

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2166 of 2021(O&M)

Reserved on 27.09.2022

Pronounced on: October 27, 2022

Sukhbir

.....Petitioner

VERSUS

Mangat Rai Kawatra

.....Respondent

CORAM: HON'BLE MR JUSTICE HARKESH MANUJA

Present:- Mr. Akshay Jindal, Advocate, for the petitioner.

Mr. Manoj Taya, Advocate, and
Mr. Rajesh Malik, Advocate,
for the respondent.

HARKESH MANUJA, J.

The present revision petition has been filed at the instance of the petitioner-tenant challenging the eviction order dated 03.02.2018 passed against him by the learned Rent Controller and affirmed by the appellate Authority vide its judgment dated 10.08.2021.

Brief facts leading to the present revision petition are that the respondent-landlord filed an eviction petition against petitioner-tenant qua tenanted premises comprised of two shops measuring 20 X 20 ft., forming part of property No.17-A, Narain Singh Park, Panipat. Eviction was sought on the ground of arrears of rent; *bona fide* necessity of the respondent as well as structural alterations having been made by the petitioner-tenant resulting into weakening of the tenanted premises. In response, the petitioner-tenant filed his written statement admitting the factum of tenancy besides tendering the arrears of rent before the

fide necessity of the respondent-landlord and also challenged the averment of having made any structural alterations in the tenanted premises.

The respondent-landlord filed a rejoinder to the written statement of the petitioner-tenant. The learned Rent Controller vide its order dated 03.02.2018, allowed the eviction petition holding that the tenanted premises was required by the respondent-landlord for his own *bona fide* need, though, the plea raised by landlord qua tenant having impaired the value of tenanted premises did not find favour with the Rent Controller. Aggrieved against the eviction order dated 03.02.2018 the petitioner filed first appeal. However, the Appellate Authority vide its impugned judgment dated 10.08.2021, dismissed the same thereby confirming the eviction order passed against the petitioner on the ground of *bona fide* need of the respondent-landlord.

Challenging the eviction orders passed by the authorities below, learned counsel for the petitioner vehemently contends that the respondent-landlord has failed to plead the basic necessary ingredients of Section 13(3)(a)(i) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as "the Act") in his eviction petition. He further submits that there has been concealment on the part of the respondent as regards he having been in occupation of one shop besides one another shop in occupation of other tenant, namely, Deepak. Learned counsel for the petitioner further contends that even no particulars have been mentioned by the respondent-landlord in the entire petition giving details as regards his requirement and as such, no case was made out in his favour on this point. For the said purpose, he

has specifically referred to para 4(b) of the eviction petition, besides the statement made by the respondent-landlord while appearing as PW-1.

In support of his submissions, learned counsel for the petitioner also made reference of case titled as ***Shankar Lal Vs. Madan Lal and others 2011 (1) RCR (Rent) 139***, so as to contend that neither the respondent-landlord pleaded the ingredients of Section 13(3)(a)(i) of 1973 Act, in his rent petition nor even did he take any steps to prove the same in his evidence while appearing as PW-1 and it was only in his cross-examination, he was forced to admit the factum of owning the other shops forming part of property No.17-A falling in Khasra No.1308 Min Patti Insar, Narain Singh Park, Panipat, situated within the Municipal limits of Panipat. Paragraph No.77 and 78 of the aforesaid judgment as relied upon by the petitioner are reproduced as under:-

“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.”

He further submits that the aforesaid act of non-pleading the

ingredients as well as concealment has seriously prejudiced the rights of the petitioner-tenant. In order to support his contention as regards the

bona fide need of respondent-landlord to be not genuine and being mere his wish, learned counsel refers to the law laid down by the Hon'ble Supreme Court in case of **Deena Nath v. Pooran Lal, AIR 2001 SC 2655**. Relevant portion of para-15 of the said judgment, as relied upon by learned counsel for the petitioner is reproduced for reference:

“The Legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bonafide which is intended to avoid the mere whim or desire. The 'bonafide requirement' must be in praesenti and must be manifested in actual need which would evidence the Court that it is not a mere fanciful or whimsical desire. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation.”

Learned counsel for the petitioner also places reliance upon a Division Bench judgment passed by this Court in case titled as **Raman Mal Vs. Faqir Chand and others 1984(1) RCR (Rent) 275**, to contend that at best, the matter in hand is required to be remanded back with liberty to the respondent-landlord to amend his eviction petition so

as to incorporate the ingredients mentioned in Section 13(3) (a)(i) of the

Act and for conducting fresh trial thereafter.

