

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

283

CR No. 1776 of 2013 (O & M)
Date of Decision : 6.1.2023

*Jugal Kishore**..... Petitioner*

Versus

*Om Parkash and others**..... Respondents***CORAM : HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present : Mr. M. L. Sarin, Senior Advocate with
Ms. Hemani Sarin, Advocate, for the petitioner

Mr. Divanshu Jain, Advocate, for the respondents

Mr. Harmeet Singh Oberoi, Advocate, for the applicant
(CM no.13243-CII of 2015)

TRIBHUVAN DAHIYA, J.

1. This is tenant's revision petition against the order of eviction dated 5.8.2011 passed by the Rent Controller ordering his eviction, as well as the order dated 17.1.2013 passed by the Appellate Authority, affirming the same.

2. The facts in brief are, the three respondents (hereinafter referred to as 'the landlords'), who are brothers, filed an ejectment application/petition under The Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short 'the Act of 1973'), claiming themselves to be owners of Shop no.15 in New Vegetable Market, Palwal (hereinafter referred to as 'the demised premises'). It was earlier allotted to the landlords' father, Shiv Lal, who expired in October 2002. Thereafter, it was allotted to the landlords, vide re-allotment letter dated 7.4.2007, as incorporated in the records of the

Municipal Council, Palwal. The respondent was tenant over the demised

premises for the last twenty years. Initially, the rate of rent was Rs.500/- per month and later, at the time of filing of the petition, the rate was Rs.3000/-per month, including house tax. The grounds on which eviction was sought were, non-payment of rent, personal necessity, change of user and that the respondent-tenant's ownership of two other shops sufficient to fulfill his business requirements.

3. Regarding non-payment of arrears of rent, it was pleaded that the respondent/tenant was a chronic defaulter and was in arrears of rent from 1.7.2005 to 30.6.2008. On the ground of personal necessity, it was pleaded that the demised premises was required by the landlord for their sons, Amit Kumar son of petitioner no.2 and Rohit Kumar son of petitioner no.3, who were about to complete graduation. The landlords wanted to settle them in the business of vegetable commission agents and the demised premises was suitable for them being in the vegetable market itself. It was also pleaded that the landlords/ petitioners were not occupying any other shop which was fit for the aforesaid business, nor had they got vacated any shop after commencement of the Act of 1973, in the urban area of Palwal town. On the ground of change of user, it was pleaded that the demised premises was being used to run grocery shop, though it was rented out to run as a vegetable shop. Lastly, it was pleaded that the respondent/tenant owned two shops in Shiv Colony, Palwal, which were lying vacant and were sufficient for his business needs.

4. The ejectment petition was contested by the petitioner (hereinafter referred to as 'the tenant') mainly on the ground that there was no relationship of landlord and tenant between the parties. He claimed himself to be a tenant under one Sandeep Goyal, who was collecting rent from him since January 1999 and issuing receipts thereupon. He was directed

by Shiv Lal, landlords' father, to make payment of rent to his grandson Sandeep Goyal. It was also stated that the demised premises was never re-allotted to the landlords, and in case there was any such transfer, the same was illegal, null and void.

5. The following issues were settled between the parties on conclusion of pleadings:

1. Whether the respondent is liable to be ejected from the demised shop on the grounds mentioned in the petition? OPP
2. Whether present execution petition is not maintainable? OPR
3. Whether petitioners have got no locus standi to file the present petition? OPR
4. Relief.

6. In order to prove their respective case, the parties led evidence. The landlords examined PW-1 Attar Singh, Mandi Supervisor, brought photocopy of the re-allotment letter of the demised premises in favour of the landlords. PW-2 Lekh Ram, House Tax clerk of the Municipal Council, Palwal, was also examined who brought on record copies of Ex.P-3 to P-5, i.e., house tax assessment for the years 1995-96, 2000-01 and 2005-06, wherein Jugal Kishore had been named as tenant. Gian Chand, landlord/petitioner no.3 testified as PW-4 and referred to devolution of ownership of the demised premises on the landlords based on the Will dated 9.9.2002 executed by their father Shiv Lal. The tenant, on the other hand, examined himself as RW-2 and Sandeep Goyal as RW-3.

