

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

Civil Revision No. 7660 of 2017 (O&M)

Date of decision : August 09, 2019

Sunil Kumar

.....Petitioner

Versus

Madan Mohan Dawar

....Respondent

Civil Revision No. 7661 of 2017 (O&M)

Ashok Kumar

.....Petitioner

Versus

Madan Mohan Dawar

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. G.C. Shahpuri, Advocate
for the petitioner in both the petitions.

Mr. Harkesh Manuja, Advocate
for the respondent in both the petitions.

LISA GILL, J.

Civil Revision Nos. 7660 and 7661 of 2017 are taken up for hearing and decision together. Respondent – landlord is common in both the matters. The above said revision petitions have been filed by two different tenants of the said landlord, challenging decisions, both dated 04.09.2017, passed by learned Rent Controller, Ambala in two separate petitions filed by the respondent – landlord.

Brief facts necessary for adjudication of both these petitions are that the respondent – landlord filed three eviction petitions, under Section 13-A (1-A) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 seeking eviction of three different tenants in the same building. In one of the petitions titled Madan Mohan Dawar vs. Jasbir Singh, the matter was

amicably resolved and the shop under tenancy of Jasbir Singh was vacated. It is pleaded by the respondent – landlord in both the cases that he is the owner and landlord of property bearing No. 159 (312/159) Gobind Nagar, Jagadhri Road, Ambala Cantt., as detailed in the petition. The present petitioner/petitioners are stated to be the tenants under the landlord in a portion consisting of one room each on the first floor of the building and as depicted in the site plan with the petition. The said premises were let out on rent at a monthly rent of ₹2,000/- to the petitioner – Sunil Kumar and ₹1,500/- per month to Ashok Kumar for the last 14 years. The rooms/shops under tenancy of the petitioners was for non-residential purposes and were being used as such since the inception of tenancy.

It is further pleaded that the landlord was employed with the Judicial Department, Government of Haryana as Superintendent Grade – II. He retired from service on 30.06.2013 after attaining the age of superannuation. Respondent – landlord pleaded that he required the premises for starting his own business of Coffee House/Snack Shop in the entire premises under the tenancy of all the three tenants. It is stated that the petitioner had also filed a petition for vacation of the premises with Jasbir Singh on the ground floor. The landlord pleaded that he wished to start his business of Coffee House/Snack Shop after joining all the three shops and that he would connect the ground floor with the first floor, from inside the shop on the ground floor. Another petition for eviction stood filed against another tenant Rajiv Kumar on the ground of personal necessity of the landlord – respondent for establishment of his office and library in the portion/shop under the tenancy of Rajiv Kumar. It is specifically pleaded that the landlord alongwith his family was residing in the back portion of

House No. 159, Gobind Nagar. Bimla Rani – sister of the landlord (divorced) alongwith her son was also living in the portion of the said house since 1994. In the front portion of Property No. 159, four shops and a garage are stated to exist. It is further revealed that the petitioner's wife owned one house, which is situated about one and a half kilometres from Jagadhri Road but the same, it is stated, is not suitable for the business of running a restaurant/Coffee House/Snack Shop. Landlord also revealed his ownership of a house in Sector 8, Housing Board Colony, Ambala City but stated that apart from the fact that the said house required lot of renovation and reconstruction, the same is not suitable for the business of running a restaurant/Coffee House/Snack Shop. The petitioners filed applications for permission to leave to defend, which are attached as Annexure P-2 with both the revision petitions. It is pleaded that the petitioners are entitled for leave to defend on the grounds that:-

- (i) Service of summons is not complete and proper.
- (ii) The landlord is not entitled to maintain more than one eviction petition yet he has filed three such petitions against three different tenants.
- (iii) Nature of building whether residential or non-residential has to be determined and the special provision for summary possession is available only for residential premises.
- (iv) Availability and sufficiency of accommodation is a triable issue, which can be discharged only after leading of evidence.
- (v) Landlord, it is stated, was habitually filing false petitions for ejection. His petition against another tenant – Rajiv Kumar was pending.

