

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

CR-1462-2013

Reserved on: 16.11.2022

Pronounced on: December 23, 2022

Naresh Yadav

..... Petitioner

Versus

Budh Parkash Tayal

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Amit Jain, Senior Advocate with
Ms. Aeshna Jain, Advocate for the petitioner.
Mr. Lokesh Sinhal, Advocate for the respondent.

HARKESH MANUJA, J.

By way of present revision petition, challenge has been made to an order dated 17.09.2012 passed by the Rent Controller as well as the order dated 18.12.2012 passed by Appellate Authority, Faridabad; whereby order passed by Rent Controller was affirmed and the eviction petition filed at the instance of petitioner/ landlord (hereinafter referred to as 'the petitioner') was dismissed.

Facts of the case are that the petitioner claiming himself to be absolute owner of Shop No.3 forming part of property bearing Khewat No. 68/61, Khatoni No. 79 min. Rect. No. 25, Killa No. 19/3 min (0-8) situated within the abadi deh of Village Sarai Khawaja, Tehsil and District Faridabad filed an eviction petition against the respondent/ tenant (hereinafter referred to as 'the respondent'), on the ground of arrears of rent from January 2009 to November 2009 @ Rs.14000/- per month and on account of his bonafide personal necessity for the purpose of setting up a Departmental Store.

In response, respondent appeared and filed his written statement disputing the rate of rent by stating that instead of Rs.14000/- per month the rent was Rs.400/- per month. The plea of bonafide requirement of petitioner was also denied and disputed.

Rent Controller vide its order dated 17.09.2012 dismissed the eviction petition filed at the instance of petitioner, thereby rejecting his plea of bonafide necessity as well as on the ground of non-payment of rent. The Rent Controller also adjudicated upon the rate of rent by assessing it to be Rs.4000/- per month, however, holding that no amount was due against the respondent.

Aggrieved against the aforesaid order of Rent Controller, two separate appeals were filed i.e. Rent Appeal No. 10 of 2012 at the instance of respondent challenging the rate of rent fixed at Rs.4000/- per month; whereas Rent Appeal No. 11/2012 by petitioner, challenging the findings recorded by the Rent Controller on both the grounds i.e. arrears of rent as well as bonafide necessity.

First Appellate Court vide impugned judgment dated 18.12.2012 dismissed both the appeals, thereby affirming the order passed by the Rent Controller while upholding the rent at the rate of Rs.4000/- per month, besides non-suiting the petitioner on the point of his bonafide necessity. It is the aforesaid order dated 18.12.2012 passed by the first Appellate Court in Rent Appeal No. 11 of 2012 which has been impugned by way of present revision petition questioning the findings recorded against the petitioner/ landlord on the point of rate of rent as well as personal necessity.

In the present revision petition, there are two prong discussions, one on the point of assessment of rent and other bonafide necessity of the petitioner.

(I) ASSESSMENT OF RENT:

Learned counsel for petitioner submits that the rate of rent was in fact, Rs.14000/- per month, however, the Courts below after relying upon the House Tax Assessment register of the Municipal Corporation pertaining to the year 2008-2009, went on to assess the same @ Rs.4000/- per month. Learned counsel further submits that in fact from the oral evidence produced by the respondent, the rate of rent was duly proved on record as Rs.14000/- per month.

On the other hand, learned counsel for the respondent submits that the fixation of rent @ Rs.4000/- per month by the Courts below as regards the tenanted premises was even highly excessive and without any basis. He further submits that in fact, the petitioner was paying rent @ Rs.400/- per month only and there was no reason for the Courts below to have determined the rent @ Rs.4000/- per month in the absence of any documentary proof in this regard what to talk of Rs.14,000/- per month.

I have heard learned counsel for the parties and perused the paper-book as well as findings recorded by the Courts below. In the present case, besides the oral assertion based on the pleadings and the deposition made by the witnesses, there was no document produced on record by the petitioner as well as the respondent so as to establish their respective stand regarding the rate of rent to be Rs.14000/- per month & Rs.400/- per month, respectively and as such considering the oral

deposition made by the witnesses and also the entries in the House Tax Assessment register pertaining to the year 2008-2009, the Courts below rightly determined the rent @ Rs.4000/- per month by taking holistic approach.

In the present case even the conduct of the parties in dispute is of some significance as none of them ever impugned assessment of rent @ Rs.4000/- per month made provisionally by the Rent Controller at the initial stage.