FINDINGS OF THE AUTHOROITIES BELOW

7. On appreciation of entire evidence, on Issue no.1 the Rent Controller held that it was duly established on record the demised premises was allotted to Shiv Lal as per letter dated 16.4.1973, and after his death re-

allotted to the landlords, sons of Shiv Lal, vide letter dated 7.4.2007. The re-allotment letter was tendered in evidence by the Mandi Supervisor, PW-1, and taken on record as 'Mark A' by the Rent Controller. The tenant's witness Sandeep Goyal, RW-3, proved the rent receipts issued by him as Ex. R-1 to R-38, and claimed himself to be owner of the demised premises. But in cross-examination, he clearly stated that he had no document of ownership of the demised premises, and feigned ignorance about re-allotment of the demised premises to the landlords herein. He also testified that validity of the allotment letter or Shiv Lal's Will in favour of the landlords with respect to the demised premises, was not challenged by him in any Court of competent jurisdiction. Therefore, there was no document or evidence on record which could, in any manner, establish Sandeep Goyal to be owner of the demised premises. In this situation, it was held that the landlords had been re-allotted the demised premises, and became owners and landlords thereof.

7.1 The ground of non-payment of arrears of rent could not be proved by the landlords. It was held that in the absence of cogent evidence it could not be said the rate of rent of the demised premises was Rs.3000/-per month. Sandeep Goyal, who had placed the rent receipts on record, was held to have been impliedly authorised by the landlords to collect rent as it was never objected to by them. Accordingly, the landlords were held entitled to recover the arrears of rent received by Sandeep Goyal, as per provisions of law.

7.2 On the ground of *bona fide* personal necessity of the landlords with respect to the demised premises, it was held that requirement of a family member, who was dependent upon the landlord, could be considered to be the requirement for his own use of the premises. Such a dependent could be

wife, husband, sister or children of the landlord or other members of the landlord's family. And in this case, it was not in dispute that Rohit and Amit were dependents on the landlords, and were unemployed. Rohit testified also as PW-5 proving necessary ingredients of the ground of personal necessity as required under Section 13 of the Act of 1973. With regard to the tenant's objection that the landlords had sold a shop as per sale deed Ex.R-16 and the fact had been concealed by them in the pleadings, it was held that the shop was sold on 14.11.2008 after filing of the ejectment petition on 17.7.2008, as apparent from the sale deed in question. Therefore, there was no concealment on the part of the landlords. Besides, there was no evidence on record which could show that the shop sold was suitable to run the vegetable business in question, for which eviction of the tenant had been sought. Besides, the shop sold was located on the railway road and not in the Vegetable Market. Therefore, it was held that the demised premises was required for *bona fide* need and necessity of the landlords, and their need stood duly established on record by way of cogent evidence.

7.3 Regarding the ground of ejectment on account of change of user of the demised premises, it was held that the landlords were not able to establish that the demised premises was let out for any particular purpose, and that the tenant had changed its user.

7.4 Lastly, regarding the ground of ejectment on account of availability of another building/alternate accommodation with the tenant, it has been held that the tenant had purchased two shops in the name of his wife, as established by the site plan (Ex.P-7). The site plan stands admitted by the tenant in his cross-examination, as also the surroundings of his property depicted therein. He has, however, denied possession of the two shops. The inference, therefore, has been drawn by the Courts below that the

two shops were in existence as per the site plan and owned by the tenant's wife. There is no evidence on record that the wife was earning independently or doing any other job or business. Nor any evidence was led which could show that the shop did not exist as per the site plan and it was residential building only. It was, therefore, held that the tenant was in possession of another building to run his business of grocery, and he was liable to be ejected on that ground.