Reply to the application was filed by the respondent – landlord.

At the time of arguments before the learned Rent Controller,

Ambala, it was additionally argued on behalf of the tenants that the landlord had already got the shop vacated from the third tenant. Therefore, he is not entitled to get another shop vacated under the special provision. Learned Rent Controller on hearing the parties dismissed the application filed by the petitioner – tenant seeking leave to defend and ordered eviction of the petitioners from the premises in question within a period of two months from passing of the order. Aggrieved therefrom, the petitioners – tenants filed the present revision petitions.

Learned counsel for the petitioner argues that both the learned courts below have grossly erred in not affording leave to defend to the petitioner-tenant. It is submitted that the respondent-landlord could not have maintained three separate petitions seeking eviction of the separate tenants from the premises in question. The remedy under Section 13A of the Act would be available only in respect to one of the shops. Moreover, one of the three tenants against whom the respondent-landlord had filed the ejectment petition, has since handed over vacant possession of the shop on the ground floor of the building. There is sufficient accommodation available with the respondent-landlord and sufficiency of accommodation is a triable issue which could be decided only in case leave to defend is afforded to the petitioner. Learned counsel for the petitioner relies upon **Dr. Rajesh Verma v. Vinod Gupta, 2017(1) HLR 521, Shanti Devi v. Rajesh Kumar Jain and another, 2015(2) SCC 158, Amarjit Singh Chadha v. Col. Jasbir Singh Likhari, 2011(3) PLR 127 and Bharat Glass and Plywood Co. v. Sushan Palsoni, 2014(2) RCR (Rent) 59.** It is, thus, prayed that the present revision petitions be allowed.

Learned counsel for the respondent, on the other hand, submits

that the respondent-landlord, who was retiring on 30.06.2013, filed three separate petitions, two of them on 31.05.2014 and the one against Jasbir Singh on 22.05.2014, as he required the entire premises for running a Coffee Shop. It is further submitted that the premises in question are an integral part of one building. Three separate rooms/shops had been given out on rent when the landlord was in service. It is submitted that there is no concealment of any kind by the respondent-landlord. The entire list of properties which are in the ownership of the respondent-landlord and his wife have been detailed in the petition itself. No triable issue has been raised by the petitioner, as it is a settled position of law that it is for the landlord to decide regarding usage of the premises in question. Moreover, the landlord, it is submitted is the best judge of his requirement and necessity and it is not a prerogative to be exercised by the tenant. Dismissal of the present revision petitions is prayed for.

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

There is no dispute regarding the respondent – landlord being an employee with the Judicial Department, Government of Haryana or his retirement on 30.06.2013. Retirement certificate is on record. The petitions have admittedly been filed within one year of his retirement. It is to be noticed that the respondent – landlord has taken a specific plea of all three shops to be an integral part of the entire building, comprised in the property bearing No. 159. It is specifically pleaded that the respondent – landlord requires the premises for running a business of Coffee House/Snack Shop after his retirement and the area in the said building, which is in his possession, is too small for running the same.

Learned counsel for the petitioners had vehemently argued that the landlord has admitted the building to be residential in nature, therefore, he cannot seek eviction for using the same for a non-commercial purpose and furthermore the respondent – landlord could not have maintained three separate petitions seeking eviction of the separate tenants from the premises in question. Remedy under Section 13-A of the Act, if at all, available can only be in respect to one of the shops in question. This argument on behalf of the petitioners is devoid of any merit for the reason that all the three shops in question, form part of one building, a part of which is being used for residential purposes. This has not been disputed even at the time of arguments before this Court. Admittedly, the petitioners took the premises on rent for commercial purposes and have undisputedly used the shops/rooms as such. Therefore, it does not lie with the petitioners to raise this plea and neither can it be a triable issue, which can be effectively decided only after leading of evidence.

