

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

CR No.8176 of 2018 (O&M)

Date of Decision: December 18, 2019

Varinder Singh and another

...Petitioners

Versus

Surinder Kaur

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Gurcharan Dass, Advocate
for the petitioners.

Mr. Arun Jain, Senior Advocate with
Mr. Abhishek Dhull, Advocate
for the respondent.

JAISHREE THAKUR, J.

1. This is a civil revision that has been filed by the petitioners-tenants seeking to challenge the order dated 04.02.2015 passed by the Rent Controller whereby, the petition of the respondent-landlady was allowed on the ground of bona fide personal necessity, as well as the order dated 25.09.2018 passed by the Appellate Authority whereby, the appeal filed by the petitioners-tenants was dismissed.

2. In brief, the facts of the case are that the respondent herein filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act against the petitioners herein for their ejectment on the grounds that the petitioners are regular defaulters in making the payment of rent and never

paid the rent in time. It was also claimed by the respondent that she required the tenanted premises for the need of herself and her husband to start their business of boutique, to design and sell the readymade ladies and gents garments. The respondent further averred that the tenanted premises is more suitable for the business of boutique and she has got vacated the adjoining shop in order to merge the same with the tenanted premises. It was submitted that the space of both the shops would be sufficient and suitable for the proper running of the boutique business.

3. The petition was contested by the petitioners by filing their written statement, in which apart from taking the preliminary objections, it was submitted that no rent note was executed between the parties, as alleged by the respondent. It was averred that the petitioners gave a sum of ₹ 2,70,000/- as security amount (Pagri). The rate of rent is ₹ 4000/- per month, which includes any house tax or any other cess or tax and the petitioners are not liable to pay any other amount. It was alleged that the respondent has not disclosed the true facts to the court that she has received an amount of ₹ 50,000/- through two cheques of ₹ 25,000/- each, as such, they have received more amount from the petitioners, which has been claimed as lump sum as ₹ 49,490/-. Remaining averments of the petition were denied.

4. Rejoinder to the written statement was filed. From the pleadings of the parties, issues were framed and the evidence was led by both the parties. On appreciating the evidence, the Rent Controller has held that the rate of rent of the tenanted premises is ₹ 4000/- per month and the respondent was directed to refund the excess rent paid by the petitioners @ ₹ 5500/- per month pursuant to the provisional order of assessment of rent,

while holding that under these circumstances, the ground of non-payment of rent is not available with the respondent. The Rent Controller has further held that the tenanted premises is required by the respondent herein for her bona fide necessity and directed the petitioners herein to hand over the vacant possession within a period of two months. The findings recorded by the Rent Controller were affirmed in appeal by the Appellate Authority. Now the orders passed by both the courts below have been assailed in this civil revision.

5. Mr. Gurcharan Dass, learned counsel appearing on behalf of the petitioners-tenants argues that the findings recorded by the Rent Controller on issues No.1 and 3 are erroneous and the same have been recorded without discussing the evidence produced by the petitioners. It is also contended that similarly findings recorded by the Appellate Authority in para 16 and 17 of the judgment are erroneous and the same are liable to be set aside. It is argued that the ingredients of Section 13 of the Act are necessary to be pleaded and in the absence thereof, the petition is liable to be dismissed. It is submitted that the respondent was having vacant portion of basement of the building in which tenanted premises is situated and this fact was not disclosed by the respondent in her petition and site plan, thus, she has concealed material facts from the court, but both the courts below have erroneously held regarding suitability of the respondent. It is also contended that even the respondent has not disclosed about vacation of shops by the tenants and re-letting of the same to another tenants during the pendency of the petition. It is stated that all these factors show that sufficient accommodations remained in possession of the respondent and if

she really had the personal requirement, she must have started her business in that portion, but she did not do so. In support of his arguments, learned counsel relied upon judgments rendered in ***Banke Ram vs. Shrimati Sarasvati Devi, 1977(1) RCR (Rent) 595, Sree Balaji Krishna Hardware Stores vs. Srinivasaiah, 1998(1) RCR (Rent) 235, Joginder Singh Sawhney vs. Harbans Lal, 2001(1) RCR (Rent) 528, Keshetariya Punjab Khadi Mandal, Kharar vs. Prem Kumar and others, 2012(2) RCR (Rent) 516, Jatinder Kaur vs. S.K. Dhaliwal, 2015(2) RCR (Rent) 194, Ram Pal Saini vs. Surinder Singh, 2016(1) RCR (Rent) 321, Smt. Banarsi Devi Jain vs. M.P. Transport Company and another, 2008(1) RCR (Rent) 536*** and ***Gurbaj Singh vs. Parshotam Singh and others 2011(4) RCR (Civil) 518.***