8. In view of the aforesaid findings on Issue no.1, the remaining issues no. 2 and 3 were also decided in favour of the landlords. The findings were affirmed by the Appellate Authority.

9. Learned counsel for the parties have been heard and record perused.

10. The relevant provisions of the Act of 1973 are extracted hereunder for ready reference:

13. Eviction of tenants. - (1) A tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this section.

(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;

[(ii) he requires it for use as an office or consulting room by his son who intends to start practice as a lawyer, qualified architect or chartered accountant or as a "registered practitioner" within the meaning of that expression used in the Punjab Medical Registration Act, 1916, the Punjab Ayurvedic and Unani Practitioners Act, 1963, or the Punjab Homoeopathic Practitioners Act, 1965, or for the residence of

his son who is married :

Provided that such son is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be, and has not vacated it without sufficient cause after the commencement of the 1949 Act.]

(iii) it was let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment :

Provided that where the tenant is a workman who has been discharged or dismissed by the landlord from his service or employment in contravention of the provisions of the Industrial Disputes Act, 1947, he shall not be liable to be evicted until the competent authority under that Act confirms the order of discharge or

dismissal made against him by the landlord;

(iv) the tenant has already in his own possession a residential building or subsequently acquires possession of, or erects, such a building reasonably sufficient for his requirement in the urban area concerned;

(v) he is a member of the armed forces of the Union of India and requires it for the occupation of his family and produces a certificate, from the prescribed authority referred to in section 7 of the Indian Soldiers (Litigation) Act, 1925, that he is serving under special conditions within the meaning of section 3 of that Act.

Explanation : xxx xxx

DISCUSSION

11. Learned senior counsel has laid much stress on the findings recorded by the Appellate Authority ordering ejectment due to availability of another building with the tenant in the form of shops owned by his wife. He has submitted that the Appellate Authority has gone patently wrong in evicting the tenant from the demised premises by holding that he could run

his business of grocery shop in the house owned by his wife, in Shiv Colony, Palwal. Business cannot be run in a house. Besides, according to him, there is a complete mis-reading of Section 13(3)(a)(iv) of the Act of 1973, as the provision applies only to residential buildings and not to a non-residential building. The argument is that eviction on the ground of tenant having another building can only be sought from a 'residential building', and not from a 'non-residential building'. Since Section 13(3)(a)(iv) uses the word 'residential building', it cannot be read to mean and include a 'non-residential building'. This distinction has been held to be not relevant only when eviction is being sought on the ground of *bona fide* personal necessity under Section 13 (3)(a)(i) of the Act of 1973, and not for any other ground.

11.1 To substantiate, learned Senior counsel has referred to a judgment of the Supreme Court in *Harbilas Rai Bansal and another v. State of Punjab* 1996 (1) SCC 1, wherein the notification dated 24.9.1956 to amend in the East Punjab Urban Rent Restriction Act, 1949 (the Punjab Act), was under challenge. The notification was to exclude the category 'non-residential building' from Section 13 and thereby disentitle the landlord from seeking eviction of a tenant from such a building on the ground of personal necessity. This notification was held to be Constitutionally invalid; resultantly, the original provision of the Act of 1949 was restored, and the landlord was held entitled to seek eviction of a tenant from a non-residential building also on the ground that he required the same for his own use. Based on that, this Court in *Ved Parkash Gupta vs. State of Haryana* 1997 (2) RCR 160, held that the word 'residential' in Section 13(3)(a)(i) of the Act of 1973 (the Haryana Act), was also liable to be struck down and the ground for ejection made out therein would be uniformly applicable to all categories of buildings, though there was no existing category of 'non-residential building'

in the provision. This judgment was upheld by a Division Bench of this Court in *State of Haryana v. Ved Parkash and another* 1999 (1) RLR 689. Therefore, he contends that it is only in case where eviction has been sought on the ground of personal necessity by a landlord under Section 13 (3) (a) (i) of the Act of 1973, that the distinction between ‘residential’ and ‘non-residential’ buildings has been done away with, and word ‘residential’ has been held to include all categories of buildings. The interpretation rendered by *Ved Prakash* case, as per him, is confined to sub-clause (i) of clause (a) of sub-section (3) of Section 13 of the 1973 Act only, and cannot be extended to sub-clause (iv) of clause (a) thereunder.

