

**In the High Court of Punjab and Haryana, at Chandigarh**

**Civil Revision No. 3930 of 2013 (O&M)**

**Date of Decision: 25.02.2020**

Pawan Kumar

... Petitioner(s)

Versus

Kamal Goel and Others

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Anil Kshetarpal**

Present: Mr. Arun Jain, Senior Advocate  
with Mr. Abhishek Dhull, Advocate  
for the petitioner(s).

Mr. Avnish Mittal and Ms. Aparna Singhal, Advocates  
for the respondents.

**Anil Kshetarpal, J.**

The present revision petition has been filed under Sub Section 6 of Section 15 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as “the 1973 Act”). The petitioner before this Court is a landlord.

The landlord has filed a petition under the 1973 Act for ejectment of the respondents on two grounds – (i) tenants have failed to pay the rent and (ii) the landlord and his family members required the shop in question so that they can start their own business. Para 3 of the ejectment petition, filed before the learned Rent Controller, are extracted hereunder:-

“3. *That the petitioner require the Shop in question for his and his family members personal necessity so that they may able to start business of his own in the Shop in question as the*

*adjoining portion of the petitioner for running a confectionery & Restaurant is not sufficient. The petitioner would rebuild the all available space for running his said business.*

The tenant/respondents contested the eviction petition and pleaded that the requirement of the landlord is not bonafide.

Since the rent was paid, therefore, the ground of non-payment of rent does not survive. Hence, the only ground available to the landlord is with regard to bonafide personal necessity. The learned Rent Controller as well as the Appellate Authority have chosen to reject the claim of the landlord by recording the following reasons:-

- a) It is alleged by the landlord that the adjoining shop is in possession of his wife who is running her business in partnership with Khurshid and Shahid, however, what prevented the petitioner either to examine his wife or the alleged partners or to produce on record the partnership deed.
- b) There are no specific pleadings that the shop adjoining the shop in dispute is in a dilapidated condition and the petitioner, after vacation of the premises in dispute, wants to reconstruct both the shops together.
- c) While the petitioner has failed to examine any neighbour or his sons in the evidence. Even the brother of the landlord has not stepped into the witness box.
- d) As per receipts, the tenancy is in the name of firm M/s Ishwar Kumar Daman Kumar which is a sole

proprietorship firm of Bala Devi, but the firm has not been impleaded as respondent, therefore, the petition is not maintainable.

This Court has heard learned counsel for the parties at length and with their able assistance, gone through the judgements of the Courts below.

Learned senior counsel appearing for the appellant has submitted that there are three different premises. He drew attention of the Court to the layout plan Ex.P1. He submitted that there is a premises towards east which is in possession of the wife of the petitioner, who is running the business of sale of sarees along with her two partners. Thereafter, there are two small premises, one measuring 14'x9' approximately, whereas the premises in possession of the respondent-tenant is 10'x11'. He submitted that the shop measuring 14'x9' approximately was vacated as the building had become unfit and unsafe for human habitation and had fallen down. He submitted that the petitioner has specifically pleaded in his petition that he wants to rebuild the vacant space which was earlier in occupation of another tenant as also the tenanted premises (in this petition) so as to run his business of confectionery & restaurant. He further submitted that in para 3 of the eviction petition, it has been specifically pleaded by the landlord that the petitioner alone would run the business of confectionery and restaurant from the tenanted premises as also the adjoining portion. It was also pleaded that the petitioner would rebuild all the available space for running the said business.

He further submitted that the petitioner had deposed while

appearing in evidence that the premises on the extreme eastern side was in possession of his wife who is running the business of sale of sarees with Khurshid and Shahid. He further submitted that there was no requirement to the petitioner to examine his wife or her partners in evidence. He also submitted that once the landlord himself had appeared in evidence and deposed about his personal necessity, there was no requirement of examining his neighbour, his children, who were school going at that time or his brother. He further submitted that the learned Appellate Authority has erred in recording that in absence of the sole proprietorship firm, the petition is not maintainable.

On the other hand, learned counsel for the respondents has submitted that the petitioner has concealed the material facts from the Court with regard to availability of another premises. He submitted that, therefore, the petition is liable to be dismissed on the ground of concealment. He further submitted, while referring to the statement of Pawan Kumar (petitioner) that Pawan Kumar has also failed to disclose that he is running his business of manufacturing corrugated boxes in House No. 14, near Ram Darbar Mandir, Ambala Cantt. He further submitted that M/s Ishwar Kumar Daman Kumar has not been impleaded as party and, therefore, the eviction petition is not maintainable.

This Court has analysed the arguments of learned counsel for the parties and with their able assistance, gone through the judgements passed by the Courts below and the record.

On critical analysis of the arguments of learned counsel for the parties, this Court has formed an opinion that the present petition is required

to be accepted.

As regards first reason given by the learned Appellate Authority, it will be noticed that the landlord has specifically deposed that the adjoining shop towards east is in possession of his wife who is running the business of sale of sarees in partnership with Mohammad Khurshid. The tenant/respondents failed to produce any evidence that the premises, wherein the business of sale of sarees is being carrying, is in occupation of the landlord. Pawan Kumar, landlord, when appeared, has stated that the partnership deed is not registered, however, his wife has a 75% share, whereas Mohammad Khurshid has remaining 25% share. The business is in the name of M/s Bombay Saree Sale. A suggestion was given to Pawan Kumar that partnership is fake and in fact the business is being run by Mohammad Khurshid and Shahid. Even if this suggestion on behalf of the tenant is accepted, the shop cannot be said to be in possession of the landlord. Hence, the learned Appellate Authority erred in recording a finding that since wife of the petitioner or her partners have not been examined or partnership deed has not been produced, therefore, the landlord is not entitled to the relief.

As regards second reason, the landlord, in para 3 of the petition as extracted above, has pleaded that the petitioner requires the shop in question for personal necessity of himself as his family members want to run the business of confectionery and restaurant after rebuilding the entire premises. The petitioner would build all available space for running his business. Therefore, the landlord has pleaded that he wants to rebuild all available space for running his business which includes the tenanted

premises. Hence, there is no concealment of fact or lack of pleadings as has been recorded by the learned Appellate Authority. No doubt, the pleadings should be specific, however, on careful reading of para 3, it is apparent that the petitioner has disclosed about the adjoining portion which he finds insufficient for running his confectionery and restaurant business and, therefore, wants to rebuild all available space.

The next reason assigned by the learned Appellate Authority that the landlord has failed to examine his children in evidence as also his brother is to be noted and rejected, particularly when Pawan Kumar has appeared in evidence and stated that he has two school going children. The landlord was not expected to examine his brother or neighbour to depose about his personal necessity.

The last reason given by the learned Appellate Authority is also equally erroneous. It is the case of the tenant that firm M/s Ishwar Kumar Daman Kumar has not been impleaded as party. It has been claimed by the tenant that M/s Ishwar Kumar Daman Kumar is a sole proprietorship firm of Smt. Bala Devi, who is respondent No.3 in the present petition. Still further, the sole proprietor is only a business name and not an independent legal entity. It has come on record that previously, Mishri Lal was the tenant and, thereafter, it is the respondents who are running their business.

Learned counsel for the respondents has pointed out that the landlord has also concealed the fact that he is in occupation of other premises and, therefore, his petition is liable to be dismissed. He drew attention of the Court to the statement of Pawan Kumar who has stated that he is running the business of corrugated boxes from House No. 14, near Ram

Darbar Mandir, Ambala Cantt. owned by his brother Shubh Karan.

At this stage, it would be relevant to reproduce the relevant provision i.e. Section 13(3)(a)(i) of the 1973 Act:-

***“13. Eviction of tenants -***

*(1) XXXX XXXX XXXX*

*(2) XXXX XXXX XXXX*

*(3) (a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession-*

*(i) In the case of a residential building if -*

*(a) he requires it for his own occupation;*

*(b) he is not occupying another residential building, in the urban area concerned; and*

*(c) He has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;*

*(d) it was let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment:*

*Provided that where the tenant is workman who has been discharged or dismissed by the landlord from his service or employment in contravention of the provisions of the Industrial Disputes Act, 1947, he shall not be liable to be evicted until the competent authority under that Act confirms the order of discharge or dismissal made against him by the landlord.*

*(i-a) In the case of a residential building, if the landlord is a member of the armed forces of the Union of India and requires it for the occupation of his family and if he produces a certificate of the prescribed authority, referred to in Section 7 of the Indian Soldiers (Litigation) Act, 1925, that he is serving under special conditions within the meaning of Section 3 of that Act.*

*Explanation.- For the purposes of this sub paragraph--*

*(1) The certificate of the prescribed authority shall be conclusive evidence that the landlord is serving under special conditions; and*

*(2) "Family" means such relations of the landlord as ordinarily live with him and are dependent upon him”.*

At this stage, it will be noticed here that the word “residential” was held to be unconstitutional and hence, struck down. Therefore, the word “residential” stands scored off.

As is clear from the reading of the aforesaid provision, the landlord is required to plead three facts – (i) he requires it for his own occupation (ii) he is not occupying any other building in the urban area concerned and (iii) he has not vacated any such building without sufficient cause after the commencement of the 1949 Act in the said urban area. The Act does not require the landlord to disclose all other properties owned or possessed by him. Still further, it has come on record that the petitioner is running his business of corrugated boxes from a residential house, which is

the aforesaid premises is a residential premises and not a non-residential premises. It is a different matter that the landlord is forced to run his business of corrugated boxes from a residential premises. The aforesaid premises is stated to be owned by the brother of the landlord. Hence, the possession of the residential house would not in any way create a doubt on the genuineness of the requirement of the landlord.

It has also come on record that the tenants are already in possession of two shops just opposite to the shop in question. In such a situation, there is no equity in favour of the tenant.

Keeping in view the aforesaid facts, the present revision petition is allowed. The judgements passed by the learned Rent Controller and the learned Appellate Court are set aside. The tenants are granted three months' time to hand over the vacant possession of the tenanted premises to the landlord.

The miscellaneous application(s), if any, shall also stand disposed of.

**(Anil Kshetarpal)**  
**Judge**

**February 25, 2020**  
**"DK"**

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No