On the other hand, learned counsel appearing for respondent/ landlord submits that though the ingredients of Section 13(3)(a)(i) of the Act have not been very categorically incorporated in the eviction petition, however, he submits that on a conjoin reading of the eviction petition, the rejoinder as well as the previous eviction petition filed by him against the petitioner which has been produced on record as Ex. R-1, all the necessary particulars/ ingredients required to be pleaded and proved as enjoined under Section 13(2)(a)(i) of the Act are already part of records and thus, there was no prejudice caused to the petitioner on this count. On account of objection regarding non-pleading of the necessary ingredients, he also refers to the case titled as ***Raj Kumar vs. Budha Mal, 2011 (2) RCR (Rent) 60***, so as to contend that even in the absence of specific pleadings regarding ingredients of Section 13(3)(a)(i) of the Act, the evidence regarding the same can be considered so as to make up for the pleadings. Para -7 of the aforesaid judgement as relied upon by learned counsel for the respondent is reproduced hereunder for reference:-

“Having perused the judgement in Banke Ram’s case (supra), this Court is of the opinion that of course ingredients of sub-section (b) and (c) of Section 13(3)(a)(i) of the 1949 Act are to be necessarily pleaded in the eviction petition, however, as held by the Full Bench in paragraph 12 of the judgement, this Court is of the opinion that it should not be understood that under no circumstances, in the absence of pleadings, the evidence regarding the ingredients envisaged under sub-section (b) and (c) can be looked into. Hence, in the opinion of this

Court, if parties were fully aware about the ingredients of sub-section (b) and (c) at the time of leading evidence and both the parties have led evidence on these issues, then petition cannot be thrown out merely because the landlord has failed to plead ingredients of sub-section (b) and (c) in the eviction petition.”

As regards non-pleading of all material particulars of his requirement by the landlord at the first instance in the eviction petition, learned counsel for respondent submits that the same cannot be made a ground for its rejection once the same are made out from the pleadings as well as the evidence available on record. In support, he refers to case titled as ***Molar Mal(Dead) through LRs. Vs. M/s. Kay Iron Works (P) Ltd., AIR 2000 SC 1261***. Relevant portion from para-7 is reproduced hereunder for reference:-

“We are not inclined to accept the first two points raised on behalf of the appellant before us. It is true in the original eviction petition all the material particulars of the requirement of the landlord were not mentioned in detail, but then in the rejoinder application all the necessary particulars are given by the landlord, notice of which the appellant had and the original authority had struck a proper issue on this question and parties understood each others case and led evidence on this issue, though Rule 4 of the Rules does require the landlord to give material particulars, this Court has held with reference to the same rule in the case of M/s. Rubber House vs. M/s. Excelsior Needle Industries Pvt. Ltd. (1989 2 SCC 413) that the said rule is not mandatory and is only directory. Therefore, the fact that the landlord did not give all the material particulars of his requirement in the first instance

cannot be made a ground for rejection of the application....”

In addition, placing reliance upon the case of ***Hukam Chand Vs. Saroj Rani 2018(1) PLR 381***, learned counsel for the respondent further submits that once no such objection regarding non-pleading of basic ingredients was taken by the petitioner-tenant in his written statement, no such plea/argument could be taken by him at later stage of the proceedings. He also submits that as the factum of one shop owned by respondent-landlord under the tenancy of one Deepak was duly specified in the previous eviction petition which forms part of the record as Ex.R-1, there was no concealment of fact on his part and at best it could be taken to be an act of *bond fide* omission. Para -10 of the aforesaid judgement is reproduced hereunder for reference:-

“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.”

I have heard learned counsel for the parties and gone through the records as well as case law cited by them. In the facts and circumstances of the present case, I do not find any merit in the contentions raised on behalf of the petitioner. The entire dispute revolves around the non-pleading of basic ingredients of Section 13(3)

Section 13(3)(a)(i) of the Act is reproduced hereinafter for reference:-

“13:- Eviction of tenants:-

(1) & (2) xxx xxx xxx

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

(a) *in the case of a residential building, if, -*

(i) *he requires it for his own occupation, is not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area,”*

A perusal of the provisions reproduced hereinabove shows that in order to seek eviction of tenant, the landlord has to prove that; he requires the tenanted premise for his own occupation; he is not occupying another building in the urban area concerned; and he has not vacated such building without sufficient cause after the commencement of 1949 Act in the said urban area.