11.2 The argument raised by learned senior counsel is misconceived. After the aforementioned judgment in *Ved Parkash* case (*supra*), the issue has been considered by the Supreme Court in a matter pertaining to Act of 1973 only in *Ashok Kumar v. Ved Prakash and others* 2010 (1) SCC (Civil) 397. It dealt with the issue whether a landlord would be entitled to evict a tenant on ground of *bona fide* requirement from a ‘non-residential building’ under Section 13 the Act of 1973, when it only provided for eviction of a tenant from ‘residential building’ in case the landlord required it for his own occupation. The law on the issue, including the earlier judgment in *Harbilas Rai Bansal* case (*supra*) was considered, and the Court held the landlord entitled to seek eviction from a non-residential building as well under Section 13. The relevant paragraphs of the judgment, mentioning the issue for consideration and the ratio thereof, are as under:

6. Before us, the pivotal issue that was seriously raised by the learned counsel for the appellant was as follows: -

(i) Whether the landlord would be entitled to evict his tenant from a non-residential premises on the ground of *bona fide* requirement under the Haryana Urban (Control of Rent and Eviction) Act, 1973

(hereinafter referred to as the 'Act') when Section 13 of the Act provides for eviction of the tenant only in case of residential building if the landlord requires it for his own occupation, and is not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of East Punjab Urban Rent Restriction Act, 1949 in the said urban area?

7 to 19. xxx xxx xxx

20. Therefore, the decisions cited by the learned counsel for the appellant cannot be relied upon for the purpose of holding that the Court is not conferred with the power to entertain an eviction petition against a tenant relating to non-residential premises as, in our view, the correct interpretation of bona fide requirement of a landlord of a residential building must include a non-residential building as well in view of the decisions referred to hereinabove. In this connection, we may also add that it may be pertinent to note that in the case of Satyawati Sharma (Dead) by LRs. Vs. Union of India and another 2008 (5) SCC 287, a similar provision in the Delhi Rent Act, 1958 was found to be unconstitutional. In this connection, reference may be made to para 38 of the said decision, which reads as under :-

"38. In view of the above discussion, we hold that Section 14(1)(e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non- residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only.

11.3 Once a residential building has been held to include non-residential building as well for the purpose of seeking eviction by a landlord under Section 13 on the ground of *bona fide* requirement for his/her own occupation, there is no reason why it should not be applicable to sub-clause (iv) of clause (a) of sub-section (3) of Section 13 of the 1973 Act. Clause (a) of sub-section (3) of Section 13 provides a landlord to apply to the Controller

for an order directing the tenant to put him in possession of a residential building in the five situations mentioned in sub-clause (i) to (v), reproduced hereinbefore. In the facts of the instant case, we are concerned with sub-clause (i) and (iv) only. The word residential building in sub-clause (iv) of clause (a) has been used with reference to the word ‘residential building’ in clause (a) of sub-section (3) of Section 13. Since the latter has already been held by the Supreme Court in *Ashok Kumar* case (supra) to mean and include ‘non-residential building’ as well, the former will also include the same. The Supreme Court has provided a wider meaning to the word ‘residential building’ in clause (a) of sub-section (3) of Section 13, which provides five situations in which eviction by a landlord from residential/non-residential building can be sought. It defies logic in case the said meaning given to the words ‘residential building’ is to be confined to sub-clause (i) only, to the exclusion of sub-clause (iv), though the two sub-clauses refer to different situations with reference to clause (a) of sub-section (3) only. Therefore, the words ‘residential building’ in sub-clause (iv) of clause (a) of sub-section (3) of Section 13 will include and mean ‘non-residential building’ as well.

