

CR-6665-2016 (O&M)
and connected cases **1**

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

1.CR-6665-2016 (O&M)

M/s Vishal Sarees and Dresses and another
.....Petitioners

Versus

Maninder Kaur and others
..Respondents

2.CR-3898-2013 (O&M)

Sulekh Chand
.....Petitioner

Versus

Maninder Kaur and others
..Respondents

3.CR-6473-2013 (O&M)

K.M.Tailor-I
.....Petitioner

Versus

Maninder Kaur and others
..Respondents

4.CR-5109-2014 (O&M)

G.S.Tailors
.....Petitioner

Versus

Maninder Kaur and others
..Respondents

5.CR-7411-2015 (O&M)

Midha Button Centre and others
.....Petitioners

Versus

CR-6665-2016 (O&M)
and connected cases 2

Maninder Kaur and others
..Respondents

6.CR-628-2017 (O&M)

Suresh Kumar
....Petitioner

Versus

Maninder Kaur and others
..Respondents

7.CR-5550-2014 (O&M)

K.M.Tailors
....Petitioner

Versus

Maninder Kaur and others
..Respondents

8.CR-1317-2019 (O&M)

M/s Vishal Sarees and Dresses and another
....Petitioners

Versus

Maninder Kaur and others
..Respondents

9.CR-771-2017 (O&M)

Tek Chand and another
....Petitioners

Versus

Maninder Kaur and others
..Respondents

10.CR-6634-2018 (O&M)

M/s Star Textiles
....Petitioner

**CR-6665-2016 (O&M)
and connected cases**

3

Versus

Maninder Kaur and others

..Respondents

11.CR-2185-2020 (O&M)

Titu @ Titu Master and another

....Petitioners

Versus

Maninder Kaur and others

..Respondents

Date of decision:17.08.2022

Reserved on: 01.08.2022

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gaurav Chopra, Sr. Advocate with
Mr. Anurag Chopra, Advocate
Mr. Divanshu Jain, Advocate
for the petitioners (in CR - 6665-2016)

Mr. Divanshu Jain, Advocate for the petitioners
(in CR - 3898-2013 CR - 6473-2013, CR - 5109-2014, CR
- 7411-2015 CR - 5550-2014, CR - 1317-2019, CR – 771-
2017, CR - 6634-2018 & CR - 2185-2020)

Mr. Prateek Gupta, Advocate &
Mr. Prashant Puri, Advocate for petitioner
(in CR - 628-2017)

Mr. Kanwaljit Singh, Sr. Advocate
with Mr. Ajaivir Singh, Advocate
for respondents (in CR - 6665-2016, CR - 3898-2013 CR -
6473-2013, CR - 5109-2014, CR - 7411-2015 CR – 628-
2017, CR - 5550-2014, CR - 1317-2019 & CR – 771-
2017).

Ms. Jasdeep Kaur, Advocate for respondents (in CR -
2185-2020 and CR - 6634-2018)

ANIL KSHETARPAL, J

1. This order shall dispose of 11 civil revision petitions filed
by the tenants of same landlords. Learned counsel representing the

parties are ad idem that these petitions can be disposed of by a common judgment.

2. The petitioners in the various petitions have been ordered to be evicted by the Rent Controller as well as the appellate authority. Their eviction has been ordered on the ground that the landlords require the premises for their bonafide requirement.

3. Heard the learned senior counsel representing the respective parties and with their able assistance perused the judgments as well as the record of the courts below.

4. Learned senior counsel representing the petitioners has referred to the facts from CR-6665-2016.

5. There are as many as 12 co-owners of showroom no.55-56, Sector 17-C, Chandigarh. The petitioners (tenants) are in possession of the different portions thereof. The landlords sought eviction on the ground that in the entire building, now they wish to start a joint venture under the name and style of M/s Malwa Stores and Services in the entire building. For that purpose, they have prepared a project report and arranged funds.

6. While filing the petition, the landlords in para 13 asserted as under:-

“13. That there is no other commercial property owned jointly and occupied by the petitioners in the Urban Area of Chandigarh or any other place in India except the demised premise which is more suitable for the proposed project.”

