

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.5159 of 2018 (O&M)

Date of Decision: January 30 , 2019

Vinod Kumar

.... Petitioner

Versus

Bhushan Kumar Jain & Ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. D.V.Sharma, Senior Advocate with
Ms. Shivani Sharma, Advocate for the Petitioner.

Mr. Amit Jain, Advocate with
Mr. Abhinav Jain, Advocate for the Respondents.

SUDIP AHLUWALIA, J.

This Revisional Application is directed against the Judgment dated 07.07.2018 passed by the Ld. Appellate Authority, Sangrur in Rent Appeal No.12 of 2015 reversing the aforesaid Order of the Rent Controller, vide which the Petition filed by the Respondent/Landlord under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 had been dismissed.

2. The Respondent/Landlord had filed the Eviction Petition seeking ejectment of the Petitioner/Tenant basically on three grounds being, firstly, that he had defaulted in payment of rent, secondly, that the premises was required by the Landlord for personal use and occupation by his son for running Hardware business, and lastly, the Suit-Shop being more than 90 years old, had completely outlived its life and had become unfit & unsafe for human habitation, and was likely to crumble down at any time.

3. In the Judgment passed by the Ld. Rent Controller, the averment of Tenant/Petitioner having become a defaulter in payment of rent was held

to be redundant, since he was found to have paid his outstanding dues after admitting the Landlord/Tenant relationship between the parties. The other two grounds for eviction being reasonable requirement of the Demised Shop for personal use and occupation by the Landlord and/or his son, as also that the said premises had become unfit/unsafe for human habitation were also decided against the Landlord on account of which, his Rent Petition was dismissed.

4. In Appeal however, the Ld. Appellate Authority reversed the aforesaid finding of the Rent Controller and decided that the demised Shop was indeed required by the Landlord as claimed, and that he had also succeeded in proving that the condition of the same was dilapidated and therefore, unfit/unsafe for human habitation. Consequently, the Eviction Petition was allowed and the Revisionist/Tenant was directed to vacate the demised Shop within a period of three months.

5. He is aggrieved with both the aforesaid findings of Ld. Appellate Authority and claims that the ground of bonafide requirement of the Respondent/Landlord of the demised Shop for his personal use or the use of his son(s) is liable to be altogether discarded in view of the fact that the Landlord consciously concealed that he was already in occupation of certain other additional Shop-Room(s) in his Eviction Petition. Besides according to the Petitioner, the finding of the Appellate Authority regarding the alleged dilapidated condition of the premises, which is contrary to that of the Rent Controller, is also perverse considering the available material on record led from the side of the Petitioner/Tenant, which has not been properly appreciated by the Appellate Authority.

6. To decide on the Petitioner's contention that there was wilful

concealment/suppression of the material fact that the Landlord/Respondent was in actual possession of certain other Shop-Room(s), which would have the effect of negating his claim of requiring the demised premises bonafide for personal use and occupation either by himself or for his son(s), first of all, the actual averments made in the original Eviction Application filed by the Landlord/Respondent need to be considered. The same are set out as below -

“6. That the petitioner is having two sons namely Shobit Jain and Saurav Jain and Shobit Jain who is elder one is helping hand in the business of General Merchants which is being run by the petitioner in Moti Bazar at Malerkotla, while the younger one namely Saurav Jain is 23 years of age.

6.(Wrongly numbered) That the petitioner requires the shop fully described in the headnote of the application for the personal use and occupation for his abovesaid son namely Saurav Jain who will run his Hardware business there, who is unemployed and idle.

7. That neither the petitioner nor his abovesaid son namely Saurav Jain is owner of any other shop, nor has he let out or vacated any such shop nor is he in possession of any such shop since the enforcement of the East Punjab Urban Rent Restriction Act, 1949 as amended upto date, within the urban area of Malerkotla.”

7. It is thus seen that in his Eviction Application, the Respondent/Landlord had stated that his elder son Shobit Jain was helping him in the business of General Merchants being run by him in Moti Bazar at Malerkotla, and that neither he nor his son Saurav Jain for whom the demised premises was required, 'is owner of any other shop' nor he has let out or vacated any such shop nor he is in possession of any such shop

since the enforcement of the Rent Act within the Urban Area of Malerkotla.