11.4 The second limb of the argument advanced by learned senior counsel with regard to availability of another building is, the alternate accommodation owned by the tenant’s wife despite being a house has been considered sufficient for him to run grocery business. A house cannot be used as a shop, nor can it be considered reasonably sufficient for the tenant’s requirement under Section 13(3)(a)(iv) of the Act. This argument is also misconceived, as a complete reading of the impugned judgments with the evidence on record would establish. It is proved on record that the site plan (Ex.P-7) mentions the tenant’s wife has two shops, and the site plan stands admitted by him. The Rent Controller has also mentioned the property as

shops owned by the tenant's wife. It is only in one solitary line that the Appellate Authority has mentioned the property as house owned by his wife situated in Shiv Colony, Palwal. Prior to that, the Authority has recorded that the tenant admitted the site plan, and location of his property. Therefore, by reading the findings in entirety along with the evidence led, it is apparent that the property being mentioned is the tenant's wife's shops, and not her house. Further, as laid down by this Court in *H.N Sood V. Vinod Kumar and Others* 1996 (2) PLR 611, property acquired by wife can be considered to be property of husband, as both form one unit. Ratio of the judgment is as under:

12. ...It will be too much to hold that the property purchased, owned or acquired by wife cannot be considered to be the property of the husband. Husband and wife form one unit. It would have been a different case if the other building is acquired or purchased by other relations of the tenant, but wife stands on a different footing altogether. Respondent-petitioner-tenant is residing with his Wife in the said house No. 1285, which is purchased by his wife in the year 1984.

That being the position in law, no exception can be taken to the findings of the Authorities below ordering tenant's eviction on account of availability of other non-residential building/shops for him to run grocery business.

12. It has next been contended by the learned senior counsel that relationship between landlords and tenant has not been established. The alleged Will as well as the re-allotment letter have only been 'marked' as 'Mark-A' and not been 'exhibited' on record. A marked document, as per the settled law, could not have been read in evidence by the Authorities below.

12.1 A perusal of the record establishes that PW-1, Mandi Supervisor, proved re-allotment letter of the demised premises, dated 7.4.2007, and no objection was raised to its admissibility. Still the letter was

only marked as 'Mark A'. Once the document had been proved on record by the official witness without any objection by the opposite side, there was no justification not to 'exhibit' the same. Be that as it may, there is no reason why such a document could not have been relied upon. Besides, having not objected to the re-allotment letter at the relevant time, the tenant cannot be permitted now to raise objection to its admissibility. Not only that, it is also not disputed that the said re-allotment of the demised premises in favour of the landlords remains unchallenged.

12.2 Further, reading of this document in evidence by the Authorities below is as per law laid down by the Supreme Court in *Oriental Insurance Company Ltd. V. Premlata Shukla & others* 2007 (13) SCC 476, which is as under:

15. A party objecting to the admissibility of a document must raise its objection at the appropriate time. If the objection is not raised and the document is allowed to be marked and that too at the instance of a party which had proved the same and wherefor consent of the other party has been obtained, the former in our opinion cannot be permitted to turn round and raise a contention that the contents of the documents had not been proved and, thus, should not be relied upon. In *Hukam Singh (supra)*, the law was correctly been laid down by the Punjab and Haryana High Court stating;

"8. Mr. G.C. Mittal, learned counsel for the respondent contended that Ram Partap had produced only his former deposition and gave no evidence in Court which could be considered by the Additional District Judge. I am afraid there is no merit in this contention. The Trial Court had discussed the evidence of Ram Partap in the light of the report Exhibit D.1 produced by him. The Additional District Judge while hearing the appeal could have commented on that evidence and held it to be inadmissible if law so permitted. But he did not at all have this evidence before his mind. It was not a case of inadmissible evidence either. No doubt the procedure adopted by the trial Court in letting in a certified copy of the

