

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

CR No. 1562 of 2019 (O&M)
Date of decision: May 22, 2019

Om Parkash

...Petitioner

Versus

Mohinder Sachdeva (since deceased) Through LRs

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. VB Aggarwal, Advocate,
for the petitioner.

Mr. Pawan Attri, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. The instant revision petition has been filed by the petitioner seeking to challenge the judgments dated 25.4.2014 and 28.11.2018 passed by the Rent Controller, Kurukshetra and the Appellate Authority respectively, allowing the ejectment petition filed against the respondent.

2. Briefly, the facts of the case are that the respondent/landlord ('**the respondent**' for short) had rented out a shop to the petitioner/tenant ('**the petitioner**' for short) situated opposite Gita School near Sunny Sports, Railway Road, Kurukshetra at the rate of ₹1,000/- per month plus house tax. The respondent filed an eviction petition against the petitioner on the grounds of non-payment of rent since 1.1.2005 to date as well as house tax, requiring the shop for the business of his son, who was unemployed and the

petitioner had impaired the value and utility of the said shop materially as he had got the electricity connection and meter removed without the consent of the respondent in writing.

3. After notice, the petitioner contested the petition and filed his written statement taking preliminary objections of maintainability, cause of action and locus standi etc. He further averred that earlier also the respondent tried to evict the petitioner forcibly, which led to the filing of Civil Suit No.18 of 2005, which was filed by the petitioner seeking decree of perpetual injunction against the respondent from disturbing the enjoyment of the shop and forcible and illegal eviction from the shop in question. The said suit was decreed in favour of the petitioner and the respondent was restrained from dispossessing the petitioner from the shop in question. The petitioner further averred that the rent up to 31.03.2011 has been paid to the respondent and nothing is due towards him. He further took objection that the shop in question was not required by the respondent for his son, who is an advocate and joined legal profession and as such is not unemployed. He prayed that the eviction petition be dismissed with costs.

4. The Rent Controller, after going through the pleadings of the parties, framed the following issues:-

- 1) *Whether respondent is liable to be ejected from the property in question on the grounds mentioned in the petition?OPP*
- 2) *Whether the petition is not maintainable?OPR*
- 3) *Whether petitioner has no cause of action and locus standi to file and maintain the present petition?OPR*

After appreciating the evidence led by the parties, the Rent Controller

decided issue No.1 in favour of the respondent. The Rent Controller held that the petitioner has paid the rent up to 31.03.2011 and did not find him to be habitual is not paying rent. He further held that even if the son of the respondent has been enrolled as an Advocate and started practicing in District Kurukshetra, eviction could still be sought, while relying upon a judgment of this Court rendered in **Megh Raj Vs. Deepak Garg and another, 2012 (2) Law Herald (P&H)**. The Rent Controller allowed the ejectment petition in favour of the respondent on the ground of personal necessity and directed the petitioner to vacate the demised premises within a period of 2 months from the date of passing of the judgment.

5. The petitioner challenged the judgment passed by the Rent Controller by filing an appeal before Appellate Authority.

6. The Appellate Authority, after taking in to consideration the pleadings of the parties and appreciating the evidence led by the parties, modified the order of the Rent Controller on issue No.1 to the effect that premises in question is required by the respondent for personal necessity to start business in the premises in question for his son namely Sourav Sachdeva, who is an MBA and not an Advocate and while upholding the findings of the Rent Controller on issues No.2 and 3, dismissed the appeal vide order dated 28.11.2018.

7. The petitioner challenged the orders of the Rent Controller and the Appellate Authority in the present civil revision petition.