8. As against the above averments, attention of this Court was drawn on behalf of Petitioner/Tenant to the statements given by Respondent Bhushan Kumar Jain and his son Saurav Jain in their respective depositions. In his Examination-in-chief, the Landlord Bhushan Kumar Jain had stated -

“11. I further state that petitioner has two sons namely Shobit Jain and Saurav Jain and Shobit Jain who is elder one and run business of petitioner as the petitioner is running of Shop of General Merchants in Moti Bazar at Malerkotla. The petitioner is not maintaining good health.

13. I further state that petitioner is not owner of any other shop nor in possession of any such shop since the enforcement of the East Punjab Urban Rent Restriction Act, 1949 as amended upto date, within the Urban Area of Malerkotla or any where else.”

9. However in his cross-examination, he stated -

“I have got two shops in my possession at Moti Bazar out of which neither one is owned by me. I have not mentioned this fact in my petition that I have got two shops in my possession at Moti Bazar. I am carrying the business of general merchant in both shops. Out of these two shops one is owned by Vipin Jain. Vipin Jain is my brother. The distance between both the shops is about 10 to 12 feet. Out of the two shops, in one shop I carry the business and in the another shop which is owned by Vipin Jain, my son Shobit is carrying on the business. There is no shop in between both the shops. It is correct that the other shop in which I am carrying the business is one in which is am tenant. It is not that shop about which a litigation is pending and which was taken from Ramesh Kumar and Krishan Kumar. It is correct that there is a litigation pending between Saroj Gupta and myself qua eviction. I do not know about which shop the said dispute is pending. I have got no link with Saroj Gupta. The above said

shop which have mentioned to be on rent with me was taken on rent by my forefather about 60 years back. I do not know about the rent of said shop as I never paid any rent of said shop. Behind the shop which is in my possession as tenant, there are godowns which are also in my possession. Those godowns are situated on the back side of above said shop in the old grain market. The old grain market is a market. There might be 15 to 20 shops on each side of the grain market. I have not mentioned about these above said godowns and shops in my present petition. I do not know who is the owner of the shop which is under my tenancy.”

10. Similarly, the Respondent/Landlord's son Saurav Jain stated in his Examination-in-chief -

“5. I further state on Oath that neither petitioner nor myself or my other brother are owners of any other shop nor have let out or vacated any shop since the enforcement of the East Punjab Urban Rent Restriction Act 1949 as amended up to date, within the Urban Area of Malerkotla or any where else.”

11. Thereafter while facing cross-examination, he was confronted with the suggestion that the Landlord's side has some other shop(s) in its possession, apart from whatever they had claimed to actual own and possess, the Landlord's son Saurav Jain stated -

“I do not know whether there are godowns situated in old anaz mandi of my father. I do not know whether we have got another shop in Moti Bazar which is under our possession.”

12. It is therefore, claimed that while the Landlord Bhushan Kumar Jain himself admitted in his cross-examination that he had two Shops in his possession, and that he had not mentioned this fact in his Eviction Petition, besides also admitting that behind the Shop occupied by him as a Tenant, there is existence of Godowns as well, which are also in his possession. On the other hand, his son Saurav Jain did not categorically deny that his father has got another Shop in Moti Bazar at Malerkotla, or that there are

Godowns situated in old Anaj Mandi of his father, but merely stated that he did not know about such Godowns or the other Shops in Moti Bazar. It therefore, becomes clear that the Respondent/Landlord certainly was in possession of at least one additional Shop in Moti Bazar, apart from some Godowns situated next to his tenanted Shop, which he specifically admitted in his cross-examination, and which his son was unable to deny. So clearly, the assertion made on behalf of the Petitioner/Tenant that the Respondent/Landlord was guilty of wilful suppression of these vital facts in his Eviction Petition is found correct, and to that extent, the Respondent/Landlord is liable to face the appropriate consequences.

