

CR-4472 of 2019 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4472 of 2019 (O&M)
Date of decision: 19.07.2019

Narinder Kumar and another

.....Petitioners

versus

Subit Dutta Sharma

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Ashok Aggarwal, Sr. Advocate,
with Mr. Mukul Aggarwal, Advocate, for the petitioners.

RAMENDRA JAIN, J. (ORAL)

Through this revision, defendants have laid challenge to the judgment of Appellate Authority dated 28.05.2019, affirming the order of the Rent Controller dated 28.09.2018, whereby they were ordered to be evicted from the demised shop in a petition filed by respondent-landlord under Section 13(2)(i) and 13(3)(a)(ii) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (in short the 'Haryana Act').

Learned senior counsel, assisted by Mr. Mukul Aggarwal, learned counsel for the petitioners referring to *Onkar Natth v. Ved Vyas*, AIR 1980 SC 1218 (SC), *Joginder Singh Sawhney v. Harbans Lal*, 2003(2) PLR 242 (P&H), *Randhir Singh Rohilla v. Rajbir*, 2015(4) PLR 325 (P&H), *Jaspreet Takhar v. Ghai Enterprises*, 2013(1) PLR 765 (P&H), *Baljit Kumar v. Ramesh Aggarwal*, 2013(1) R.C.R. (Rent) 260 (P&H), *Babli v. Kumari Ruchi Bansal*, 2017(1) PLR 811 (P&H) and *Thakar Dass v. Madan Mohan*, 2018(2) Rent Law Reporter 593 (P&H), *Banke Ram v.*

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Shrimati Sarasvati Devi, 1977(1) RCR (Rent) 595 (SC), *Manmohan Lal v. Shanti Parkash Jain*, 2014(5) RCR 667 (P&H), *Jatinder Kaur v. S.K. Dhaliwal*, 2015(2) R.C.R. (Rent) 194 (P&H), *Shankar Lal v. Madan Lal and others*, 2011(1) R.C.R. (Rent) 139 (P&H) and Section 13(3)(a)(ii) of the Haryana Act, *inter alia* contends that both the Courts below failed to appreciate that it was mandatory for the respondent-landlord to satisfy the ingredients of this Section, which he failed. Therefore, eviction of the petitioners from the demised shop is bad in law. Respondent-landlord intentionally and deliberately concealed other properties owned by him and occupied by his son. From this angle too his eviction petition was liable to be dismissed. Lastly, he contends that it has come in the evidence that son of the respondent was practising as Advocate since the year 2005. Thus, eviction of the petitioners could not have been ordered, considering the provision of above Section, according to which a property can be ordered to be vacated in case son of landlord “immediately intends” to start practice.

Having given thoughtful consideration to the submissions made by learned counsel for the petitioners, this Court finds the instant revision completely devoid of any merit for the reasons to follow.

For brevity, para 6 of the eviction petition filed by respondent-landlord is reproduced hereunder: -

“6. *That the respondents are liable to be evicted from the shops on the following grounds: -*

- a) *The respondents have failed to pay the monthly rent w.e.f. 1.1.2015 till 31.10.2017 i.e. for total 34 months @ Rs.3090/- which comes to Rs.105060/-.*
- b) *That the petitioner has got two sons, elder son*

Kapil Dutta is a lawyer and is residing with the petitioner and is practicing at District Courts, Sector 12, Faridabad as well as in various courts at Delhi and also in Delhi High Court. Likewise, the younger son of the petitioner is Dr. Kartik Dutta. The petitioner son Kapil Dutta who is advocate has got no office at Faridabad and wants to open office cum consultation room in the tenanted premises thus the petitioner has got personal and bonafide requirement to use and occupy the tenanted premises to run the office as well as consultation room as an advocate. The petitioner thus bonafide requirement to get the tenanted premises vacated for the requirement of his son Kapil Dutta to run his office cum consultation room as an advocate.