The Hon'ble Supreme Court while dealing with the question of entitlement of the landlord to recover possession of either the whole building or in part of parts thereof, in **Zenobia Bhanot versus P.K. Vasudeva and another 1995 (6) SCC 770** specifically observed that, “There are no words in Section 13A of the Act to import the idea that if a residential building is let out in parts each part will become residential building thereby fettering the 'specified landlord' to avail the concession only from a part”. It is further observed that:-

“ Section 13A which gives a special right to the landlord, is to enable him to exercise the right to recover the residential building for his own occupation, if he does not own or possess any other suitable accommodation. In interpreting the Section,

it is a far-cry to state, that the question as to whether the accommodation with the landlord after taking possession from one of the tenants is sufficient for his personal requirement or not, is not to be gone into in such proceedings. The right is given to the landlord, in case where he does not own or possess any other suitable accommodation to recover possession of his residential building. If the building is let out in parts, any or all such parts can also be recovered, since the part or parts let out, form part of the building.”

Insofar as the argument that this judgment would be applicable only in case of residential buildings is equally devoid of any merit. This is so for the reason that the Hon'ble Supreme Court in **Harbilas Rai Bansal versus State of Punjab 1996 (1) PLR 227** has found the distinction between residential and non-residential building for eviction on the ground of bonafide personal requirement as discriminatory.

A Division Bench of this Court in **Vinod Kumar Jain versus M/s Harindera Scientific Works, Gur Bazar, Sadar, Ambala, Cantt. 2011 (3) PLR 762,** while dealing with the provisions of Section 13A(1A) of the Act observed as under:-

“13. Though it is for the legislature to confer right of eviction and also to provide for procedure for eviction in respect of buildings or class of building and confer such right on a landlord or a specific category of landlords, but the distinction between the residential and non residential building has not found favour with the Hon'ble Supreme Court under the [Punjab Act](#). Such provisions have been extended by the Division Bench of this Court to the Haryana Act. Such view has been approved by the Hon'ble Supreme Court in Mohinder Prasad Jain and Ashok Kumar's case (supra) as noticed above. The distinction between the residential and non-residential building for the purpose of restricting the right of eviction on the ground of personal requirement has not been upheld. Therefore, the

argument that the summary right of eviction of the tenant on the ground of personal requirement from a non-residential building is not available to landlord of such building, is not correct. A landlord, who satisfies the parameters of sub-section (1) and sub-section (1-A) of [Section 13-A](#) of the Act, is entitled to seek eviction of a tenant from a residential or non-residential building on the ground of personal requirement. Since the distinction between the residential and non-residential building for the purpose of eviction under [Section 13\(3\)\(a\)](#) (i) has not been upheld, therefore, the principles laid down by the Hon'ble Supreme Court in Gian Devi Anand's case are not applicable.

14. The argument that [Section 13\(3-A\) of the Act](#), has conferred right of eviction only on a category of landlords to seek eviction from non-residential building for personal requirement and thus, all other categories stand excluded, is not tenable. After the said provision was enacted, the Hon'ble Supreme Court has found the distinction between residential and non-residential building for eviction on the ground of bona-fide personal requirement as discriminatory not only under the [Punjab Act](#) or the Haryana Act, but the State Rent Legislations of other states including Delhi as well. Sub clause (1) of [Section 13-A](#) of the Act, inserted in the year 1986, granted summary right of eviction to the army personnel, whereas such right of summary right of eviction was extended to the Government servants in the amendment carried out in the year 1990 when sub-clause (1-A) was inserted. The judgments of the Supreme Court are subsequent to such amendments. Therefore, neither the object and reasons nor the forms attached to the Act or the grounds of eviction specified in clause 13(3) (a)(i) restricting the right of eviction on the ground of personal requirement from a residential building alone, can be said to be sustainable. No such argument is available to the tenants after the authoritative pronouncement of the Supreme Court on the subject.

15. Thus, it is held that a landlord is entitled to seek eviction of

a tenant from residential and non residential building in summary manner in terms of [Section 13-A\(1\)](#) & (1-A) of the [Act](#).”