13. In '**A.V.Papayya Sastry & Ors. Vs. Government of A.P. & Ors.**' **2007(2) R.C.R (Civil) 431**, the appeal preferred against the decision of the High Court, which had recalled its earlier Order dated 27.4.2000 by observing that it was a case of fraud, and by suppressing material facts several orders were passed and actions taken. The Supreme Court also dismissed the Appeal against that High Court Order by relying on an earlier decision in '**S.P.Chengalvaraya Naidu (dead) by LRs. V. Jagannath (dead) by LRs. & Ors., 1994(1) RRR 253 : (1994) 1 SCC 1 : JT 1994(6) SC 331**, wherein it was held that -

“This Court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial court upheld the contention and dismissed the

application. The High Court, however, set aside the order of the trial court, observing that "there was no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". B approached this Court.

Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the High Court as 'wholly perverse', Kuldip Singh, J. stated:

"The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loandodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation". (emphasis supplied)

The Court proceeded to state: "A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party".

The Court concluded: "The principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants".

14. In 'Shankar Lal Vs. Madan Lal & others' 2011(1) R.C.R. (Rent) 139, the Revision preferred by the Tenant against the Judgment of his Eviction was allowed by a Coordinate Bench of this Court with the following observations -

"77. On consideration, I find force in the contentions raised by the learned counsel for the petitioner. The reading of the pleadings in the rent petition as well as in the replication clearly

shows, that the ingredients of Section 13(3)(i)(b) & (c) have not been pleaded.

78. Even in the evidence the landlord/respondent did not take steps to prove the pleading, but had to admit the factum of owing other shops in the cross-examination. Thus, there is force in the contention of the learned senior counsel for the petitioner, that this was a deliberate attempt to seek eviction and by non-pleading this ingredient the tenant was specifically prejudiced.

*79. The landlord has further failed to plead and prove the fact, that his son for whose occupation premises were sought was not occupying any other building, and has not vacated such building without sufficient cause, as held by the Hon'ble Supreme Court in the case of **Ajit Singh & Anr. Vs. Jit Ram & Anr.** (supra).*

80. This fact also assumes importance, as evidence was brought on record showing ,that there was shop under the ownership of Sanjeev Kumar also which fact was also concealed by the landlord in the pleading. Not only that the respondent / landlord had failed to prove the mandatory provisions but was also guilty of concealment.

15. In '**Sandeep Kumar Vs. Nihal Chand**' 2014(12) R.C.R. (Civil) 543, similarly, the Revision of the Tenant against his Eviction Order was allowed in view of the fact that Respondent/Landlord had failed to disclose the material facts in his Eviction Petition. The relevant observations of the Court are as follows -

“27. It mandates in law that a party is required to approach the Court with clean hands by making full disclosure of all the facts. The respondent has intentionally not disclosed that he has always been in possession of the said two shops. Therefore, he has not made a bonafide and correct statement in his eviction petition. In the present case, after filing the photographs, there is no explanation by the respondent who has also failed to take any stand before the Court. Learned counsel for the petitioner made

a statement that in case the respondent will deny the possession to these shops, his client be permitted to lead additional evidence. But there was no positive response from the respondent's side.

30. Law mandates that when a party approaches the Court in order to seek relief, it is presumed that the party would always disclose the true facts. No litigant can derive benefit from a Court of law of his own wrongs. No litigant should be encouraged to invoke the jurisdiction of the Court by concealing material fact. If such attempt is made, normally such a party would not be entitled to relief as truth is an integral part of the justice delivery system."

16. On the other hand, contention of the Respondent/Landlord before this Court was that even if he had failed to disclose about all the ingredients required under section 13(3)(a)(i) in the original Eviction Petition, the same could not be fatal to his application in view of the Single Judge's decision of this Court in '**Vishwa Mittar and others Vs. Manohar Lal Makkar**' 2004(2) R.C.R. (Rent) 177, and in any case, this Court in '**Gurbaj Singh Vs. Parshotam Singh and others**' 2011(2) R.C.R. (Rent) 349 had held that if no objection had been raised by the Tenant where the Landlord had failed to plead necessary ingredients of Section 13(3)(a)(i), it was not fatal if the Landlord actually led evidence, which otherwise would satisfy the relevant Statutory requirement.

