

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3295-2017(O&M)

Date of decision:10.02.2020

Kasturi Lal and another

.....Petitioners

Versus

Sudhir Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Ashish Aggarwal, Sr. Advocate with
Mr. Kulwant Singh,
Ms. Malka Aggarwal, Advocates for the petitioners

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Vaibhav Sehgal, Advocate for respondent

ANIL KSHETARPAL, J.

Tenants have filed the present revision petition assailing the correctness of judgment ordering ejectment of the tenants-petitioners from the tenanted premises, affirmed in appeal by the Appellate Authority.

Landlord-respondent filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Act of 1949') praying for an order of ejectment of the tenants from the shop forming a part of the property no. B-IX-1672/6, Saban Bazar Ludhiana. It was pleaded that the landlord requires the premises for his personal use as the premises in his occupation is insufficient. The

landlord is doing wholesale/retail business of Coco Brooms, Phool Jharoo, Pam Broom, Coir Mattresses, Jute Matting, PVC Matting, Woolen Mags, Wirla Matting, Wipers, Bursto, Baan & Rope, Sutli, Bamboo Brooms, Cotton MOP, dustors etc.. It is pleaded that the landlord has already sought eviction of M/s Makhan Mal Vasandha Mal, another tenant in the another portion of the same building and even if landlord is successful in getting possession thereof, still the tenanted premises shall be required for expansion of the business as the space already available with the landlord is not sufficient.

Tenants contested the ejectment petition and claimed that the requirement of landlord is not bona fide.

Both the Courts on appreciation of evidence have concurrently found that requirement of the landlord is bona fide.

This Court has heard learned senior counsels for the parties and with their able assistance has gone through the judgments passed by the Courts below and the record. Learned counsel for the petitioners-tenants has submitted that the shop in question is a separate building and therefore, since the landlord has already got possession of the premises from M/s Makhan Mal Vasandha Mal, therefore, the landlord is not entitled to maintain the present petition. In this regard, he has referred to second proviso to Section 13 (3) of the Act. He further submitted that separate municipal number have been allocated to the tenanted premises and therefore, it is a separate building. While elaborating further he has submitted that the landlord has purchased the property through a separate sale deed.

On the other hand, learned counsel for the respondent-landlord has submitted that the building is one. He drew attention of the Court to the definition of “building” in Section 2 (a) of the Act of 1949. He submitted that the entire building is one building having common roof. He further relied upon a judgment passed by three Judge Bench of the Hon’ble Supreme Court in the case of **'Kailash Chand and another vs. Dharam Dass'** 2005(5) SCC 375 and submitted that second proviso to Section 13 (3) of the Act of 1949 cannot be read in the manner as is being contended by the learned counsel for the petitioners-tenants. He further submitted that the landlord has already occupied the premises which was in possession of M/s Makhan Mal Vasandha Mal, but even thereafter bona fide requirement remains.

No doubt, on casual reading of second proviso to sub section 3 of Section 13 it appears that the present petition is not maintainable. However, the Hon'ble Supreme Court in three Judge Bench judgment in the case of Kailash Chand (supra) has interpreted a parallel pari materia provision under the Himachal Pradesh Urban Rent Control Act, 1987 and it has been held that the proviso cannot be read in a manner as is being suggested by the learned counsel for the petitioner. The Hon'ble Supreme Court held as under:-

“12. We find it difficult to accept the construction placed on the third proviso, in para 14 of the judgment in *Molar Mal case* [(2000) 4 SCC 285] .

In *Rakesh Wadhawan v. Jagdamba Industrial Corpn.* [(2002) 5 SCC 440] this Court has held that a

statute can never be exhaustive. The legislature is incapable of contemplating all possible situations which may arise in future litigation and in myriad circumstances. Scope is always there for the court to interpret the law with pragmatism and consistently with the demands of varying situations. The construction placed by the court on statutory provisions has to be meaningful. The legislative intent has to be found out and effectuated. “Law is part of the social reality.” (See *Law in the Scientific Era* by Justice Markandey Katju, 2000 Edn., p. 33.) “Though law and justice are not synonymous terms, they have a close relationship as pointed out by the American jurist, Rawls. Since one of the aims of the law is to provide order and peace in society, and since order and peace cannot last long if it is based on injustice, it follows that a legal system that cannot meet the demands of justice will not survive long. As Rawls says: ‘Laws and institutions no matter how efficient and well arranged, must be reformed or abolished if they are unjust.’ ” (ibid., p. 72.) Clearly, law cannot be so interpreted as would cause oppression or be unjust.

13. Life is not static and so the law cannot afford to be static. The third proviso cannot be so interpreted as to restrict the right conferred by sub-

section (3)(a)(i) on the landlord to be exercisable only “once in a lifetime”. The proviso has to be read as providing a statutory expression of a situation which would otherwise have been held to be *mala fides* of a requirement. A landlord, having obtained possession of any building to satisfy a requirement, cannot again and again plead the same set of circumstances or similar circumstances for evicting tenants one after the other. That is what the third proviso aims at providing. The proviso cannot be interpreted to mean that in spite of the requirement having undergone a change or a new requirement unrelated to the previous one having come into existence, the landlord would yet be denied relief under sub-section (3)(a)(i) merely because at some point of time in the past he had resorted to this provision for seeking an eviction. Such an interpretation is too rigid an interpretation and would cause such hardship to the landlord as the legislature cannot be said to have intended. The examples are available in decided cases and two such are: *Jagir Singh v. Jagdish Pal Sagar* [(1980) 1 R CR 494 (P&H)] and *Brij Lal Puri v. Muni Tandon* [AIR 1979 P&H 132].

Keeping in view the aforesaid facts, the eviction and subsequent handing over of the possession by the M/s Makhan Mal

Vasandha Mal(another tenant under the landlord) would not debar the landlord to file the present petition. Hence, the present petition is held to be maintainable.

Next argument of the learned senior counsel is with respect to the buildings are separate. He has submitted that since separate municipal numbers have been assigned, therefore, the buildings are separate. While elaborating he has submitted that the landlord had purchased three separate buildings by three separate sale deeds and therefore, the landlord cannot claim that the tenanted premises are a part of the same building.

On the other hand, learned counsel appearing for the respondent while drawing attention of the Court to the lay out plan has submitted that the premises in question are part of the same building having common roof. He further submitted that as per Section 2 (a) of the Act of 1949 any building or part of a building, let out for any purpose is a building and therefore, the building would be one.

On consideration of the matter while carefully examining the lay out plan, it becomes clear that the entire premises is one building. Municipal Corporation has assigned municipal No.1672 to this entire building. No doubt, Municipal Corporation has further assigned numbers to separate portions of the building with numbers from 1672/1 to 1672/6 but the basic number remains 1672. Still further, definition of building as contained in Section 2 (a) of the Act of 1949 includes any building or part of a building. Thus, in other words the term 'building' is comprehensive.

Keeping in view the aforesaid facts, there is no ground to interfere.

Hence, dismissed.

10.02.2020	(ANIL KSHETARPAL)
rekha	JUDGE
Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No