Thus, vacation of a part of building by one of the tenants is also not a ground to non-suit the respondent – landlord from pursuing the present ejectment petitions. The ground regarding sufficiency and availability of alternate accommodation to the landlord is not tenable in the given facts and circumstances of the case. Perusal of the application seeking leave to defend/contest attached as Annexure P-2 with both the petitions reveals that the petitioners contended that the respondent – landlord was no longer residing in the portion towards back of property No. 159 but had shifted to another house in Ram Nagar, Ambala Cant. One of the shops in the building No. 159 was lying vacant and was wrongly shown to be occupied by the respondent's sister, who was a mere household lady and was not engaged in any work. Therefore, there is sufficient space to run the coffee shop in the area. It is relevant to note that the respondent – landlord has clearly detailed all the properties owned by him as well as his wife and it is clearly mentioned that his sister, who was divorced was running a business of Tour and Travel and was earning her livelihood while working from one of the four shops. It is further specifically pleaded that the other property is not suitable for running a Coffee House/Snack Shop. It is a settled position that need of the landlord cannot be determined by tenant. The Hon'ble Supreme Court in **Suryanarayana (D) by Lrs versus K.S. Muddugowramma 2014 (1) RCR (Rent) 395**, has observed that when eviction was sought on the ground of personal bonafide necessity, there is an initial presumption that the premises are so required by the landlord.

The Hon'ble Supreme Court in **Surinder Pal Singh Bhattal vs.**

Rakesh Kumar Jain (1996) 4 SCC 275 has held that the Court is only to look into the averments in the application filed by the tenant, to conclude whether any ground is made out for granting leave to contest the petition to the tenant. It is observed as under:-

“ It is settled law that in proceedings like the one in question when an application for leave to defend is made by the tenant supported by an affidavit for grant of leave to contest the eviction petition filed by landlord under Section 13-A of the Act, the rent controller is not required to examine the issue from the point of view of the ultimate proof which the tenant may produce but the only thing which the Controller is required to examine is to look into the averments made in the application by the tenant and the affidavit in support thereof to see whether the tenant has made out a case which, if proved, would disentitle the landlord from claiming the eviction of the tenant from the premises occupied by him in summary proceedings.”

Dismissal of an application seeking leave to defend, filed by a tenant was upheld in the case of **Jitender Kumar versus R.S. Virk and others 2014 (5) RCR (Civil) 679** by a Co-ordinate Bench of this High Court in similar circumstances. It was observed that merely because the landlord had obtained ejectment in respect of two other shops forming part of the same premises, right of the landlord for summary eviction of the tenant from the premises in dispute is not lost. It is further observed that the landlord is entitled to raise a presumption in law, that his need is bonafide and the need of the landlord is not to be determined by the tenant.

The abovesaid decision in **Jitender Kumar's** case (supra) has been upheld by the Hon'ble Supreme Court while dismissing SLP (C) No. 30176/2014 filed by the tenant therein vide order dated 18.11.2014.

Respondent – landlord admittedly falls in the category of a

specified landlord within the meaning of the provisions of the Act. No argument has been raised in this respect. As noted in the foregoing paras, there is no dispute regarding retirement of the landlord on 30.06.2013 or of the filing of the ejectment petition within the prescribed time. In the present matter, the respondent – landlord has clearly pleaded his case in both the petitions. Details of all the properties as well as the necessity is clearly delineated therein. There is no ground whatsoever to negate the case set by the respondent – landlord and consequently dismiss the petitions filed by him. The learned Rent Controller has rightly ordered ejectment of the petitioners from the demised premises.

Learned counsel for the petitioner is unable to point out any illegality or infirmity in the impugned decision dated 04.09.2017 passed by the learned Rent Controller, Ambala which calls for any interference in exercise of revisional jurisdiction by this Court.

No other argument has been raised. No arguments have been addressed on the pending applications, including the one seeking mesne profits.

Accordingly, both the petitions are dismissed with no order as to costs. Pending applications, accordingly stand disposed of as well.

August 09, 2019

rts

Whether speaking/reasoned

Whether reportable

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:

Yes/No

Yes/No

(Lisa Gill)
Judge