

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

Civil Revision No.2500 of 2019 (O&M)

Date of Decision: May 24, 2019.

Harbhajan Singh (deceased) through his LR

.....PETITIONER(s).

VERSUS

Lakhbir Singh and others

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Mandeep S. Sachdev, Advocate
for the petitioner (s).

SURINDER GUPTA, J.

This is revision against the order dated 18.02.2019 passed by Appellate Authority under East Punjab Urban Rent Restriction Act, 1949 (later referred to as 'the Rent Act') affirming order of the Rent Controller dated 10.10.2018, ordering the ejectment of the petitioner from the demised premises on the ground of personal bona fide need for the same.

Lakhbir Singh and others sought ejectment of the petitioner-tenant from the ground floor, first floor and second floor of House No.1684 Sector 22-B, Chandigarh, on the ground of non-payment of rent and his personal bona fide necessity. They deciphered their need for the premises in para 5 of the petition as follows:-

“5. That the entire house is required by the petitioners for their personal use and occupation as they have (sic no) house/accommodation in Chandigarh and around

Chandigarh. The son of the petitioner No.1 and the petitioner No.2 and 4 wants to live in the house as the son of the petitioner is doing job at Chandigarh and the petitioner No.2 and 4 are residing at village sahurán and waiting for the eviction of the house to settle at Chandigarh and starts the business of transport. The petitioner No.3 is studying at Australia and wants to settle at Chandigarh after completion of study.”

As the rent as due was paid, the ground for seeking eviction of the petitioner for non-payment of rent was held as not tenable, however, learned Rent Controller held the personal need of the respondents-landlord for the demised premises as bona fide.

Learned first Appellate Authority upheld the finding of the Rent Controller to this effect. It was also argued before the learned Appellate Authority that the ingredients of Section 13(3) of Rent Act have not been pleaded. While discarding this plea, learned first Appellate Court observed has follows:-

“9. The contention of learned counsel for appellant that ingredients of Section 13(3) has not been pleaded is not tenable. From the contents of eviction petition, tenants were well aware about the property of landlord at Village Sahuran(Ropar) and Calcutta. The addresses of house at Village Sahuran in Ropar as well as of Calcutta and of demised premises are given in the title. So, no prejudice has been caused to the tenant as she/he has complete information about residential accommodation of landlord at various places. Further in their evidence PW-1, PW-2 and PW-4 all have deposed that the demised premises is required for their personal use as family wants to shift at Chandigarh and they have no accommodation in and

around Chandigarh nor they have vacated any premises in and around Chandigarh. 10. The Hon'ble High Court in **Jugal Kishore Ahuja (supra)** while relying upon the judgement **Banwarilal versus Ram Parkash and another 2009 2 RCR 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 deposition of pleading of the ingredients in ejectment petition has been diluted to a larger extent and that too based upon the principle of no budget used to any of the parties because of nonpleading/disclosure of the said fact. Further in the recent judgement **Navyug Goods Carrier versus Manpreet Singh and another CR No. 5722 of 2018** decided on 07/09/2018 the Hon'ble Punjab and Haryana High Court after considering the law laid down in a **Ajit Singh versus Jit Ram 2008(2) RCR(Rent) 328** has laid down that "as noticed earlier, the 1949 Act does not require any particular form of pleadings and there is no format of the rent petition provided under the 1949 Act. The court is required to examine the pleadings and the evidence and then find out whether sufficient facts have come on record to prove that landlord fulfills those ingredients. Hence, the statutory provisions of the relevant section 13(3) of the Act has been well proved during the evidence in the present case."

Learned counsel for the petitioner has relied on the observations of Hon'ble Apex Court in case of **Ajit Singh and Anr. Vs. Jeet Ram & Anr. 2008(9) SCC 699** that in case, a non-residential premises is to be got vacated for the use of son of landlord for business, it is mandatory for

the son to plead and prove that he was not occupying any other such building nor has vacated any such building without sufficient cause. He has also relied on the observations of Full Bench of this Court in case of ***Banke Ram Vs. Shrimati Sarasvati Devi 1977 PLR 112***, in support of his contention that it is mandatory to plead the ingredients as per requirement of Section 13 (3)(a) (i)(b) (c) of Rent Act.

In case of ***Ajit Singh and Anr. Vs. Jeet Ram & Anr. (supra)***, Hon'ble Apex Court has observed that where premises is to be got vacated for the need of son of the landlord, Section 13 (3) (a)(ii) (b)(c) require the pleadings in the eviction petition that the son is not occupying or has vacated any such premises in the urban area concerned. In this case, respondent No.1 has sought ejectment of the petitioner on the ground that he required the premises as his son and petitioners No.2 and 4 want to live in this house. Son of respondent No.1 is in job at Chandigarh, while respondents No.2 and 4 are residing at village Sahuran and are waiting for eviction of petitioner from the house in question to settle at Chandigarh to start their business of transport. Respondent No.3 at the time of filing petition, was studying at Australia and wished to settle at Chandigarh after completion of study.

Observations of Hon'ble Apex Court in case of ***Ajit Singh and Anr. Vs. Jeet Ram & Anr. (supra)***, are not applicable to the facts and circumstances of the case as need projected by respondent No.1 is his personal need i.e. his children want to live with him in the said house. Predominantly, the need of the house remains to be that of the respondent-landlord to facilitate living of his children with him. It is not a case where a

shop is to be got vacated from the tenant for the business of son/daughter or grand children where landlord may be asked to plead and prove that they do not possess or have vacated any such premises. This citation was also relied upon before the Appellate Authority and keeping in view the facts and circumstances, learned Appellate Authority has committed no error while observing that the observations in case of *Ajit Singh and Anr. Vs. Jeet Ram & Anr. (supra)* are of no help to the petitioner-tenant.

In case of *Banke Ram Vs. Shrimati Sarasvati Devi (supra)*, Full Bench of this Court has considered the fact of non-pleading of ingredients as per requirement of Section 13(3) (ii) (b) and (c) and observed in para 12 as follows:-

“12. In the present case, we are concerned only with the question as a principle of law as to whether it is essential to plead in an eviction application the ingredients of Sub-clauses (b) and (c) and not the question that if in a particular case these ingredients are not pleaded, but the parties have led evidence with regard to them, what will be the effect? In any given case, where facts have not been averred in the pleading, a number of questions can arise as to whether proper evidence has been adduced by the landlord regarding those facts which do not find place in the pleadings and secondly whether such evidence will be admissible or not and lastly, whether the tenant was taken by surprise or not and had led evidence with full knowledge of the requisite contentions raised by the landlord and whether the tenant has in those circumstances been prejudiced or not. The Court would be required to give full consideration to the contentions raised by the respective parties and the facts and circumstances of each case before giving its decision in

favour of the landlord or the tenant, but the decisions of the High Courts or the Supreme Court, in this regard, cannot be of any avail to detract from the validity of the proposition that it is necessary for the landlord to make averments regarding the ingredients of Sub-clauses (b) and (c). However, it may be made clear that when it is held that it is essential to plead the ingredients of Sub-clauses (b) and (c) in the eviction application by the landlord, it should not be understood that under no circumstances, in the absence of pleadings, the evidence regarding the ingredients envisaged in Sub-clauses, (b) and (c) can be looked into. This is not peculiar to the eviction applications. Similar considerations come into operation even in the case of suits which are governed by the specific and detailed provisions of the Code of Civil Procedure regarding pleadings.”

In this case, the respondent No.1, while describing his need for the demised premises, appears to have pleaded that the respondents have no house/accommodation in and around Chandigarh. This fact is clear from the perusal of copy of amended rent petition (Annexure P-3) produced by counsel for the petitioner-tenant with his application (CM-10173-CII-2019), which is allowed to take the documents attached with it on record subject to all just exceptions. It appears that due to clerical mistake, the word “no” between the words “they have” and “house” in line stating that “they have house accommodation in Chandigarh and around Chandigarh.”

While appearing as PW1, respondent No.1 has categorically stated that respondents have no accommodation or have vacated any such premises in or around Chandigarh. In cross-examination, his statement has gone un rebutted as no suggestion was given to this witness that he

possessed or vacated any premises in the urban area of Chandigarh. Even in the reply to the ejectment petition filed by the petitioner, it had not been pleaded that the respondents-landlords possessed or have vacated any other residential building in or around Chandigarh.

Learned counsel for the petitioner has further argued that there is no pleading regarding the dependency of the family of respondent No.1-landlord on him and that ground floor in his possession is not sufficient for the need of his family.

To have a look on the need as projected by respondent No.1-landlord, reference may be made to the pleadings in para 5 as reproduced above, wherein he has pleaded that son of respondent No.1, respondents No.2 and 4 want to live in this house. While appearing as PW1, he has stated that after being given possession of 1st and 2nd floor, respondent No.1 started living there with his family, which, however, was got vacated by respondent under police pressure. Kamalpreet Singh son of elder sister of respondent No.1 Lakhbir Singh is suffering from blood cancer and is regularly getting treatment from PGI, Chandigarh for which family has to stay at Chandigarh to attend the patient. Father of Kamalpreet is also suffering from serious ailments and is bed ridden, as such, the house in question is urgently required by the family. He has further stated that entire house is required by respondents as they do not own any other accommodation in or around Chandigarh. He and his family are frequent visitors to Chandigarh and want to live here with their son, who is residing at Chandigarh in a rented accommodation. Kuldeep Kaur, respondent No.2 has stated that her son Jagmohan Singh has come to Chandigarh in

connection with his transport business and she wants to settle here. She has also corroborated the statement of PW1 Lakhbir Singh regarding the requirement of demised premises. From the aforesaid statements of witnesses, it is evident that respondents have requirement of the demised premises. Respondents are four in number and they want to live in this house with son of respondent No.1, 2 and 4. The requirement has also been projected for the son of sister of Lakhbir Singh, who with his family comes to Chandigarh for treatment from PGI. From the above evidence, it is clear that respondents-landlord required this entire house for their bonafide need. It has though not been specifically averred in the petition that son of respondent No.1 is dependent on him but the tone and tenor of his pleadings and evidence, it is evident that his son wants to live with him in this house and to explain the need of the son, no specific wording is provided under the Rent Act for pleading this fact. The same can be inferred from the facts and circumstances of each case. Lakhbir Singh has stated that after completing his studies, his son respondent No.3 has come to Chandigarh. He is doing his job here and living in a rented accommodation. This shows that the accommodation with the respondent is not sufficient to accommodate his son. Even otherwise, it is a settled principle of law that the landlord is best judge of his need and tenant cannot dictate any terms in this regard.

In view of my above discussion, I find no infirmity in the observation of learned Rent Controller and the Appellate Authority under the Rent Act holding the need of the respondents for the demised premises as bona fide. The orders passed by the Rent Controller and Appellate

Authority suffer from no legal or factual infirmity therein calling for any interference. This revision petition has no merits.

Dismissed.

May 24, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*