

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4958-2011 (O&M)
Date of decision: 25.07.2022

SATPAL SINGH

..Petitioner

Versus

LAL CHAND AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.K. Chopra, Sr. Advocate
with Mr. Vidul Kapoor, Advocate
for the petitioner.

Mr. Keshav Pratap Singh, Advocate
for respondent No.1.

ANIL KSHETARPAL, J.

The petitioner herein is a tenant who has been ordered to be evicted by the Rent Controller as well as the Appellate Authority on the ground of bonafide personal necessity of the landlord. The premises in dispute is a shop located at Kothi Road, Nawanshahr, Punjab.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook as well as the record.

The learned senior counsel representing the petitioner contends that the petition is liable to be dismissed as the landlord has failed to plead the necessary ingredients under Section 13(3)(a) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act') in the eviction petition. While relying upon a judgment passed by a Full Bench of this Court in **Banke Ram Vs. Shrimati Sarasvati Devi 1977(1) RCR (Rent)**

595, he contends that the landlord has mischievously added the word

“suitable” in order to defeat the very purpose of the requirements. He further

contends that in the absence of pleadings, the evidence cannot be

considered, therefore the judgments passed by the Courts below are perverse. While referring to the deposition of Sh. Ashwani Kumar (cousin of the landlord), who has been examined by the tenant as RW-2, the learned counsel submits that one shop of the landlord is lying vacant and the landlord can occupy the same.

On the other hand, the landlord, while drawing the attention of the Court to para 5(iii) of the eviction petition, contends that the necessary averments were specifically made in the eviction petition. He submits that the deposition of Sh. Ashwani Kumar has been disbelieved by the Courts below and in the absence of corroborative evidence, the same cannot be relied upon.

For better appreciation of the arguments, it is necessary to reproduce the essential requirements under the Act:-

“13(1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section or in the pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.

*(2) * * **

** * * **

(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 building, if,-

(a) he requires it for his own occupation

(b) he is not occupying another 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”.

Note: Section 13(3)(a) in clause (i) and (b), the word residential has been declared unconstitutional in **Harbilas Rai Bansal Vs. The State of Punjab and Anr., 1996(1) SCC 1.**

It is evident that the landlord can apply to the Rent Controller for an order of eviction of tenant, if the landlord requires it for his own occupation and he is not occupying another building in the urban area concerned and has not vacated any such building without sufficient cause, after the commencement of the Act, in the said area. It may be noted here that there is no provision for employing a particular statutory language while filing the petition. The landlord, while filing the petition, has asserted as under:-

“That the Petitioner required the premises in dispute for his personal and bonafide needs. The Petitioner is unemployed and is not doing any business in these days nor is in possession of any other suitable Shop, nor available to the Petitioner. The Petitioner is not in occupation any other premises suitable and has also not vacated the same after the passing of the E.P.U.R.R. Act. Earlier the rent was increased as the Petitioner was residing out of India i.e. in Gulf Country and for the said reason the rent was increased now the Petitioner has no intention to increase the rent at all.”

It is evident that the learned Senior counsel contends that the word “suitable” added by the landlord is fatal to the landlord's case, therefore, the pleadings are defective.

This Court has carefully read the judgments passed in **Banke Ram's case (supra)**. In para 7 of the judgment, the Full Bench held that it is essential for a party to plead the necessary facts/ingredients, on which he wants to rely and in proof of which he may produce evidence. In para 12 of the RCR report, the Full Bench itself held that if the landlord has led evidence with regard to the ingredients, in any given case, the Court shall examine whether the tenant was taken by surprise or not. The Court held that it should not be understood that under no circumstances, in the absence of pleadings, the evidence regarding ingredients required in sub-clause (b) and (c) can be looked into by the Court. Para 12 of the judgment is extracted

as under:-

“12. In the present case, we are concerned only with the question as a principle of law as to whether it is essential to plead in an eviction application the ingredients of Sub-clauses (b) and (c) and not the question that if in a particular case these ingredients are not pleaded, but the parties have led evidence with regard to them, what will be the effect? In any given case, where facts have not been averred in the pleading, a number of questions can arise as to whether proper evidence has been adduced by the landlord regarding those facts which do not find place in the pleadings and secondly whether such evidence will be admissible or not and lastly, whether the tenant was taken by surprise or not and had led evidence with full knowledge of the requisite contentions raised by the landlord and whether the tenant has in those circumstances been prejudiced or not. The Court would be required to give full consideration to the contentions raised by the respective parties and the facts and circumstances of each case before giving its decision in favour of the landlord or the tenant, tout the decisions of the High Courts or the Supreme Court, in this regard, cannot be of any avail to detract from the validity of the proposition that it is necessary for the landlord to make averments regarding the ingredients of Sub-clauses (b) and (c). However, it may be made clear that when it is held that it is essential to plead the ingredients of Sub-clauses (b) and (c) in the eviction application by the landlord, it should not be understood that under no circumstances, in the absence of pleadings, the evidence regarding the ingredients envisaged in Sub-clauses, (b) and (c) can be looked into. This is not peculiar to the eviction applications. Similar considerations come into operation even in the case of suits which are governed by the specific and detailed provisions of the Code of Civil Procedure regarding pleadings.”

The Full Bench itself has given reply to the arguments of the learned Senior counsel. Furthermore, the attention of the Court has not been drawn to any format which requires that while filing the eviction petition the landlord must employ a particular form of language in the pleadings as required under sub-clauses (b) and (c). The Court is required to examine the substance of the language employed. Hence, this court is of the view that once there is substantive compliance, the eviction petition cannot be

It has come in evidence that the landlord is owner of as many as four shops located at Kothi Road, Nawanshahr, Punjab. He has explained that out of the four shops, one is in possession of the petitioner herein-tenant, whereas, remaining three are in possession of Sh. Roshan Lal, Sodhi Watch Company and Sh. Manohar Lal, respectively. The learned counsel representing the tenant has thoroughly grilled the landlord while cross-examining him, however, failed to impeach his credibility. The learned counsel representing the tenant failed to extract any information from the landlord which may prove that the case put forth by the landlord is not correct.

With the greatest respect, in such circumstances, this Court is of the view that the landlord has already included the necessary pleadings and the word “suitable” is not fatal to the result of the case of the landlord.

As regards the second argument, it may be noted that RW-2 Sh. Ashwani Kumar is examined by the tenant, though he is the cousin of the landlord. He claims that in the layout plan Ex.A-3, shop at Sr. No.2 is lying vacant but goods of Sh. Manohar Lal have been stored therein. From a careful reading of the deposition, it is evident that Sh. Manohar Lal uses the shop for storing the utensils. The landlord himself admits that Sh. Manohar Lal is tenant in possession of one shop. Thus, it is not appropriate to hold that the shop in possession of Sh. Manohar Lal is lying vacant and is available to the landlord.

The scope of interference in revision petition filed under Section 15 of the East Punjab Urban Rent Restriction Act, 1949, is limited in view of the judgment passed by the Five Judge Bench of the Supreme Court in *Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh,*

The learned Senior counsel has failed to draw the attention of the Court to any perversity or material irregularity which goes to the root of the case.

Consequently, finding no merit, the revision petition is dismissed.

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

25th July, 2022

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No