17. In the opinion of this Court however, the Respondent's reliance on the aforesaid Single Judge's decision of this Court is not well founded. Suffice it to say, the present case is not a merely one of omission to raise certain pleas but that of a conscious suppression/concealment of material facts regarding possession of various other Shop-Room(s) and Godowns by the Landlord while seeking eviction of the Tenant on the ground of his

personal bonafide requirement. If he had simply failed to mention that he was 'not in possession of any other premises' within the meaning of Section 13(3) of the Act and that fact otherwise happened to be true, in that situation, the aforesaid decision could have come to his rescue. But as it turns out here, it was not plain omission in pleading but concealment of certain vital facts wilfully regarding the actual existence of other Shop-Rooms/premises in his possession, which he was bound to disclose before making out a case for bonafide requirement of the demised premises. Consequently, the decision of the Ld. Appellate Authority in favour of Landlord after setting aside the original Order of the Rent Controller in this regard is found to be incorrect, and therefore, liable to be set aside.

18. The other contention regarding the alleged dilapidated condition of the demised Shop as claimed by the Landlord, however, stands on a different footing. It was his averment in the Eviction Petition -

“8. That the shop fully described in the headnote of the application is more than ninety years old and has competely outlived its life and has become alarmingly unfit and unsafe for human habitation. The walls have developed big cracks and the same are out of plumb and the hind portion of the shop has fallen and is in dilapidated and demolished condition and the remaining portion is likely to crumble at any moment.”

19. The Petitioner/Tenant however, controverted the aforesaid averments of the Landlord, and to support his own denial, drew attention of the Court to the fact that as far back as in 1996, which was many years before filing of the present Eviction Petition, the Landlord's father had raised a similar claim about the dilapidated condition of the Suit building in a separate proceeding, which was however, withdrawn lateron, and, in the given facts and circumstances, considering that the demised Shop-

Room still has not collapsed after almost 22/23 years till date, the claim of Landlord regarding its alleged dilapidated condition itself stands falsified. This Court is however, not in agreement with such contention. This is so because there cannot be an automaric presumption that if a certain untoward situation which is apprehended, has not occurred in a long period of 22 years, so there is no chance whatsoever that the same will never come about in the near or distant future times to come as well. Rather than relying upon the speculative presumption that apprehension of the Landlord is unfounded simply because it did not actually happen for a long time, the more appropriate course would be to consider the actual evidence led by the parties regarding the condition of the premises. In this regard, while admittedly the Rent Controller found that the Landlord's claim qua dilapidated and dangerous condition of the premises was not tenable, the view taken by the Appellate Authority was different. Both sides have led extensive evidence on this point not only by way of their depositions, but also through reports of their respective Building Experts qua condition of the demised Shop-Room, which were conflicting with each other. But there is no denial of the fact that the demised premises was actually very old having been constructed during the *Era* of the Nawabs of Malerkotla almost 90 years before the present Eviction Petition was filed, and that admittedly there are numerous cracks in the walls of the demised Shop and its mud plaster had gone very weak and was peeling off the walls, while the wooden roof had already started falling down on account of which, the rain water enters the premises further damaging its foundational structure. So in any case, the fact that the demised Shop is not in a good condition is untenable.

20. Now contention raised on behalf of the Petitioner is that his own Building Expert had determined that the demised Shop is actually not as dilapidated as claimed by the Landlord.

21. However, the relevant vital observations of the Ld. Appellate Authority on this question, as contained in Paras 41 & 42 of the impugned Judgment are set out as follows -