7. The tenants contested the petition claiming that the

requirement of the landlords is not bonafide as they have been giving on rent various portions of the premises at various points in time.

8. The landlords had also filed replication. On appreciation of the pleadings, the Rent Controller had framed the following issues for adjudication:-

“1. Whether the demised premises are required by the petitioners for their own bonafide use and occupation, if so, its effect?

2. Whether the petitioner Amarbir Sidhu is competent to file the petition on behalf of other petitioners no.1 to 11? OPR

3. Relief.”

9. Sh.Amarbir Sidhu, respondent no.2, who is also the attorney of petitioner no.1 to 11, appeared in evidence as PW1 and produced documents Ex.P1 to P13. On the other hand, on behalf of the tenants Sh.B.R.Bansal, appeared in evidence and produced various documents. As already noticed, both the authorities have ordered the eviction of the petitioners.

10. During the pendency of the first appeal, an application for permission to lead the additional evidence was allowed and the tenants were given an opportunity to lead further evidence as the tenants asserted that the landlords have during the pendency of the petitions leased out certain portion of the property. The appellate authority, after considering the additional evidence, dismissed the said appeals.

11. The learned counsel representing the petitioners (tenants) submits that the landlords have failed to plead the necessary ingredients which are a cause of fatality to their case. While relying upon the

judgment passed by the Full Bench in **Banke Ram vs. Smt. Saraswati Devi, 1977 (1) RCR (Rent) 595**, the learned counsel contends that in the absence of the pleadings regarding the necessary ingredients, the petition is liable to be dismissed. He further submits that the project report has not been proved and the various landlords are residing in the various parts of the world. He, hence, submits that the requirement of the landlords for needing the premises is not bonafide. In the end, he submitted that one portion of the building fell vacant during the pendency of the petition in which the landlords opened a showroom named “Blacks”. He submits that the landlords do not require the premises.

12. Per contra, the learned senior counsel representing the landlords submitted that they should not be non-suited on the ground of lack of necessary pleadings, particularly, when the tenants never objected to the maintainability of the petition while filing the reply and the tenants failed to prove any prejudice caused to them. He further submitted that Sh.Amarbir Sidhu has appeared in evidence and has been cross examined at length by the learned counsel representing the tenant. He submits that despite the lengthy cross examination, the learned counsel has failed to impeach the credibility of the witness. He further submits that since the finalization of the various eviction petition was taking a lot of time, therefore, the respondent has started business at a small scale under the name of “Blacks” which clearly proves that the requirement of the landlords for the premises is bonafide. He further contends that certain portion of the building was rented only upto the

year 2005 and not thereafter. He submits that the landlords have already arranged funds for opening the store in the entire building.

13. It may be noted here that while interpreting the provisions of Section 13 (3) (a) (i), (b) and (c) of the East Punjab Urban Rent Restriction Act, 1949, a full Bench of this Court in **Banke Ram (supra)**, has held that it is a requisite to incorporate the necessary pleadings in order to give an opportunity to the tenant to defend the petition. However, in para 12 of the judgment, the Full Bench has observed 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) & (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, but the decisions of the High Courts or the Supreme Court, in this regard, can not 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.”

14. Before proceeding further, it is important to take note of the language of the statute which is extracted as under:-

“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) xxxx

(ii) In the case of rented land, if - (a) he requires it for his own use; (b) he is not occupying in the urban area concerned for the purpose of his business any other such rented land, and (c) he has not vacated such rented land without sufficient cause after the commencement of this Act, in the urban area concerned.”

15. In the present case, the landlords have already fulfilled the necessary requirement under clause (b) of Section 13 (3)(a)(ii). However, there is failure on the part of the landlords to make averments with regard to clause (c), which has been extracted above. In that context, the matter is required to be examined carefully.

16. It may be noted here that the landlords filed the petitions

under the East Punjab Urban Rent Restriction Act, 1949 on the ground of personal necessity in the year 1997, however, due to the interpretation of law, the landlords withdrew the same and after serving notice terminating the tenancy they filed a suit for recovery of the possession. However, subsequently, the rent petition was held to be maintainable. Hence, these petitions were filed against all the tenants in 2009.