6. Per contra, Mr. Arun Jain, learned Senior counsel appearing on behalf of the respondent-landlady, assisted by Mr. Abhishek Dhull, Advocate submits that the arguments so advanced by learned counsel for the petitioners have already been dealt with in detail by both the courts below and no ground is made to interfere with the same. While controverting the arguments of learned counsel for the petitioners, learned Senior counsel for the respondent submits that there is specific plea taken by the respondent in her petition that she has got vacated the adjoining shop from the other tenant two months back in order to merge the same with the tenanted premises, after getting it vacated from the petitioners, as the space of both the shops would be sufficient and suitable for the proper running of the boutique business by the respondent and her husband. Regarding the basement of the demised premises, which was lying vacated and let out

during the pendency of the petition to the two tenants, it is contended that said portion is now with Dr. Atamjit Singh, Dentist, who was already running his clinic in some portion of the said basement, however, it has already come on record, during the course of evidence, that the said basement portion is not suitable for the business of the respondent and her husband. It is argued that the said vacant portion of basement and the tenanted premises, which is situated on the first floor portion, have lot of difference and the tenant has no right to dictate terms to the landlady as to where and in which portion of the demised premises, the landlady could start her business. It is submitted that the landlady is the best judge in respect of her suitability and both the courts below have rightly held that the personal requirement of the landlady is bona fide. It is also contended that this Court while exercising revisional jurisdiction cannot re-appreciate evidence and concurrent findings rendered by the courts below. In support of his arguments, learned Senior counsel relied upon judgments rendered in ***Om Parkash vs. Mohinder Sachdeva (since deceased) through LRs, CR No.1562 of 2019, decided on 22.05.2019, Jai Parkash (since deceased) through LRs vs. Sanjeev Bansal (since deceased) through LRs, CR No.7676 of 2013, decided on 28.03.2019, Gandhe Vijay Kumar vs. Mulji @ Mulchand, 2017(2) RCR (Rent) 391, Smt. Prabha Sehgal and others vs. Shri Subhash Sagoonja and others, 2018(2) RCR (Rent) 599, Hukam Chand vs. Saroj Rani, 2018(1) PLR 381, Ram Paul vs. Vijay Kumar and others, 2013(4) RCR (Civil) 649, Gurbaj Singh vs. Parshotam Singh and others, 2011(4) RCR (Civil) 518, M/s British Motor Car Company Pvt. Ltd. vs. Sewak Sabha Charitable Trust (Regd.) 2003(2) RCR (Rent) 606,***

Shri Sukhbir Singh vs. Dr. I.P. Singh, 2012(2) RCR (Rent) 409, Anil Bajaj and another vs. Vinod Ahuja, 2014(2) RCR (Civil) 974, Satish Kumar Khurana vs. H.S. Bajaj, 2016(2) RCR (Rent) 348, Mohinder Kaur vs. Balwinder Kumar, 2010(1) RCR (Civil) 460, Thankamony Amma & Ors. vs. Omana Amma N. & Ors., 2019(2) RCR (Rent) 312 and Daya Rani and another vs. Shabbir Ahmed, 2019(2) RCR (Rent) 365.

7. I have heard learned counsel for both the parties and with their valuable assistance, have gone through the case file and the authorities relied upon.