In the present facts and circumstances, from a careful and cumulative reading of eviction petition, rejoinder and the previous eviction petition filed at the instance respondent-landlord, it can clearly be traced out that a complete disclosure is there on record about one shop being in occupation of respondent-landlord besides one another adjoining shop in occupation of one Deepak as tenant, thus making out all the necessary ingredients as required under Section 13(3)(a)(i) of the Act.

Relevant portion from eviction petition, rejoinder and the previous eviction petition filed at the instance of the respondent-landlord

reference:-

“Eviction Petition

- (b) *That the shops in question is a commercial building and the petitioner is in the dire need of the same for his personal necessity for expansion of his business as the petitioner has not sufficient space or accommodation for his own business.”*

“Rejoinder:

7. *That para No.7 of the preliminary objection is wrong and hence denied. The petitioner is sitting with his son in his property No.17-A, as the petitioner has no alternate. Now the petitioner wants to do separate shop from the petitioner and also wants to expend his business. The petitioner is in the dire need of the demised shop to expend his business.”*

“Ex.R1(previous eviction petition)

“Patti Insar, Narain Singh Park, Panipat, marked by letters ABCD shown rend in the site plan attached and is bounded as under:-

North: Shop of petitioner under tenancy of Deepak Chawla (Mobile shop).

South: Road.

East: Road.

West: Residential house of Mohan Chhabra.

situated within municipal limit of Panipat.”

Therefore, from the pleadings as well as documents available on record, it can be easily made out that the factum of one shop in occupation of respondent-landlord besides one another shop in occupation of Deepak as tenant has been established on record and thus, the plea raised by the petitioner as regards the non-pleading of necessary ingredients as well as the concealment of facts cannot be held to be fatal to the case of landlord.

Still further, it is now more than settled that even if basic necessary ingredients under the Rent Act have not been pleaded at the first instance in the eviction petition, once those have been pleaded in rejoinder besides, having been proved on record in the evidence, landlord cannot be non-suited merely for want of necessary pleadings as regards ingredients. For this I find support from the observations made by this court in the case of **Raj Kumar vs. Budha Mal 2010 (4) PLR 773**, wherein after having discussed the Full Bench judgement of this Court in **Banke Ram v. Smt. Sarasti Devi, reported on 1977 All India Rent Control Journal 332**, it has been held that though it is necessary to plead ingredients of Section 13 (3) (a) (i) of the Act, in the eviction petition, however, in the absence of pleadings, the evidence regarding the ingredients can be looked into. It has also been held that if the parties are fully aware about the ingredients at the time of leading evidence and both the sides have led their evidence in this regard, the eviction petition cannot be thrown out merely because the landlord has failed to plead the ingredients in the eviction petition. To the same effect observations are made by the Hon'ble Supreme Court in **Molar Mal's** case (supra); wherein also it has been held that in case the landlord did not give all the material particulars of his requirement at the first instance, the same cannot be made a ground for rejection of the eviction petition.

Further, the judgment cited by learned counsel for the petitioner in case of **Shanker Lal's (supra)** is not applicable to the facts of the present case as in the said case the ingredients were not even made good in the replication by the landlord.

As regards the plea raised by the petitioner on the point of alleged concealment of fact by the respondent-landlord, I may point out here that the same even is not made out in the facts of this case. Once the factum of occupation of one shop by the landlord has been pleaded in the rejoinder and the other shop in occupation of one Deepak is also established on record through Ex.R-1 which happens to be the previous eviction petition and was already within the knowledge of the petitioner, it can at best be said to be a case of an error/omission on the part of the respondent-landlord; rather than concealment. It may be pointed out here that the pleadings in such matters ought not to be construed too technically; rather the true test is to see whether the other side has been taken by surprise.

As regards the *bona fide* need of the respondent-landlord to be mere wish as argued by the learned counsel for the petitioner, I again find the same to be devoid of merit. Admittedly, the respondent-landlord owns 4 shops being part of the same building. One shop is in occupation of respondent-landlord along with his son; whereas another shop is in occupation of one Deepak as a tenant besides, the two shops in question being in occupation of petitioner-tenant. The respondent-landlord has duly proved on record his *bona fide* personal need to get the tenanted premises vacated so as to expand his business and the same has found favour with both the learned Courts below being based on sufficient evidence on record.