previous deposition of Ram Partap made in the criminal proceedings and allowing the same to be proved by Ram Partap himself was not correct and he should have been examined again in regard to all that he had stated earlier in the statement made by him in the committing Court. It appears that the counsel for the parties in order to save time did not object to the previous deposition being proved by Ram Partap himself who was only cross-examined. It is not a case where irrelevant evidence had been let in with the consent of the parties but the only objection is that the procedure followed in the matter of giving evidence in Court was not correct. When the parties themselves have allowed certain statements to be placed on the record as a part of their evidence, it is not open to them to urge later either in the same Court or in a court of appeal that the evidence produced was inadmissible. To allow them to do so would indeed be permitting them both to approbate and reprobate."

12.3 So far as the question of registered Will, dated 9.9.2002, of late Shiv Lal (landlords' father) is concerned, it is mentioned specifically therein that the demised premises has been bequeathed only upon the three landlords, and not upon Hari Ram (father of Sandeep Goyal). This Will was specifically put to RW-3, Sandeep Goyal, during his cross-examination where he admitted that photograph on the Will was that of his grand-father; the photograph was Ex.PA. It is also not in dispute that the Will was not challenged by him till the time he testified to that effect before the Controller. Besides, the Will has only been referred to as a circumstance by the Authorities below, without returning any finding of ejectment on that basis. There is nothing illegal or irregular about the same.

12.4 In this background the landlords have been recorded owners of the demised premises on the basis of re-allotment letter, issued in due course by the Municipal Council, Palwal, (the body responsible for allotment/ re-allotment of shops). Apart from that, there is documentary evidence in the

form of Ex.P-1 and Ex.P-2, which are show cause notices dated 23.7.2007 and 16.1.2008 respectively, issued by the Market Committee, Palwal, mentioning the landlords as owners of the demised premises. Once re-allotment of the demised premises stands established on record and both the authorities below have concurrently held, on appreciation of the evidence, that by way of re-allotment, the landlords became owners of the demised premises, there is no reason for this Court to disturb the same.

12.5 As per settled proposition of law, a tenant is not entitled to dispute ownership of the landlord. Besides, owner is always landlord, and is included in the definition of landlord as incorporated in Section 3 of the Act of 1973. In this regard reference can be made to judgment of the Supreme Court in *Santosh Chaturvedi v. Kailash Chandra and another* 2020 (16) SCC 672, wherein it was held that on transfer of property by the owner, the tenant automatically becomes tenant of the transferee, and ownership of the property cannot be disputed by the tenant. Relevant para no. 15 of the judgment reads as under:

15. Whether the share given by Shri Dwarka Prasad to the appellant who is his son is justified or as to whether the nature of the document under which the settlement was recorded was as per requirement of law and valid are all issues which can only be raised by any other member of the family who would feel deprived and could have claimed right over the such property. But in a circumstance where Shri Dwarka Prasad who admittedly was the owner of the property had made a settlement in favour of the appellant who is his son, the title thus acquired, in any event, cannot be called in question by the person who is in occupation of the premises as a tenant when Shri Dwarka Prasad who admittedly was his landlord did not continue to claim to be the landlord. If that be the position as rightly noticed by the Appellate Authority, in view of the provision as contained in Section 8 and Section 109 of Transfer of Property Act, on transfer of the property by the owner the tenant

would automatically become the tenant of the transferee...

The original petitioners are, therefore, owners of the demised premises, and the landlords as well.

