

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

Civil Revision No. 7674 of 2017 (O&M)

Date of decision : February 21, 2019

Ramesh Kumar Goyal

.....Petitioner

Versus

Hardayal

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sunil Garg, Advocate
for the petitioner.

Mr. Vishal Goel, Advocate
for the respondent.

LISA GILL, J.

Petitioner – tenant is aggrieved of judgment dated 08.10.2011 passed by the learned Rent Controller, Patiala whereby the petitioner's eviction from the demised premises has been ordered as well as judgment dated 18.07.2017 passed by the learned Appellate authority, Patiala whereby judgment dated 08.10.2011 passed by the learned Rent Controller, Patiala has been upheld.

Brief facts necessary for adjudication of the case are that respondent – landlord filed a petition under Section 13 of East Punjab Urban Rent Restriction Act, 1949 (for short – 'the Act') seeking eviction of the present petitioner – tenant from the demised premises i.e. a shop as detailed in the petition. It was pleaded by the respondent – landlord that he and his mother (since deceased) were/are the owners and landlords of the shop in question. The present petitioner was a tenant on the premises doing the work of a property dealer under the name and style of 'Goel Property

Consultants'. The shop in question was taken on rent by the present

petitioner from the landlords on 14.12.1988 at the rate of ₹600/- per month. Landlord Hardayal's mother Premwati passed away on 18.01.2006. Eviction of the present petitioner was sought on the ground of personal bona fide necessity of the landlord - Hardayal, who had retired from the office of the Superintending Engineer, Electrical Circle, PWD (B&R) as Senior Assistant on 31.07.2008. It was pleaded that respondent wanted to start his business of electrical goods in the demised shop and he had not vacated any other building or premises within the municipal area immediately before filing of the petition. It was claimed that the petitioner was a bad tenant, who misbehaved and created a scene whenever rent was demanded from him.

Petition was contested by the present petitioner. In the reply filed by the petitioner, it was denied that the respondent and his mother were the owners of the demised shop though it was admitted that the present petitioner was a tenant in the said premises doing the work of a property dealer. It was further admitted that the shop was taken on rent at the rate of ₹600/- per month from Premwati. All the legal heirs of Premwati, it was alleged, had not been impleaded as party to the petition. It was denied that the shop was required by the respondent-Hardayal for his personal use or occupation for starting his own business of electrical goods after his retirement as Senior Assistant. It was denied that the petitioner was a bad tenant or misbehaved with the respondent – landlord. Dismissal of the petition was prayed for.

Rejoinder was filed.

Following issues were framed by the learned Rent Controller:-

1. Whether the petitioner is entitled for ejectment of the respondent, as prayed for?OPP

2. Whether the shop in question is required by the petitioner for his personal use and occupation?OPP.
3. Whether the petition is not maintainable in the present form?OPR
4. Whether the petitioner has not come to the court with clean hands and has suppressed the material facts, if so, its effect?OPR
5. Whether petition is bad for non joinder of necessary parties?OPR
6. Whether the petition is false and frivolous and vexatious and is based on false allegations?OPR
7. Relief.

Learned Rent Controller while holding that the relationship of landlord and tenant was established, concluded that the demised shop was required by the landlord for his own personal use or occupation. Rent petition was allowed and eviction of the present petitioner from the shop in question was ordered.

Appeal filed by the present petitioner was allowed by the learned Appellate Authority, Patiala vide order dated 11.01.2012. Eviction of the petitioner ordered by the learned Rent Controller on 08.10.2011 was set aside. It was held by the learned Appellate Authority that essential ingredients of Section 13 clause (b) and (c) of the Act did not stand fulfilled, therefore, order passed by the learned Rent Controller was set aside.

Respondent – landlord filed Civil Revision No. 1230 of 2012 challenging the said order. Order dated 11.01.2012 passed by the learned Appellate Authority, Patiala was set aside by this Court in the above said civil revision vide decision dated 24.04.2017 (Annexure P-8). The matter was remanded to the learned Appellate Authority, Patiala to decide the

matter afresh.

SLP No. 17582 of 2017 (Annexure P-9) filed by the present petitioner was disposed of by the Hon'ble Supreme Court on 14.07.2017. While upholding the remand of the matter to the Rent Controller, it was observed that the learned Appellate Authority shall take into consideration all the contentions raised by the petitioner uninfluenced by the observations and findings of this Court in order dated 24.04.2017. Thereafter, learned Appellate Authority after hearing the matter afresh dismissed the appeal filed by the petitioner vide order dated 18.07.2017.

Aggrieved therefrom, present petition has been filed.

Learned counsel for the petitioner vehemently argues that the essential requirements of Section 13 (3) of the Act have not been complied with, inasmuch as the landlord has not specifically pleaded that he has not vacated any such building without sufficient cause after the commencement of the Act in the urban area of Patiala. There is, thus, active concealment on the part of the landlord. Therefore, both the learned courts below have erred in ordering eviction of the petitioner from the demised premises. It is vociferously argued that once the petitioner did not plead and prove that he was not occupying any other building in the urban area concerned for the purpose of his business and he has not vacated any such building without sufficient cause after the commencement of the Act, the landlord is not entitled to any relief. Moreover, personal bona fide necessity of the respondent is not proved on record. Furthermore, all the legal heirs of Premwati were not impleaded as party to the petition, therefore, the petition filed by the respondent should have been dismissed on this ground itself. Learned counsel for the petitioner argues that the

Hon'ble Supreme Court specifically observed that the learned Appellate

Authority shall take into consideration all the contentions raised by the petitioner, uninfluenced by the observations and findings of this Court in order dated 24.04.2017. However, the learned Appellate Authority has been clearly influenced by the said order and has, thus, grossly erred in dismissing the appeal filed by the petitioner. It is thus, prayed that this petition be allowed.

