

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

**Civil Revision No.3261 of 2019 (O&M)
Date of Decision:May 28, 2019.**

Subhash Chand and another

.....PETITIONER(s).

VERSUS

Nirmal Singh

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Bhriugu Dutt Sharma, Advocate
for the petitioner (s).

SURINDER GUPTA, J.

Heard.

Learned counsel for the petitioners has raised two pleas while challenging orders passed by the Rent Controller and Appellate Authority ordering ejectment of the petitioner from the demised premises. Firstly, the respondent-landlord has nowhere pleaded in his petition that he did not possess or has vacated any premises within the municipal area of Phagwara and secondly, no such plea was raised for the grand son of respondent-landlord for whose necessity, the ejectment of petitioner was sought. He further submits that relevant questions were not allowed to be put during the cross-examination of grand son of respondent. In this regard, petitioner had moved application under Order 41 Rule 27 CPC to seek permission to further cross-examine grand son of respondent-landlord namely Ranjit Singh, which was wrongly declined by Appellate Authority. Similar

provide opportunity to the petitioner to bring on record relevant material facts.

Copy of the ejectment petition has been placed on file as Annexure P-1, which shows that in para 3(iii), petitioner has categorically stated that he has no other suitable accommodation to fulfill requirement of his grand son in the urban area of Phagwara nor has vacated any shop or let out any other shop in the municipal area of Phagwara, after the commencement of the Act. Respondent-landlord has further clarified that he has six shops in Balmiki Mohalla, Phagwara and all these shops are under the tenancy of different tenants since long. His other four shops situated at Chaura Khuh area are also under the tenancy of different tenants since long and except demised premises, he has no other commercial property suitable for the bona fide requirement of his grand son Ranjit Singh.

Petitioners-tenants had also raised this contentions before learned Rent controller and on appraisal of evidence, it was observed as follows:-

“On the other hand in order to rebut the above evidence and to prove their plea, respondent No.1 Subhash Chand appeared as RW1 and further examined Kundan Lal as RW2, who have deposed about the other shops of the petitioner, but petitioner has specifically pleaded and deposed that the said other shops are under tenancy. Regarding the other suitable accommodation available in the Urban Area of Phagwara, this court is of the view that petitioner has specifically pleaded and deposed that there is no other suitable place for settlement of grand son Ranjit Singh except the shop in dispute. The other 6 shops situated in Balmik Mohalla, Phagwara and 4 others

shops situated at Chaura Khuh Area are under tenancy of tenant since long. Since the above said other shops are under tenancy, therefore the same cannot be considered as an alternative accommodation and it is not for the tenant to tell the landlord which premises he should use for his bonafide requirement.”

Learned first Appellate Court again examined this plea and in view of the pleadings and evidence but on record, found no merits therein.

Learned counsel for the petitioners in support of his contention that landlord has concealed material facts and not pleaded ingredients of Section 13 (ii) (b) & (c) of the East Punjab Urban Rent Restriction Act, 1949, has relied on observations of Full Bench of this Court in case of ***Banke Ram Vs. Shrimati Sarasvati Devi 1977(1) R.C.R. (Rent) 595.***

Arguments of learned counsel for the petitioners has no merits as respondent-landlord in para 3(iii) of the petition has specifically stated that he is not possessing any suitable accommodation for fulfilling his requirement nor has vacated or let out any shop in the urban area of Phagwara. He has further clarified about his title over six shops in Balmiki Mohalla and four shops in Chaura Khuh area, which are under the tenancy of different tenants. There is, as such, no concealment on the part of respondent-landlord on this score.

In the case of ***Banke Ram Vs. Shrimati Sarasvati Devi (supra)***, Full Bench of this Court took note of the fact that if the ingredients as per the requirement of Section 13 (ii) (b)(c) of East Punjab Urban Rent Restriction Act, had not been pleaded but the evidence with regard to these ingredients has been led, what will be effect of the same? While answering

the question, it was observed 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.”

As already discussed, the respondent had stated about shops owned by him and occupied by the other tenants. While appearing as PW3, he has deposed that he does not possess any other shops or had vacated any shop in Phagwara town. His attention was drawn towards letting out of a shop of Virk Tailor about 3 years back. He stated that shop was let out 3 years back but was not sure about the period when it was let out and the name of the tenant. Ranjit Singh grand son of respondent-landlord while appearing as witness, has stated that he does not own any shop. The petitioner has not produced any evidence to rebut his testimony that no other shop was in possession of the respondent-landlord or his grand son Ranjit Singh, as such, this argument is not available to learned counsel for the petitioner that respondent had not pleaded or proved that he does not possess or has vacated any shop in the urban area of Phagwara town. During the cross-examination of Ranjit Singh, who appeared as witness, a question was put to him whether there was any tenant in the name of Virk Tailor in the building in which shop in dispute is situated and the same was got vacated and let out to one Yashika Designers. This question was disallowed being irrelevant. He was put another question as to how many tenants are there in other shops situated in the building and since when they are in possession as tenant and at what rate of rent. This question was also disallowed being irrelevant. The premises in question is not the ownership of Ranjit Singh. It is owned by Nirmal Singh, respondent. With regard to the above questions, Nirmal Singh could be confronted to get answer and Ranjit Singh, who is not a party to this petition, could not be asked to

answer such type of questions, as such, learned Rent Controller has rightly declined these questions being irrelevant.

The petitioner has come up with application under Order 41 Rule 27 CPC for permission to further cross-examine Ranjit Singh grand son of respondent-landlord on above aspects and for producing on record assessment register maintained by the Municipal Corporation, Phagwara.

Learned counsel for the petitioner has argued that by producing assessment register (TS-1 form), petitioner wants to prove that earlier Virk Tailor was tenant in one of the shops and after vacation of shop by him, same has been let out to Yashika Boutique and Designers during the pendency of the present petition.

This application was also moved before the Appellate Authority, which was declined on the ground that petitioner in support of his contention has failed to produce any document on file. During the course of arguments, learned counsel for the petitioner has shown me a copy of assessment register of Municipal Corporation, Phagwara issued on 11.03.2019 which shows that under the respondent, there are six tenants including Virk Tailor. There is no tenant named Yashika Boutique and Designers. This document, as such, does not support the contention of petitioner that about 3 years back, Virk Tailor has vacated the shop, as such, the application under Order 41 Rule 27 CPC has no merits and the same is declined.

Learned Rent Controller and Appellate Authority on perusal of evidence on record, have committed no error while observing that the demised premises is required by the respondent for his personal bona fide

need and I find no reason to interfere with the findings recorded by both the Courts below.

This revision petition has no merits. Dismissed.

May 28, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>