ADDITIONAL EVIDENCE AND SUBSEQUENT EVENTS

13. Lastly, learned senior counsel has argued that the application moved by the tenant before this Court (CM No. 6752-CII of 2013) for bringing on record a copy of the plaint of civil suit No.267 of 13.12.2012 titled *Sandeep v. Sat Prakash and Others*, as additional evidence should be allowed. It pertains to a suit for declaration by way of partition, with consequential relief of permanent and mandatory injunction, dated 13.12.2012, filed by Sandeep Goyal against the landlords challenging the Will in question dated 10.9.2002. He has further stated that another application (CM no. 13244-CII of 2015) filed by the tenant under Section 15 (6) of the Act of 1973 for bringing on record subsequent events should also be allowed. The subsequent events are that both the boys, Amit and Rohit, for whose business ejectment from the demised premises has been sought, are well settled now and doing their respective businesses/jobs. This, as per him, establishes that the landlords' requirement to occupy the premises no longer exists nor is it *bona fide*. It is submitted that this Court should look into the additional evidence as well as the subsequent events, and dismiss the ejectment application on that account.

13.1 So far as the additional evidence, i.e., plaint in civil suit dated 13.12.2012 challenging the Will in question is concerned, the same was filed by Sandeep Goyal much after filing of the ejectment petition on 17.7.2008/10.6.2009. He himself testified before the Rent Controller as RW-3 on 27.4.2011 and admitted that neither the Will, nor the re-allotment letter, was challenged by him. The Rent Controller ordered ejectment vide judgment

dated 05.08.2011. In case, subsequently Sandeep Goyal, RW-3, has become wiser and filed the suit for partition challenging the Will in question, there is no reason for this Court to look into such a suit or its pleadings. Even otherwise, the same have no value so far as proceedings of the eviction petition are concerned. Therefore, there is no ground to entertain the application bearing CM No. 6752-CII of 2013, seeking to adduce the additional evidence.

13.2 This Court is not inclined to allow the second application and/or look into the subsequent events on account of the settled proposition of law that need of the landlord is to be seen at the time of filing of the eviction petition which is the crucial date for determining his *bona fide* need. The eviction petition in question was filed by the landlords in 2008. In case the boys have completed their education and have started to earn for themselves, that cannot be a ground to defeat the eviction petition by stating the landlords no longer require the demised premises for the pleaded personal necessity of theirs. Pendency of litigation cannot be allowed to work to the advantage of either of the parties. Besides, it is a self-defeating argument raised by learned senior counsel, as it amounts to conceding that at the time of filing of the ejection petition when the boys were unemployed, the landlords' personal necessity was there.

13.3 In this regard it is apposite to refer to the Supreme Court judgment in *Gaya Prasad vs. Pradeep Srivastava* 2001 (2) SCC 604, holding that *bona fide* requirement of landlord is to be seen on the date of filing of the petition. This was a case where at the time of filing of the petition, the landlord's son was a medical graduate for whose medical practice the demised premises was required. The litigation continued for 23 years and son joined government service in the meanwhile. In these circumstances, the

Supreme Court held that need of the landlord would not fade and crucial date for deciding the *bona fide* requirement of landlord was the date of filing of the petition. Relevant paragraph no. 10 of the judgment reads as under:

10. We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.

Therefore, there is no ground to entertain the application bearing CM No. 13244-CII of 2015, seeking to place the subsequent events on record.

14. The applicant/Sandeep Goyal has also filed a miscellaneous

application, CM No. 13243-CII of 2015, under Order I Rule 10 CPC for being impleaded as a party respondent to the instant petition. It needs mention that the applicant himself appeared as RW-3 before the Rent Controller and testified in support of the tenant. Despite being well aware of the eviction proceedings, he never sought to be impleaded as a party respondent before the Rent Controller. Therefore, at this stage of the case, there is no reason to entertain his application for being impleaded as a party respondent. The application appears to have been filed for oblique motives.

15. There is, therefore, no ground to interfere with the judgments passed by the Rent Controller as well as the Appellate Authority as the same do not suffer from any error of law or jurisdiction. The revision petition is, accordingly, dismissed.

16. The petitioner-tenant is granted three months' time from today, i.e., up to 5.4.2023 to vacate the demised premises and handover its possession to the respondents-landlords.

17. Miscellaneous application(s), if any, stands disposed of accordingly.

(TRIBHUVAN DAHIYA)
JUDGE

6.1.2023

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No