17. When Sh.Amarbir Sidhu appeared in evidence, his attention was never drawn to the lack of necessary pleadings or his explanation on the aforesaid fact was never sought by the tenants. The tenants, while filing the written statement did not object to the maintainability of the petitions on the ground of lack of pleadings of necessary ingredients. Sh. Amarbir Sidhu has been cross examined on various dates of hearings including 03.04.2013, 01.05.2013, 02.05.2013 and his cross examination runs into approximately 20 pages of the court record. The facts with regard to each of the co-owner have been asked which has been satisfactorily replied by petitioner no.12. However, still no suggestion was given to him about the lack of pleading regarding the necessary ingredients. In fact, if one reads the cross-examination of Sh. Amarbir Sidhu, it is evident that he has stated that previously he was serving in the Education field in Himachal Pradesh and presently, he is serving as a Principal of Saupins School. From the careful reading of the cross examination, it is evident that there is no attempt on the part of the landlords to conceal any material facts. When the tenant appeared in evidence, he never asserted that any of the landlords ever occupied another commercial building in the urban area concerned.

18. In that context, the matter is required to be examined. For the first time, the tenant objected to the maintainability of the petition on the ground of lack of necessary pleadings of the ingredients at the time of final arguments before the Rent Controller. In such circumstances, the tenant will be deemed to have acquiesced or abandoned his objection, particularly when neither in the written statement nor in the evidence, this fact was ever pointed out. As per the settled principles of law here in India, it is crystal clear that the pleadings are laconic and the pleadings alone should not be literally examined to non-suit a party, particularly, when no prejudice is caused. It is also well settled that ambiguity in the pleadings regarding the necessary ingredients set out in Section 13 (3) (a) of the Act, if made good in the evidence is the sufficient compliance of the statutory requirement. Reliance in this regard can be placed on **Bhatia Cloth House vs. Dr. Raj Kumar Gupta 2008 (4) RCR (Civil) 250, Dr.S.S.Mann vs. A.K.Sharma 2013 (4) RCR (Civil) 1054 and Daulat Ram vs. Hari Ram 1980 (2) RCR (Rent) 108.**

19. This matter can be examined from an another aspect. In **Madan Gopal vs. Mam Raj AIR 1976 SC 461**, the Supreme Court after analysing that the pleadings in the District Court are laconic observed that the Court should not scrutinize the pleadings so meticulously in order to non-suit the parties in dispute. At the most, it is a technical omission, for which the landlord cannot be thrown out, particularly when the technicalities are the handmaid of justice and they should not be a hindrance in imparting the justice.

20. Hence, there is no substance in the first argument of the learned counsel.

21. The next argument is with regard to the failure to prove the project that was prepared by the landlords. Once Sh. Amarbir Sidhu has appeared in evidence and has proved their case for bonafide requirement, failure to prove the project report will not have any adverse impact on the merits of the case.

22. The last argument of the learned counsel is with regard to one portion of the building having fallen vacant, which according to the tenant has been leased out by the landlords. On the other hand, the appellate authority on appreciation of evidence, has found that the aforesaid business has been opened by the landlords themselves while filing reply to the application for permission to lead additional evidence, the landlord explained that the aforesaid portion of the premises has been used for the time being in order to utilize the same. At the cost of repetition, the first petition was filed by the landlords around 25 years ago and the eviction proceedings were started 13 years ago. Hence, it is futile to expect from the landlord to keep the premises vacant to wait for the order of eviction without utilizing the space which has become available during the pendency of the petitions.

23. It may be noted here that the scope of revision petition is thoroughly defined by the Five Judge Bench of the Supreme Court in **Hindustan Petroleum Corporation Limited vs. Dilbahar Singh (2014) 9 SCC 78** wherein it has been held that the High Court has no power to re-appreciate the evidence but its consideration of evidence is

confined to find out illegality, irregularity and propriety of the order. The Court went on to hold that in the absence of any material irregularity, procedural propriety or perversity which goes to the root of the matter, the High Court while exercising the revisional jurisdiction should not interfere into the decisions made.

24. Consequently, finding no merit, all the revision petitions are ordered to be dismissed.

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

17.08.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

**(ANIL KSHETARPAL)
JUDGE**