

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

CR-1479-2014

Date of Decision: September 29, 2023

YOGINDER KUMAR GARG

..... Petitioner

Versus

BANARSI LAL

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Divanshu Jain, Advocate for the petitioner.

Mr. Arun Jindal, Advocate and

Mr. Kanish Jindal, Advocate for respondent.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition, challenge has been laid to the judgment dated 06.12.2013 passed by the Appellate Authority, Jind, whereby an eviction order dated 22.12.2012 passed by the learned Rent Controller on an ejectment petition filed on behalf of petitioner-landlord has been reversed.

2. Briefly stating, the petitioner-landlord filed an eviction petition against the respondent-tenant qua the demised premises i.e. shop No.582/15 situated near Mandir Santoshi Mata, Tonga Chowk, Jind, inter alia on the grounds of arrears of rent w.e.f. 01.06.2011 to 31.10.2011 as well as for his bona fide requirement so as to open a shop of general merchant, post his retirement from the post of Superintendent Grade-II, Accounts Branch, Office of District and Sessions Judge, Jind.

3. The eviction petition was opposed at the instance of respondent-tenant while submitting that that the petitioner-landlord owns a double storey residential-cum-commercial building at Safidon

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Gate, Jind, wherein one showroom on the ground floor which was around five times the size of demised shop was rented out for the purpose of running furniture showroom and this fact was concealed in the eviction petition, thereby rendering the petitioner-landlord to be disentitled for eviction on account of his bona fide need because non-compliance of the provision of Section 13(3)(a) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 1973 Act).

4. The Rent Controller vide judgment dated 22.12.2012 allowed the eviction petition filed at the instance of petitioner-landlord. Aggrieved thereof, the respondent-tenant filed First Appeal and the same was allowed thereby reversing the eviction order dated 22.12.2012, consequently resulting into dismissal of eviction petition.

5. Impugning, the judgment passed by the Appellate Authority, learned counsel for the petitioner-landlord submits that the Appellate Authority went wrong while non-suiting the petitioner-landlord on the ground that the factum of existence of one shop/showroom situated at Safidon Gate, Jind which though formed part of residential building was not disclosed in the eviction petition and argues, that the same not being in his occupation was not required to be disclosed for the purposes of compliance of mandate under Section 13(3)(a) of 1973 Act. He also submits that since the factum of existence of aforementioned shop/showroom was in the knowledge of the respondent-tenant right from the inception of the eviction proceedings that is the stage of filing of his written statement, no prejudice at all was caused to the

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respondent-tenant on account of any such non-disclosure.

6. On the other hand, learned counsel for the respondent-tenant submits that as per mandate of Section 13(3)(a) of 1973 Act, the petitioner-landlord was required to mention about shop/showroom situated at Safidon Gate, Jind, even though the same was not in his occupation. He also submits that for the purpose of adjudication of eviction petition filed at the instance of petitioner-landlord, not even his bona fides as regards the genuine need qua the premises in question were required to be taken into consideration, rather his own bona fides while approaching the rent authorities as well as while pursuing the eviction petition were also to be considered. He thus submits that for having concealed the factum of other shop owned by petitioner-landlord, he was required to be non-suited. No other argument has been addressed.

7. I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made by learned counsel for the petitioner.

8. Before start of discussion, Section 13(3)(a) of 1973 Act which is relevant for the purpose of adjudication of present revision petition is reproduced hereunder:-

13(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;"

Perusal of the aforementioned provision shows that the Legislature in its wisdom used the word “occupying” while casting an obligation upon the landlord at the time of filing of the eviction petition to plead that “he is not occupying any other residential building in the urban area”. The term “occupation” cannot be equated with the term “ownership” and thus, in a case where a landlord owns any other residential or commercial property as the case may be, in the same urban area but is not occupying the same, he may not be under any legal obligation to plead and provide details of those other properties and therefore its non-disclosure cannot be taken as concealment on his part. The aforementioned distinction has been dealt with by this Court in cases of **“M/s Bombay Kashmir Goods Carriers Vs. Charanjit Singh”, 2022(2) RCR(Rent) 533** and **“Babu Lal Vs. Rahul”, 2023(2) RCR(Rent) 14**. Relevant portion from paragraph 11 of judgment passed in case of **“M/s Bombay Kashmir Goods Carriers”** (Supra) is reproduced hereunder:-

“11. The Legislature in its wisdom has used the expression ‘occupation/occupying’ which has to be distinguished from ‘ownership’. Therefore, it cannot be said that there has been any concealment by the respondent/landlord in not disclosing the properties owned by him because the petitioner/tenant failed to bring to the notice of this Court any material from which it could be shown that the respondent/landlord was in possession of any other premises other than the adjoining shop.....”