(II) BONAFIDE NECESSITY:

So far as the issue of bonafide necessity is concerned, learned counsel for the petitioner submits that the case set up in the eviction petition was that the shop in question including the other shops which were adjacent to it were required for the purpose of running a departmental store and the petitioner was not having any other property to do his business near main market as well as G.T. Road. Learned counsel emphasis upon the pleadings set out in the eviction petition so as to contend that the shop in question, besides the other adjoining shops were the best situated and preferentially located in the main market as well as G.T. Road, for the purpose of running a Departmental Store and thus, were required by the petitioner for his personal necessity. Learned counsel further submits that once the factum of other building of 5 different shops owned by the petitioner was disclosed in the cross-examination by specifically deposing that the tenanted premises was the most appropriate and suitable there being no suggestion put to the landlord to rebut the same, no prejudice was ever caused to the respondent-tenant. In this regard, learned counsel for the petitioner

places reliance upon the judgment in the case of **Suresh Chand Goyal Vs. Kali Charan and another, 2019 (1) R.C.R.(Rent) 391**. Para -5 of the same is reproduced hereunder:

“In the present case also, what has come on the record is that the landlord-respondent No.1 does own other properties but he has explained that they are not suitable for the projected use. The petitioner has not led any positive evidence to show that this explanation is false. He has not shown that actually the premises which are claimed as a chaubara is a shop or that the other premises is not on rent or that the two other sons are not occupying those properties which are attributed to them.”

He also submits that no specific objection regarding maintainability of the eviction petition for want of the necessary ingredients or any substantial concealment on the part of petitioner was ever raised by respondent-tenant in his written statement and as such the same could not be held to be fatal to the case of the petitioner while dismissing his eviction petition. In support, he places reliance upon the case titled as **Mohan Lal Vs. Rakesh Kumar Bhakoo and another, 2006 (2) R.C.R.(Rent) 209**. Para -8 of the same is reproduced hereunder:-

“8. This Court in Kesho Ram v. Jagan (Deceased) represented by his LR Om Parkash and others, 1977 RCR 623, considering the Full Bench decision of this Court in Banke Ram vs Shrimati Sarasvati Devi, 1977 RCR 595 (F.B.), has held that it is necessary for the landlord to plead necessary ingredients but it has been held that if such necessary ingredients are not pleaded, the land is required to be provided with an opportunity to make necessary pleadings. Still further, it has been held that the

tenant should raise an objection in the written statement at the earliest to the effect that the necessary ingredients have not been pleaded.

In this regard, he further places reliance upon the case titled as **Hukam Chand Vs. Saroj Rani 2918(1) PLR 381**. Para -10 of the same is reproduced hereunder:-

“10. The answer to third question, one can skip since the Court has taken the view that if there is no objection in the written statement by the tenant as is clear on reading of pp.19 of the present paper-book read together with the fact that when landlady led her evidence to the effect of ingredients of Section 13(3)(a)(i) then non-pleading of the ingredients would not be fatal to warrant outright dismissal of the ejectment petition.”

Learned counsel for the petitioner also places reliance upon the case of **Om Parkash Vs. Mohinder Sachdeva (since deceased) through LRs, 2019 (2) R.C.R. (Rent) 650**, the relevant portion therefrom is reproduced as under:-

“The argument that the respondent failed to plead or state that he is not occupying any other shop would lose significance since there was no objection taken either in the written statement nor were any issues framed. Moreover, the petitioner was not caught unaware and did put the landlord all relevant questions in this regard. There is substantial evidence on the record to establish that the ingredients of section 13 (3) (a) (i) of the Rent Act have been complied with insofar as evidence has been led and the tenant is not caught unaware.”

On the other hand, learned counsel for the respondent submits that besides non-pleading of the basic ingredients of Section 13(3)(a) (i) of the Act, there has been material concealment on the part

of the petitioner/landlord. The factum of owning five other shops in the same vicinity could only be elicited during the cross-examination of landlord who appeared as witness in support of his eviction petition and even no effort was ever made by him to make disclosure about the other shops in his examination-in-chief. In support, learned counsel for the respondent refers to the case of **Shankar Lal Vs. Madan Lal and others, 2011(1) R.C.R. (Rent) 139**. Paras 77 and 78 therefrom, are reproduced for reference:

- “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.”*

It has been pointed out that the case of **Shankar Lal (supra)** has even been followed by this Court in Para-23 of the case titled **Anil Kumar Sood Vs. Subhash Chander Kapila** passed in **CR No.3293 of 2011 (O&M)**, decided on **19.11.2014** and case titled **Vinod Kumar Vs. Bhushan Kumar Jain and others** passed in **CR No.5159 of 2018 (O&M)** decided on **30.01.2019**.