The judgment cited by learned counsel for the petitioner in this regard i.e. **Dina Nath's** case (supra) which lays down general proposition of law to the effect that there must be a requirement by the

landlord which means that it is not a mere Will or a fanciful desire by him and the requirement must be bonafide and it must be manifested in actual need, is also of not much help to his case on facts.

Taking into consideration the aforementioned observations made by the Hon'ble Supreme Court and after appreciating the pleadings and evidence of the case in hand, I am of the considered view that in the present case wherein father-son are running a joint evocation from the same premises and are wanting expansion of the business, their personal need of the tenanted premises cannot by any stretch of imagination be said to be a mere wish.

This Court while dealing with similar issue in CR-152-2021-**Harbhajan Singh Vs. Vimal Rai**, decided on 11.10.2022, has made the following observations:-

“....The idea of expansion of business by the landlord, who is already running his business in the adjoining premises, cannot be by any stretch of imagination held to be a mere desire besides stating it to be an excuse for getting the demised premises vacated. The expansion of business is necessary for furthering the prospects in life of an individual which cannot be curtailed at the instance of a tenant....”

Only fact that no eviction petition has been filed against the other tenant, namely, Deepak who is also in occupation of one shop cannot come in the way of respondent-landlord so as to render his personal need to be a mere wish as even this has been duly explained by the respondent-landlord in his statement while appearing as PW1 wherein he categorically deposed that Deepak has already assured him of vacating the premises once the petitioner does the same.

More than that, no specific objection regarding absence of pleadings of ingredients of Section 13 (3)(a)(i) of the Act was ever raised by the petitioner in his written statement, at the first instance. In this situation and considering the facts of the present case, the judgment relied upon by learned counsel for the respondent in **Hukam Chand's** case (*supra*) comes to his rescue which specifically holds that the absence of objection in the written statement by the tenant regarding ingredients of Section 13 (3) (a) (i) of the Act coupled with the landlord having led evidence to the same, the non-pleading of ingredients would not be fatal to warrant outright dismissal of the ejectment petition.

Last but not the least, the plea raised on behalf of the petitioner by taking aid of Division Bench judgment of this Court in **Raman Mal's** case (*supra*), as regards his alternate prayer for remand of the matter again to the Rent Controller by granting liberty to the respondent /landlord to amend his eviction petition so as to plead the ingredients of Section 13 (3) (a) (i) of the Act, cannot be accepted in the wake of law laid down by the Hon'ble Supreme Court in **Duggi Veera Venkata Gopala Satyanarayana Vs. Sakala Veera Raghavaiah and another, AIR 1987 SC 406**. Relevant extract of para No.8 of the same is reproduced hereunder:-

“Even if we set aside the eviction order and send the case back on remand to the Rent Controller allowing the parties to amend the pleadings and to adduce further evidence, it will be a futile exercise inasmuch as all the materials are already on record. It is not the case of the appellant that if he is given an opportunity to adduce further evidence after amendment of pleadings, he would be able to furnish any new material showing that the

respondents are occupying any non-residential building suitable for commencing the pro- posed business therein and, as such, they are not entitled to an order for eviction.”

In the present case also, nothing has been brought to my notice by learned counsel for the petitioner that there is any other suitable premises in occupation of respondent/ landlord, besides the one under the occupation of the petitioner or in occupation of the other tenant, namely, Deepak, thus, the remand in the case in hand will be a futile exercise.

In view of the discussion made hereinabove and having held that though the complete ingredients of Section 13 (3) (a) (i) of the Act were not pleaded in the eviction petition, however, once the same have been duly made out from the pleadings in the shape of eviction petition and the rejoinder as well as from the evidence led by the parties, the eviction petition filed at the instance of respondent/landlord cannot be thrown out, particularly when the petitioner/tenant did not even raise a specific objection in this regard in the written statement; nor even was taken by surprise or suffered even any prejudice in this regard.

Resultantly, the present revision petition is hereby dismissed, upholding the eviction orders passed by the authorities below.

Pending application(s), if any, shall stand disposed of.

27.10.2022
anil

(HARKESH MANUJA)
JUDGE

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