- c) That the petitioner elder son Kapil Dutta has not occupied any other office-cum-consultation room and son of petitioner namely Kapil Dutta have not vacated any such office /consultation room after the commencement of the Act.*
- d) That the petitioner have requested the respondents orally several times to vacate the premises but the respondents have been putting off the petitioner on one pretext or the other and have finally refused to vacate the premises on 21.10.2017, hence this petition has become the legal necessity to file the present petition, before this Hon'ble Court.”*

From the above pleadings in the eviction petition, it is apparent on the record that all the ingredients of Section 13(3)(a)(ii) of the Haryana Act were specifically and diligently fulfilled by the respondent-landlord.

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It is pertinent to mention here that respondent-landlord did not conceal anything from the Rent Controller. Petitioners did not lead any evidence that respondent had any other property except one residential house on the date of filing of the eviction petition. However, the same was not necessary to be mentioned in the eviction petition inasmuch as respondent-landlord had shown himself to be the resident of said house in the title of his eviction petition, itself.

More so, by this time, it is well-settled that a tenant cannot dictate his terms to the landlord. It is always the wish and choice of a landlord to choose as to which of the property would be more suitable for him out of his several properties qua his *bona fide* requirement. Simply because, respondent-landlord was owning a residential house, he or his son could not be forced to open office in that house, more particularly when to a query put to son of respondent-landlord PW2 Kapil Dutta, he clarified that total eight members i.e. his family as well as of his brother and parents were living in their house. Considering the factum of residence of three families in a single house, it can safely be held that house owned by respondent-landlord was not sufficient to open office of his Advocate son.

Judgments in ***Onkar Natth v. Ved Vyas***, AIR 1980 SC 1218 (SC), ***Joginder Singh Sawhney v. Harbans Lal***, 2003(2) PLR 242 (P&H), ***Randhir Singh Rohilla v. Rajbir***, 2015(4) PLR 325 (P&H), ***Jaspreet Takhar v. Ghai Enterprises***, 2013(1) PLR 765 (P&H), ***Baljit Kumar v. Ramesh Aggarwal***, 2013(1) R.C.R. (Rent) 260 (P&H), ***Babli v. Kumari Ruchi Bansal***, 2017(1) PLR 811 (P&H) and ***Thakar Dass v. Madan Mohan***, 2018(2) Rent Law Reporter 593 (P&H) are under the provisions of

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East Punjab Urban Rent Restriction Act, 1949, whereas impugned eviction petition was filed under the Haryana Act and their facts and circumstances are also not identical to the fact of present case. Therefore, no benefit of the same can be given to the petitioners inasmuch as above authorities deal with the cases wherein landlords had filed eviction petitions on the ground of their own *bona fide* requirements, whereas in the instant case, respondent-landlord has sought eviction of the petitioners on the ground of *bona fide* requirement of his son for which there is a specific provision under Section 13(3)(a)(ii) of the Haryana Act, introduced in the year 1978.

As far as judgments in ***Banke Ram v. Shrimati Sarasvati Devi***, 1977(1) RCR (Rent) 595 (SC), ***Manmohan Lal v. Shanti Parkash Jain***, 2014(5) RCR 667 (P&H), ***Jatinder Kaur v. S.K. Dhaliwal***, 2015(2) R.C.R. (Rent) 194 (P&H) and ***Shankar Lal v. Madan Lal and others***, 2011(1) R.C.R. (Rent) 139 (P&H) are concerned, same are also not helpful to the petitioners inasmuch as their facts and circumstances are not identical to the facts of present case, inasmuch as discussed above, respondent-landlord fulfilled all the ingredients which are mandatory to be pleaded and proved under Section 13(3)(1)(iii) of the Haryana Act.

As far as word “intends” is concerned, it denotes to the immediate use. Suppose, son of a landlord living in Delhi practices at Madras. With the passage of time, in case his son intends to shift to Delhi and start his practice there, in that eventuality words “intends to start practice” are sufficient for the landlord to get the tenanted premises vacated. Taking into account the above example, practice of son of the respondent earlier at Delhi does not effect the merits of the case.

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No other point was urged or arises for consideration in this revision.

In view of discussion above, revision is dismissed.

Since two months' time granted to the petitioners to vacate the demised shop has already expired, therefore, they are given further 15 days' more time from today to vacate the same, failing which they shall be liable to pay mesne profits to the respondent-landlord @ ₹75,000/- per month.

July 19, 2019
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No