Relevant paragraphs of judgment passed in case of “Babu Lal” (Supra) are reproduced hereunder:

“11.3 Section 13(1)(a)(i) of the Act necessitates three conditions; (i) the landlord requires the premises for his/her own occupation, (ii) he/she is not occupying another residential building in the urban area concerned, (iii) he/she has not vacated such building without sufficient cause after the commencement of the Act of 1949 in the said urban area. We are concerned with the second condition only, wherein the expression used is ‘occupying’, i.e., ‘in occupation’. The words ‘possession’ and ‘occupation’ are two different words with distinct meanings; the legislature has consciously used the latter only. Section 13(3) of the Act uses the word ‘possession’ but Section 13(3)(a)(i) uses the word ‘occupation/occupying’. Therefore, the two cannot be used inter-changeably. One may possess a property, but may not occupy the same. The expression ‘occupation’ means, ‘use of the premises in occupation’. It refers to the state of being in control and using the premises. The meaning assigned to the words ‘occupation’ and ‘possession’ in the Black’s Law Dictionary, Tenth Edition– Pages no. 1248 and 1351 respectively, also points to their being distinct, having different implications. It is as under:

Occupation. 2. The possession, control, or use of real property;
OCCUPANCY

Possession. 1. The fact of having or holding property in one’s
power; the exercise of dominion over property.

11.4 ‘Occupation’, therefore, has a wider meaning as it includes possession, apart from being in control or using the property, but not vice versa. ‘Possession’ does not include occupation; it refers to the state of being in control over a property to the exclusion of others, which may not be in actual use by the one having possession over it.

11.5 The Supreme Court also with reference to provisions of Section 13 (2) (v) of the Act of 1973 explained the terms ‘possession’ and ‘occupy’ in Ram Das v. Davinder (2004) 3 SCC 684. The case pertained to a landlord seeking possession of the tenanted premises on the ground that the tenant had ceased to occupy it for a continuous period of four months without reasonable cause. In that context it was held as under:

7. The terms “possession” and “occupy” are in common parlance used interchangeably. However, in law, possession over a property may amount to holding it as an owner but to occupy is to keep possession of by being present in it. The Rent Control Legislations are outcome of paucity of accommodations. Most of the Rent Control Legislations, in force in different states, expect the tenant to occupy the tenancy premises. If he himself ceases to occupy and parts with possession in favour of someone else, it provides a ground for eviction. Similarly, some legislations, provide it as a ground of eviction if the tenant has just ceased to occupy the tenancy premises though he may have continued to retain

possession thereof. The scheme of the Haryana Act is also to insist on the tenant remaining in occupation of the premises. Consistently with what has been mutually agreed upon the tenant is expected to make useful use of the property and subject the tenancy premises to any permissible and useful activity by actually being there. To the landlord's plea of the tenant having ceased to occupy the premises it is no answer that the tenant has a right to possess the tenancy premises and he has continued in juridical possession thereof...

This meaning assigned to the terms 'possession' and 'occupy' has direct relevance to the issue arising in the instant petition, as in Ram Das (supra) case also possession or occupation of the premises was the issue.

11.6 The requirement of Section 13(1)(a)(i) of the Act, therefore, is that the landlord is not occupying another residential/non-residential building in the urban area concerned, i.e., he/she is not keeping possession of the premises and using it too by being present in it. Mere ownership and possession of a premises by the landlord, without it being in occupation, will not be of any consequence and cannot bar a landlord from seeking its possession for bona fide personal use."

9. In the present case, from the evidence available on record in the shape of deposition of RW-2 i.e. the respondent-tenant himself, it has been established on record that at the time of filing of eviction petition, the petitioner-landlord was not in occupation of the shop/showroom situated at Safidon Gate, Jind. The respondent-tenant while appearing as RW2 categorically admitted in his cross-examination that the shop situated at Safidon Gate, Jind was under tenancy before the filing of the eviction petition. Moreover, in his written statement as well as in his affidavit of evidence dated 11.10.2012 as RW2 the respondent-tenant merely mentions about the other shop being owned by the petitioner-tenant, he himself nowhere mentions about the occupation.

10. Furthermore, the bona fide requirement of the premises in question by the petitioner-landlord has been duly established on record,

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the petitioner-landlord being a retired person wants to keep himself occupied besides wanting to increase his income, mere fact that his wife and son are employed and well placed in life cannot be taken to be disadvantageous towards him as he has his own individual right to excel in life and cannot be written off merely being a retiree.

11. In view of the discussions made hereinabove, there being no concealment on the part of petitioner-landlord in his pleadings about occupation of any other building as contemplated under Section 13(3)(a) of 1973 Act, besides his need qua the premises in question being proved to be bona fide and genuine, the present petition is allowed and the impugned order dated 22.12.2012 passed by the Appellate Authority is hereby reversed.

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

29.09.2023

tejwinder

(HARKESH MANUJA)
JUDGE

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