“41. Now coming to the point of unfit and unsafe for human habitation, the petitioner has examined AW-4 Dev Raj Gupta Building Expert, who has tendered into evidence his affidavit Ex.AW4/A. In his detailed report he has clearly mentioned that the building structure of the shop in dispute, comprising of walls, roof, floor etc. has outlived its life and has become unfit and unsafe for the human habitation as well as for doing any kind of business in it. It has reached a stage, where it cannot be made fit for human use by any amount of repairs. It requires re-construction afresh after dismantling the present out dated dilapidated structure. His report is accompanied by photographs Ex.AW4/E to Ex.AW4/AB. In his cross-examination he has stated that Moti Bazar that adjoins Loha Bazar is more than 100 years old. He has denied the suggestion that he has prepared the report only to suit the interest of the petitioner. The cracks which has been mentioned in his report were not through and through. In his report he has submitted that numerous cracks of varying dimension have appeared in the walls of the demised shop. The mud plaster of the walls being under the influence of moisture and dampness has gone very weak and is peeling off the walls. The bricks have lost their original texture. The old wooden roof has already started falling down. The rain water which enters its compartment through the fallen roof is constantly damaging the foundation structure of the demised shops. The wooden beams and wooden planks over them have gone weak with the passage of time. Wild grass had grown over the terrace. A big hole has appeared in this roof, which is clearly shown

in the site plan Girders has totally rusted. Photographs Ex.AW4/E to Ex.AW4/AB, which are 24 in numbers, it is clear that roof has been fallen down. Same is clear from Ex. AW4/E and same is also clear from Ex.AW4/F, Ex.PW4/G and Ex.PW4/H. From the entire photographs shows that shop in dispute is unfit unsafe for human habitation.

42. *RW-1 Mohinder Singh Sohi has tendered into evidence his affidavit Ex.RW1/A. He has also tendered into evidence his report, Ex.R3, in which he has submitted that shop in dispute is safe and fit for office use, store, workshop and fit for human habitation. Though the same requires some minor repairs but in his cross-examination he has stated that shop in dispute is old one and it is constructed at the time of Nawab Sahib. He visited the shop in dispute for the first time on 01.07.2013 but he has never obtained any permission from the Court. At the time of his visit, labour was working therein. He admitted that ground portion of the entire shop is constructed with mud mortar. The roof of the shop are wooden battens.”*

22. Undoubtedly, the parties themselves are presumed to be interested witnesses while deposing as to certain facts, and to an extent even their respective Building Experts are expected to tow their lines to support their relevant clients, but from the detailed observations regarding dilapidated condition of the demised premises as reproduced in Para 41 of the Judgment of Appellate Authority above, in which even the Building Expert from the Tenant's side also admitted that the roof of the demised Shop had fallen and portion of the Room shown in the Photographs Ex.AW4/J was in bad condition and that admittedly, rainy water falls in the premises through the hole created by falling of the Shop, leave no scope of doubt that the actual condition of the demised premises happens to be dilapidated, particularly considering the fact that the Building Expert

examined from the Tenant's side admitted that he had first visited the Suit Shop on 1.7.2013 (during the pendency of the Eviction Petition) without obtaining any permission from the Court. In such circumstances, this Court is inclined to place more reliance on the report of the Building Expert from the Landlord's side, since admittedly, there are cracks in the building which is close to 100 years old by now, its roof has fallen and internal condition of the Room is not good and rainy water enters into the premises through the hole created by the fallen portion of the roof, which undoubtedly further damages the foundational structure of the building, and the mere fact that the building has not totally fallen down for the last 22/23 years is not reason enough to convince this Court that it is otherwise not outlived its life, or that it is not likely to collapse even in future at any time.

23. For the aforesaid reasons, this Court finds only a partial merit in the present Revision. The decision of the Appellate Authority reversing the findings of the Rent Controller is found to be correct qua the dilapidated condition of the demised premises, but untenable for the purpose of granting a Decree of Eviction to the Landlord/Respondent on the alleged ground of his bonafide personal requirement of the same.

24. He nevertheless is found to be entitled to such eviction on the ground that the demised premises is in a very dilapidated condition and unfit/unsafe for human use and occupation without making wholesale renovation of the same after demolishing the existing structures thereupon. Consequently, the Revisionist/Petitioner is held liable to vacate the premises on this ground alone.

25. The impugned Judgment and Decree of Ld. Appellate Authority

while thus being modified, is nevertheless upheld in the final result, whereby the Petitioner/Tenant had been directed to vacate the demised premises. The Revision therefore, fails and he is accordingly directed to vacate the same after three months and latest by 30.4.2019, during which period any Execution Proceedings against him shall remain stayed.

(SUDIP AHLUWALIA)
JUDGE

January 30, 2019
AS

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|--------------------------------|--------|
| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |