

**CR-933-2018 (O&M)
and connected case**

1

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

1. CR-933-2018 (O&M)

Rohtash Kumar and others

....Petitioners

Versus

Amar Kaur (since deceased) through her LRs

.....Respondent

2. CR-2559-2018 (O&M)

Amar Kaur (since deceased) through her LRs

....Petitioner

Versus

Rohtash Kumar and others

.....Respondents

Date of decision:16.08.2021

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Divanshu Jain, Advocate for the petitioners
in CR-933-2018 and
for the respondents in CR-2559-2018

Mr. Vikas Kuthiala, Advocate for the petitioners
in CR-2559-2018 and
for the respondent in CR-933-2018

ANIL KSHETARPAL, J

The hearing of the case was held through video
conferencing on account of restricted functioning of the Courts.

By this order, CR-933-2018 and CR-2559-2018 (filed by
the tenants and the landlady respectively) shall stand disposed of.

The landlady has sought eviction of the tenants on the grounds of non-payment of rent, causing damage to the tenanted premises, the premises remained locked for a period of more than 10 years and also on bona fide requirement of her grand daughters for running business. The petitioner's son (the father of the grand daughters) has already died. The tenants contested the petition. The Rent Controller dismissed the petition on 31.08.2015, however, the Appellate Authority, on re-appreciation of the evidence, has held that although the landlady has failed to prove the grounds of eviction with respect to the non-payment of rent, damage to the tenanted premises due to material alterations and that the tenanted premises remained unoccupied for a period of 10 years, however, found merit in the plea of bona fide requirement of the landlady. Thus, the tenants have assailed the correctness of judgment passed by the Appellate Authority whereas the landlady through her legal representatives has assailed the correctness of the findings arrived at by the Appellate Authority with respect to the failure to prove the other grounds of eviction.

Heard learned counsel for the parties at length and with their able assistance perused the paper book as well as the record of the courts below. Learned counsel representing the tenants contends that the landlady has failed to disclose the necessary ingredients of Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the '1949 Act') and therefore, the judgment passed by the Appellate Authority is not sustainable. While elaborating, he contends that the landlady has failed to disclose her possession of SCF no. 26, Sector 23-

C, Chandigarh. He relies upon a Full Bench Judgment of the Court in '**Banke Ram vs. Smt. Saraswati Devi**' 1977 (1) RCR (Rent) 595. He further contends that since the petitioner failed to disclose the correct facts, therefore, the petition is also liable to be dismissed on the basis of concealment of the facts.

Per contra, learned counsel representing the landlady submits that in the replication, the landlady has disclosed the aforesaid fact, which form a part of the pleadings. He further submits that the petition under Section 13 of 1949 Act was filed on 22.05.2010 whereas the landlady became owner of SCF no. 26, Sector 23-C, Chandigarh, on 05.03.2014, when the Court of Civil Judge, Junior Division, Chandigarh, gave a declaration to that effect. He further contends that the Appellate Authority has erred in refusing the order of eviction on the remaining grounds as well.

It is well settled that the eviction petition, reply/written statement and replication form a part of the pleadings. It is not in dispute that the landlady disclosed about her ownership of SCF no. 26, Sector 23-C, Chandigarh, in the replication. She has further stated that she is in possession of only a small portion in SCF no. 26, Sector 23-C, Chandigarh, which is not suitable for her grand daughters to run their prospective business.

Thus, it is obvious that once in the pleadings the landlady has disclosed the aforesaid fact, it would not be appropriate to dismiss the petition on the ground that the landlady has failed to disclose the necessary ingredients of Section 13. Hence, the judgment passed in

Banke Ram's case (supra) is not applicable in the present case. Still further, it is apparent that the parties were aware of the issue and they had also led their evidence. Both the courts i.e Rent Controller as well as the Appellate Authority have discussed this aspect at length. Hence, it is not appropriate to hold that there was concealment of material facts. Furthermore, it is well settled that the landlady/landlord is the best judge of his/her requirements. In the present case, it has been pleaded that her two grand daughters have completed their studies in the field of computer and they wish to run their business from the tenanted premises. It has further been pleaded that a small portion out of SCF no. 26, Sector 23-C, Chandigarh, which is in the possession of the landlady, is not suitable for the business proposed to be started by the grand daughters.

Keeping in view the aforesaid facts, in the considered view of this Bench, the finding of fact arrived at by the Appellate Authority cannot be said to be perverse. A Five Judges Bench in '**Hindustan Petroleum Corporation Limited vs. Dilbahar Singh**' (2014) 9 SCC 78 has held that the jurisdiction of the High Court while hearing the revision petition is limited and re-appreciation of evidence in the absence of perversity is not permissible.

As regards the revision petition filed by the landlady, it may be noted that the Rent Controller as well as the Appellate Authority have concurrently found that the landlady has failed to make out a case for eviction on the other grounds, except bona fide requirement. Learned counsel representing the landlady, although, made sincere attempts, however, failed to draw the attention of the Court to any substantive

error in the findings on those grounds.

Consequently, both the revision petitions are dismissed.

However, the tenants are granted two months time to hand over the physical vacant possession of the tenanted premises to the landlady.

All the pending miscellaneous applications, if any, are also disposed of.

16.08.2021

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

**(ANIL KSHETARPAL)
JUDGE**