the mere fact that Ankit Goyal is already doing business in a room at the first floor of the building or is an income tax assessee would not enure to benefit of the respondent, as has been sought to be contended.

The tenancy in favour of Sh. Nawab Rai was created in the year 1999. Ankit Goyal became major later and started doing business in one room on the first floor. There is nothing on record suggestive of the fact that except the eviction application which was dismissed in default any other eviction application was filed by the petitioner – landlady. She filed a suit for possession but the same was withdrawn in view of some notification issued by Chandigarh Administration. Taking into consideration conduct of the petitioner coupled with the materials on record, it is difficult to affirm findings of the Appellate Court that need projected by the petitioner is fanciful, unreasonable, in-genuine and has been created with oblique motive.

To be fair to the respondent, counsel has raised an issue that the demised premises has now been mutated in the name of Suresh Kumar

Goyal, father of Ankit Goyal, therefore, petition for eviction should have been filed by Suresh Kumar Goyal if the premises is required for necessity of Ankit Goyal or to say that the petitioner cannot maintain the petition for necessity of Ankit Goyal.

Firstly, there is no dispute between the parties with regard to relationship of landlord and tenant and as such the petitioner being the landlady can maintain an eviction application on one or more than one ground envisaged under the Act. Secondly, the petitioner is not literate and she cannot read or write English. She had studied only upto 4th class. In her cross examination on 18.09.2013, she had stated about the property being partitioned by way of a writing and the portion in question has been mutated in the name of Suresh Kumar. However, in the later part, she has deposed that in that document executed by her it is mentioned that during her lifetime she will continue receiving rent of both the portions in respect whereof the title vested in her sons. Meaning thereby that she would continue to be landlady of the property during her lifetime. Not only this, cross examination the petitioner was deferred for producing document in respect of division of the shop. In her cross examination on 25.11.2013, the petitioner had stated that she is in possession of original Will dated 28.10.2010 and except this there is no other document in her possession depicting ownership of demised premises of her sons. She has further deposed that Suresh Goyal has no other shop/commercial property in his occupation. It can be safely inferred that in her cross examination conducted on 18.09.2013, the petitioner talked about partition of the property on the basis of Will dated 28.10.2010, and as such respondent cannot derive any advantage to his contention from the facts elicited in her

cross examination of September 2013 in regard to partition or mutation in favour of her sons. Analyzed from any angle, contention raised by the respondent with regard to non-maintainability of eviction application for the need of Ankit Goyal and Suman Goyal is not meritorious and stands rejected. As has been discussed hereinbefore but for the sake of repetition, findings of the Appellate Court reversing the eviction order suffer from legal flaws and incorrect appreciation of factual and legal controversy, in the light of materials on record, therefore, perverse and ordered to be set aside. As a natural corollary, findings of the Rent Controller are liable to be restored and ordered accordingly.

In view of what has been discussed hereinbefore, the petition is allowed. The judgment passed by the Appellate Authority is set aside and that of the Rent Controller is restored. The eviction application filed by the petitioner is accepted on the ground of personal necessity of Ankit Goyal and Suman Goyal.

MARCH 27, 2019
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no