8. There is no doubt that there is a concurrent finding of fact by both the Courts below, that the premises in question is required for the bona fide requirement of the respondent to set up the business of boutique with her husband. It is argued by counsel for the petitioners-tenants that the ingredients of Section 13 of the Act are necessary to be pleaded and in the absence thereof, the petition is liable to be dismissed. In this regard, it is true that a Full Bench in **Banke Ram vs. Smt. Saraswati Devi, 1977(1) RCR (Rent) 595** has held that *“it is mandatory to plead the essential ingredients that he requires the demised premises for his own personal need and that he had not vacated any house in the municipal area where the demised premises is situated and to plead that he was not occupying any other premises in the area, but the petitioner herein did not raise any objection thereto in his written statement”*. But in the judgment rendered in **Sat Prakash Chaudhry vs. Kewal Krishan Malhotra, 2010(4) PLR 622** it has been held that, *“there is no dispute to the proposition of law as enunciated in the Full Bench judgment relied upon by the learned counsel*

for the petitioner. But, at the same time, the Court cannot be oblivious to the fact that mere non-pleading of a fact, which is enshrined in the statute, can always be rectified if a relevant objection is taken at the initial stage. The petitioner failed to take any such objection in his reply to the petition. The pleadings have to be considered broadly in a rent petition where it is not captive to the strict law of interpretation which may be the situation in a civil suit. In rent proceedings, the Rent Controller is merely obliged to hold an inquiry to look into the averments which have been made in the petitioner.” This view has been followed in a subsequent case **Gurbaj Singh vs. Parshotam Singh (2011) 3 PLR 653.**

9. It is also argued by learned counsel for the petitioners that the respondent was having vacant portion of basement of the building in which tenanted premises is situated and this fact was not disclosed by the respondent in her petition and site plan, thus, she has concealed material facts from the court. It is also contended that even the respondent has not disclosed about vacation of shops by the tenants and re-letting of the same to another tenants during the pendency of the petition. In this regard, the Rent Controller has observed in its order that although the respondent has not pleaded the necessary ingredients in the petition itself, but still she has not denied the factum of renting out of her other properties and vacating. Hence, on this score it cannot be termed that the respondent has concealed the material facts. In fact, witness has answered all the queries regarding rent out of the shop to other persons from time to time. The Appellate Authority, while dismissing the appeal of the petitioners, affirmed the findings returned by the Rent Controller. This court finds no illegality or

perversity in the findings so returned by the courts below. Reliance in this regard may be placed upon the judgment rendered in **M/s Bhatia Cloth House vs. Dr. Raj Kumar Gupta, 2008 (4) RCR(Civil) 250** and **Raj Kumar vs. Budha Mal 2011(2) RCR (Rent) 60**, wherein it has been 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.”*. The same view has been taken in the judgment rendered in **S.S. Maan vs. A.K. Sharma reported in 2013(4)RCR(Civil) 154** wherein para 8 it has been held that *“It is cardinal principle of law that technicalities are handmaids of justice and they should not be hindrance in imparting substantial justice. In the present case, it has not been shown by learned Counsel for the tenant as to how any prejudice has been caused to him by non-pleading of the ingredients as referred by him in his arguments. No doubt, the pleading of all the ingredients are necessary for any person to seek relief, but at the same time if the party leads positive evidence to prove a certain ingredient,*

although not pleaded then the Court cannot throw him away on mere technicalities, if it is otherwise proved that no prejudice has been caused to him". The authorities relied upon by learned Senior counsel for the respondent-landlady also stand on the same footing.

10. Another argument has been raised by the counsel for the petitioners that sufficient accommodation remained in possession of the respondent and if she really had personal requirement, she could have started her business in that portion, but as she did not do so, therefore the need is not bona fide. As rightly held by the Rent Controller, the petitioners cannot dictate terms to the respondent. The law is settled that need of the landlady/landlord has to be seen from the angle of the landlady/landlord and not from the view point of the tenant. Even if the respondent has alternative accommodation, even then it is for the landlady to determine the suitability of the accommodation for her requirement, which is to set up a boutique. As has come on record, the basement gets waterlogged and would not be suitable. Moreover, having a boutique on the ground floor would make better business proposition than setting up a boutique in the basement. The Appellate Authority, while rejecting the plea of the petitioners-tenants in this regard, has observed that a careful perusal of evidence of RW1 Varinder Singh shows that when he was given option, whether he could be ready to start his business in the said vacant portion of basement, after vacating the demised premises, then he categorically refused while making deposition in his cross-examination. With due respect, the authorities relied by counsel for the petitioners-tenants are distinguishable and cannot be applied to the facts and circumstances of the present case.

11. Under the facts and circumstances of the present case, this court is of the considered opinion that the findings returned by the courts below are well supported by the evidence led by the parties, which cannot be said to be perverse in any way.

12. In view of the above, the civil revision in hand is hereby dismissed.

December 18, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No