

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6187-2014(O&M)
Date of Order: 29.04.2022

Ramesh Sharma and others

..Petitioners

Versus

Usha Rani and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rahul Sharma, Advocate, for the petitioners.
Mr. Amar Vivek, Advocate, for the respondents.

ANIL KSHETARPAL, J(Oral)

While assailing the findings of fact arrived at by the Appellate Authority, the present revision petition has been filed by the tenants.

Some facts are required to be noticed.

Originally the petition was filed by Smt. Kaushalya Rani on 18.05.2000. She asserted that after the death of her husband and son, she is residing with her daughter-in-law and grand children. The daughter-in-law has started the business of running a boutique and now she wants to expand and move to a commercial place. Previously, the daughter-in-law was running the business from residential premises. The eviction was also sought on the ground of non-payment of rent and sub letting.

The Rent Controller dismissed the petition on 20.07.2007, which was affirmed in appeal by the Appellate Authority, on 11.08.2011. In the High Court, the matter was remitted back to the Appellate Authority for deciding the matter afresh after deciding the pending application for

additional evidence. Now the Appellate Authority on reappreciation of evidence has accepted the appeal and ordered eviction of the petitioners.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book and the record which was requisitioned.

The learned counsel representing the petitioners contends that the eviction has been sought on the ground of bonafide necessity of Usha Rani (daughter-in-law of the landlady). However, the necessary ingredients as per Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the 1949 Act') qua her have not been pleaded. He further contends that the eviction was sought for by the landlady on her own occupation and not for her daughter-in-law who is not dependent on the landlady. He further contends that the application for additional evidence filed before the Appellate Authority was dismissed and therefore the Appellate Authority could not form a different opinion as it amounts to review.

Per contra, the learned counsel representing the respondents contends that the landlady while filing the petition asserted the necessary ingredients and in any case Smt. Usha Rani entered evidence and fulfilled the requirements of the 1949 Act. He submits that the petitioners were granted an opportunity to cross-examine the witness and despite the searching questions, the petitioners failed to impeach her credibility. He further contends that in view of the judgment passed by the Supreme Court in **Joginder Pal vs. Naval Kishore Behal, (2002) 5 SCC 397**, the landlady is entitled to seek eviction of the tenant not only on the ground of her own need but also on the bonafide requirement of his or her family members.

After having analyzed the arguments of the learned counsel representing the parties, this Court is of the considered view that there is no substance in the present petition.

As regards the deficiency of lack of pleadings with regard to necessary ingredients as per Section 13 of the 1949 Act, Smt. Usha Rani (daughter-in-law) has appeared in evidence and deposed in this regard. The deficiency of lack of pleadings has been made good by leading evidence. It is also not in dispute that the landlady while filing the petition pleaded the necessary ingredients with respect to herself and not with respect to the daughter-in-law. In the considered opinion of the Court, once the aforesaid facts have come in evidence and the tenant has not suffered any prejudice because he has been granted an opportunity to cross-examine the witness and thereafter, lead evidence, the aforesaid defect, if any, pales into insignificance. Furthermore, such defect being procedural is a curable defect concerning procedure.

As regards second argument, the matter stands concluded by law expounded by the Supreme Court in **Joginder Pal vs. Naval Kishore Behal, (2002) 5 SCC 397.**

The last argument of learned counsel representing the petitioners also does not have any substance because the High Court while remitting the matter back to the Appellate Authority, directed the Appellate Authority to decide the matter afresh. The judgment passed by the Appellate Authority, in the first round on 11.08.2011, was specifically set aside. In such circumstances, the Appellate Authority on re-appreciation of evidence was well within rights to decide the case on appreciation of evidence.

In view thereof, no ground to interfere.

Dismissed.

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

April 29, 2022

(ANIL KSHETARPAL)
JUDGE

nt

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