Learned counsel for the respondent per contra argues that both the learned courts below have rendered reasonable and logical judgments/orders after proper appreciation of evidence on record. Personal bona fide necessity of the respondent is duly proved on record. Furthermore, the ingredients and requirement of Section 13(3) of the Act is duly met with. It is, thus, prayed that this petition be dismissed.

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

Relationship of landlord and tenant is proved by the evidence on record. Present petitioner has admitted that he had taken the demised shop on rent from Premwati i.e. mother of the respondent – landlord in the year 1988 at the rate of ₹600/- per month and he was doing the work of a property dealer from the said shop. No serious argument has been raised regarding the relationship of landlord and tenant between the parties. Learned counsel for the petitioner has mainly stressed upon non-fulfilment of requirement of Section 13(3) of the Act. Para 3(a) of the petition filed by the respondent reads as under:

“ The shop in question is required by the petitioner for his personal use and occupation bonafidely. The petitioner has retired from the office of Superintending Engineer, Electrical Circle South, PWD (B&R) Mini Secretariat, Patiala as Senior Assistant on 31.07.2008, now the petitioner is jobless. The

petitioner wants to start the business of selling electrical/electronic goods in the shop in question. The petitioner has not vacated any other building and premises within the Municipal Area immediately before filling the present petition without any reasonable cause or excuse. The petitioner is having sufficient amount in his hand to start the business in the shop in question. The petitioner requires the shop in question bonafidely for his personal use and occupation.”

In para 3 of his affidavit, respondent – Hardayal stated as under:-

“ I state on oath that the shop in question is required by the deponent for his personal use and occupation bonafidely. The deponent has retired from the office of Superintending Engineer, Electrical Circle South, PWD (B&R) Mini Secretariat, Patiala as Senior Assistant on 31.07.2008, a letter issued by Baldev Singh Superintending Engineer Electrical Circle South, Punjab PWD B&R, Patiala is enclosed herewith for ready reference, the deponent identifies the signatures of Baldev Singh, Superintending Engineer Electrical Circle South, Punjab PWD B&R, Patiala, over the same and the same is Ex.P-11. Now the deponent is jobless. The deponent wants to start the business of selling electrical/electronic goods in the shop in question. The petitioner has not vacated any other building and premises within the Municipal Area immediately before filling the present petition without any reasonable cause or excuse. The deponent is having sufficient amount in his hand to start the business in the shop in question. The deponent requires the shop in question bonafidely for his personal use and occupation.”

In the affidavit of Sunder Lal i.e. brother of the respondent – landlord it is mentioned that, “the petitioner is not occupying any other such scheduled building as the case may be in the urban concerned area of

Patiala. The petitioner has also not vacated any such building without sufficient cause after the commencement of the Act in the urban area of Patiala”.

Learned counsel for the petitioner has argued that the respondent – landlord did not specifically plead that he was not the owner of any other property and that he had vacated any other building/premises within the urban area concerned 'after the commencement of the Act' and that there is concealment of material facts by the landlord. Thus, his petition should be dismissed on this ground alone.

This Court in **Jugal Kishore Ahuja versus Surinder Kaur 2017 (2) RCR (Civil) 508** while dealing with the fulfilment 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 non-pleading 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

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.”

Learned counsel for the petitioner is unable to point out any evidence on record to indicate that there is any concealment on the part of the landlord. There is indeed no evidence to indicate that the landlord is the owner of, in possession and occupation of any other premises in the concerned urban area. To conclude that merely because it is not pleaded by the landlord himself that he has not vacated any such premises within the

concerned urban area after the commencement of the Act is sufficient to non-suit him is indeed incorrect and unacceptable in the facts and circumstances of the case. A perusal of the evidence on record reveals that the parties were very well alive to the controversy and issues in hand. PW1 Hardayal – respondent has specifically denied in his cross examination that he is the owner of huge properties as suggested.

Argument raised by learned counsel for the petitioner that a specific issue in this regard was not framed, therefore, grave prejudice was caused to the petitioner is devoid of any merit, hence rejected. Issue No. 1 clearly covers the question and moreover it is not denied that specific evidence in this regard has been led by the parties, who were clearly alive to the issue in question, therefore, it cannot be said that any prejudice has been caused to the petitioner by non-framing of a specific and separate issue in this regard.

Respondent – landlord has categorically pleaded that he retired from the service as Senior Assistant from the office of the Superintending Engineer, Electrical Circle, PWD (B&R) on 31.07.2008. It is specifically pleaded that the respondent – landlord wanted to start the business of selling electrical/electronic goods in the shop in question. It is further evident from the record that the respondent – landlord retired from the Electrical department and worked as Senior Assistant with PWD (B&R). There is indeed no evidence on record to indicate that the personal necessity set forth by the respondent – landlord is not bonafide or is his mere whim or fancy, which would disentitle him from the relief as claimed.

It is a settled position that personal bona fide necessity of the landlord is to be viewed from the point of view of the landlord. Said need

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.

Another plea raised by learned counsel for the petitioner that the learned appellate Authority was influenced by order dated 24.04.2017 is devoid of any merit. Learned appellate Authority has considered all the aspects and rendered a well reasoned and logical decision after considering the evidence on record. Judgment dated 08.10.2011 passed by the learned Rent Controller has been rightly upheld. 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 petitioner is unable to point out any illegality and infirmity in the impugned judgment 08.10.2011 passed by the learned Rent Controller, Patiala as well as order dated 18.07.2017 passed by the learned Appellate authority, Patiala 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.

February 21, 2019
rts

(Lisa Gill)
Judge

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