8. I have heard the counsel for the parties and have also perused the pleading and the case law with their assistance.

9. At the very outset, Mr. V.B. Aggarwal, learned counsel for the

petitioner, argued and laid great stress on the fact that the respondent landlord has another shop in the vicinity which was recently rented out, and therefore, by his act and conduct would not be entitled to seek eviction of the petitioner from the demised premises. On a caveat, counsel for the respondent urged that the demised shop was better located, being nearer to the school, since his son wanted to start a stationery shop. To settle the dispute an advocate of this Court was appointed as Local Commissioner to submit a report along with a site plan showing the vicinity of both the shops in question and the proximity to the School. A detailed report has been submitted along with photographs and site plan, giving minute details as to the proximity/distance/location of the demised premises along with the shop rented out with the school in question. As per the report of the Local Commissioner, the location of the demised premises has been described in the following manner:-

“10 That so far as the location of the demised premises as well as the last rented shop with regard to the distance from the school is concern, none of the parties can deny the fact that the way towards the last rented shop is passing from the front side of the demised premises because the demised premises is a corner shop situated on the main road and the way towards the last rented shop is on the link road of sector 17. In short if any person use to go towards the last rented shop from the school then the demised premises will come in-between firstly, then the last rented shop will come with a distance of 95 feet approx. after turning to the link road from the main road.

11. That the demised premises is a Ground Floor Corner shop facing on the main road. The width of the road on which demised premises is facing is 20-21 steps i.e. 55 to 60 feet

*including the footpath. The demised shop was locked and two looks were hanging on the shop, on asking of the undersigned, tenant said that due to the Sunday the demises shop is closed whereas the landlord was continuously insisting that the shop is lying closed from the last so many years and he further stated that even tenant do not have the keys of the demises premises. That all the photographs clicked by the undersigned/local commissioner are attached as **Annexure P-3 (Colly) for the kind perusal of this Hon'ble Court.**"*

10. Based on the report of the Local commissioner, it can be safely concluded that the demised shop is in a better location and better suited to the needs of the respondent. In any case, it is well settled that a landlord is the best judge of his needs and a tenant cannot dictate his terms to the landlord with regard to suitability of the accommodation required by him. Reliance is placed upon **Tirlok Chand v. Suresh Kumar 2014 (1) R.C.R (Rent) 226, Sunil Kumar v. Jagjiwan Kumar 2014 (1) R.C.R (Rent) 361; Sanjiwan Kumar @ Pappu Khad Wala v. Sarabjit Kaur 2014 (1) R.C.R (Rent) 364.**

11. Learned counsel appearing on behalf of the petitioners argues that the respondent has failed to disclose and plead essential ingredients required under Section 13 (3) (a) of the Haryana Urban (Control of Rent and Eviction) Act, 1973. It is contended that non-disclosure and concealment that he has another shop in his possession is fatal to the eviction petition. In this regard, he places reliance on a judgments rendered in **Karnail Singh Vs Vidya Devi 1980 CLJ (Civil) 285, Padam Sain vs Meena 2017(1) R.C.R (Rent) 423, Rajiv Gupta Vs Jiwan Ram 2015(1) R.C.R (Rent) 98, Subhash Vs Yash Pal 2013 (2) Rent Law Reporter 360.** Whereas the

counsel for the respondent argues that both the courts below have already dealt with the issue and returned a finding that there is a bonafide requirement for the demised premises and have rightly ordered ejectment.

12. There is no doubt a concurrent finding of fact by both the Courts below, that the premises in question is required for the bonafide requirement of the respondent to set up her son in a business. An argument has been raised that the eviction petition is not maintainable as essential ingredients under Section 13 (3) (a) (i) have not been pleaded. 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”*. 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**. The argument that the respondent failed to plead or state that he is not occupying any other shop would loose significance since there was no objection taken either in the written statement nor were any issues framed. Moreover, the petitioner was not caught unaware and did put the landlord all relevant questions in this regard. There is substantial evidence on the record to establish that the ingredients of section 13 (3) (a) (i) of the Rent Act have been complied with insofar as evidence has been led and the tenant is not caught unaware. 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 *“it is consistent position of law that ambiguity in pleadings regarding the ingredients set out in Section 13(3)a of the Act have made good of the evidence as sufficient compliance of the statutory provisions”*. 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*

thrown him away on mere technicalities, if it is otherwise proved that no prejudice has been caused to him”. The judgments as relied upon by the petitioner would not be relevant in the facts of the instant case.

13. Therefore, finding no grounds made out to interfere in the well reasoned judgments of both the courts below, this revision petition stands dismissed.

May 22, 2019
seema/prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No