Learned counsel for the respondent also submits that the omission to take an objection regarding maintainability of eviction petition

for want of necessary ingredients in the written statement would not come to the rescue of the petitioner/landlord as the need to plead the ingredients has been statutory in nature. Learned counsel for the respondent/tenant further submits that in the present case, it has been sufficiently proved and established on record that the petitioner landlord owns other properties of the similar nature in the same vicinity which were not disclosed by him in the eviction petition.

I have heard the learned counsel of the parties and gone through the paper book including records of the case as well as the judgments cited by respective counsel. In the present case, petitioner has been non-suited primarily on the ground that the necessary ingredients of Section 13 (3)(a) (i) of the Act were not pleaded at his instance in the eviction petition and despite owning another property in the same vicinity, the same was never disclosed in the eviction petition thereby, amounting to material concealment.

A perusal of the eviction petition filed at the instance of petitioner shows that a specific and categoric case set up therein was that the shop in question along with other adjoining shops were required by the petitioner for the purpose of running a departmental store as these shops were existing near main market and G.T. Road. Cumulative reading of pleadings as well as the evidence available on record shows that in fact the petitioner choose to seek eviction of the shop in question on account of the same being the most suitable for the purpose of running a Departmental store being adjoining other shops situated in the main market. Thus, the non-disclosure of other property situated in the same area by the petitioner could not have been termed to be a

concealment and specially under the circumstances when the factum of existence of other properties owned by the petitioner was duly disclosed by the respondent even in his own written statement. Once the respondent himself was aware of the factum of existence of other property owned by the petitioner right from the inception of the proceedings, no prejudice could be said to have occurred to the respondent in this regard and as such the non-disclosure about the said property could not have been held to be fatal to the case of petitioner. The submission made on behalf of the respondent to the effect that the factum of existence of other property could only be elicited from the cross-examination of petitioner only, is also not made out from the fact as the existence of other property in the nearby area has even been mentioned by the respondent in his own written statement.

Still further, I find substance in the submissions made on behalf of the petitioner that no specific or catgoric objection regarding the maintainability of the eviction petition for want of necessary ingredients or substantial concealment on the part of petitioner was ever raised by the respondent in his written statement. In the absence of their being any specific objection having been taken in this regard, in the eviction petition, the same could not have been dismissed, as to my mind, in the facts and circumstances of the present case, from the perusal of eviction petition itself it could easily be made out that the case projected therein was to the effect that the shop in question along with adjoining shops was the most suitable for the purpose of running a Departmental Store by the petitioner.

More than that, the, first Appellate Court even failed to appreciate that the petitioner while appearing as a witness specifically deposed that the shop in question, besides other three shops were required for him for the purpose of running departmental store and he was not having any other property to run his business near the “main market and near G.T. Road as well, and nearby his residential house”.

This fact of shop in question being near to his residential house was also reiterated in the cross-examination as well. From a cumulative reading of the complete statement of petitioner as well as that of the respondent, one could easily trace out that the shop in question, besides the other adjoining shops were required for the purpose of running a Departmental store being the most suitable as it was situated in the main market near G.T. Road as well as adjoining to the house of the petitioner. The factum of situation/ location of the shop in question existing near the residential house of the petitioner was not even disputed or denied by the respondent either in his statement; nor even any such suggestion to rebut this fact was ever put to the petitioner.

Thus, in view of the findings recorded hereinabove, the petitioner was even able to establish his bonafide necessity of setting up of the Departmental store in the shop in question along with other shops by making it as one unit, the same being situated in the main market near G.T. Road and especially near the residence of the petitioner.

As such even if other shops were available with the landlord, it was for the landlord to choose the demised premise for his bonafide need depending upon the strategic location or convenience, he being the best judge of his need and requirement.

Therefore, in my considered opinion the petitioner/ landlord successfully proved that he required the demised shop for his personal use and occupation and there are sufficient grounds to interfere with the judgment dated 18.12.2012 passed by the Appellate Authority, the same is, therefore, set aside. In any case, the safeguard of section 13(6) of the Act is always available to the respondent-tenant and if landlord acts in violation of Section 13(6), respondent-tenant can approach the controller for appropriate remedy.

In view of the discussion made hereinabove, the revision petition is allowed and the respondent is directed to vacate the demised shop, the same being required by the petitioner on account of his personal necessity.

December 23, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>