

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

107

CR-4147-2015 (O&M)

Date of Decision: 20.10.2023

Gurpreet Singh

..... Petitioner

Versus

Taranjit Singh Bassi and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present : Mr. Rajiv Kataria, Advocate
for the petitioner.

None for the respondents.

HARKESH MANUJA, J.(ORAL)

1. By way of the present Civil Revision challenge has been made to the judgments dated 25.09.2014 and 04.05.2014 passed by the Courts/ Authorities below whereby an eviction petition filed at the instance of petitioner-landlord has been dismissed.

2. Briefly stated, claiming himself to be the landlord of the demised premises i.e. H. No. 1422, Sector 44-B, Chandigarh, the petitioner filed an eviction petition qua the ground floor and the top floor against the respondents on the grounds of arrears of rent as well as personal necessity as he wanted to shift to Chandigarh from village Ballo Majra for better educational convenience of his children. The eviction petition, at the hands of the respondents, was opposed while disputing the facts stated in the eviction petition.

3. The Rent Controller vide judgment dated 25.09.2014 dismissed the eviction petition holding that neither the ingredients of Section 13(3)(a) (i) of the East Punjab Urban Rent Restriction Act, 1949 (for short “the Act

of 1949”) were pleaded therein, nor even a joint petition qua two separate tenants of ground floor and top floor was maintainable. Aggrieved thereof, the petitioner filed first appeal, but the same was also dismissed for want of having not pleaded the mandatory ingredients of Section 13(3)(a)(i) of the Act, 1949 though the plea of joint eviction petition at the instance of petitioner was answered in his favour while recorded that on account of top floor having been vacated during pendency of proceedings before Rent Controller. The petition survived only qua the ground floor and thus was maintainable.

4. Despite notice, no one has put in appearance on behalf of the respondents, accordingly, the petitioner only has been heard through his counsel.

5. Assailing the aforesaid judgments of the Court below, learned counsel for the petitioner submits that in the entire written statement filed at the instance of the tenant-respondent, no objection as regards the non-mentioning of basic ingredients of Section 13(3)(a)(i) of the 1949 Act, was ever raised and, thus, the petitioner could not have been non-suited on this account. In this regard, he also places reliance upon the judgment rendered by this Court in the case of ***Mohan Lal vs. Rakesh Kumar Bhakoo and another, 2006(2) R.C.R. (Civil) 713***. Relevant para no. 9 thereof is reproduced hereunder :

“A perusal of the written statement shows that no such objections in respect of lack of pleadings of necessary ingredients have been raised. The parties have understood the case and led evidence. It has been found that the landlord satisfied the necessary ingredients contemplated under Section 13 of the Act to seek eviction on the ground of bonafide

personal requirement.

6. Learned counsel for the petitioner further submits that in the facts of the present case wherein the petitioner intended to shift to Chandigarh to occupy the demised premises for the convenience and better education of his children, *bona fide* need was duly established.

7. I have heard learned counsel for the petitioner and gone through the paper-book as well as the records of the Court below.

8. A perusal of the eviction petition shows that though the basic necessary ingredients of Section 13(3)(a)(i) of the 1949 Act were not pleaded therein to the extent that the petitioner was not occupying another residential building in the urban area concerned and did not vacate such building without sufficient cause after the commencement of the Act, in the same urban area, yet, no specific objection to this extent was ever raised in the written statement filed at the instance of respondents. In the absence thereof, drawing support from the decision of this Court in ***1977(1) R.C.R. (Rent) 622, Kesho Ram vs. Jagan (deceased) represented by his Legal Representatives Om Parkash and others***, it can be safely held that the respondents/tenants were precluded from raising such plea at the time of final adjudication of the eviction petition and the petitioner-landlord could not have been non-suited for this reason. Undoubtedly, permitting the respondents-tenants to raise the plea of non-pleading of necessary ingredients of Section 13(3)(a)(i) of 1949 Act, at the stage of final arguments before Rent Controller, would cause serious prejudice to the rights of the petitioner-landlord, who would be deprived of his remedy to seek amendment of pleadings that this objection had been taken at the beginning of the trial in the eviction petition having taken specific objection in the

written statement. Relevant para no.4 of the judgment of **Kesho Ram** case (supra) is reproduced hereinafter for reference :-

“4. I may add that the decision of the Full Bench does not also preclude an appellate court or revisional court from refusing, in the exercise of its discretion, to permit a tenant to raise for the first time in the appellate court or revisional court a point that the ingredients of sub-clauses (b) and (c) of section 13(3)(i) have not been averred. As observed by the Full Bench itself, in the passage extracted, in regard to pleadings and evidence this is not something which is peculiar to appeals and revisions arising out of applications for ejectment but something which concerns the exercise of discretion by all appellate or revisional courts. The exercise of discretion by a appellate Court or a revisional court to permit a new ground to be raised depends upon the peculiar facts and circumstances of each case and one cannot lay down any hard and fast rule about it. In a case where a landlord goes before the Rent Controller with an application for ejectment under section 13(3)(i) and alleges that he requires the building for his own occupation but fails to allege the ingredients of sub-clauses (b) and (c). It is open to the tenant to plead that the landlord was occupying another residential building in the urban area concerned or that he had vacated such a building without sufficient cause. If he does not raise any of these questions and if he is content to join issue on the question of requirement of the landlord of the building for his own occupation, can he be permitted after losing the application before the Rent Controller to come before the appellate court or the revisional court and contend that the ingredients of clauses (b) and (c) were not averred in the plaint. Can he be allowed to withhold a plea before the first court and raised it before the appellate court or revisional Court if he fails in the first court on the question raised by him there ? Can be allowed to spring such surprise on the opposite party? Would not the opposite party be prejudiced thereby, for,

if the objection had been raised at the earliest, the opposite party would have sought a suitable amendment. These are all questions which must be considered and decided before a tenant is allowed to raise before the appellate court or the revisional court or the first time, a point that the ingredients of clauses (b) and (c) were not pleaded in the petition. I may add that the strict rule regarding pleading applies with as much force to the respondent before the Rent Controller as to the petitioner before the Rent Controller. The question of the Full Bench does touch the question of the exercise of discretion by the Appellate or the revisional court.”

The aforesaid view has even been followed by this Court in case of **Mohan Lal** case (supra)

9. Moreover, the factum of petitioner landlord residing in Village Ballo Majra was duly disclosed in the eviction petition and nothing was brought on record by the respondents that the petitioner-landlord owned or possessed any other property situated in the same urban area i.e. Chandigarh. No suggestion was even put to the petitioner by the tenant in his cross-examination to point out that he ever occupied, possessed or vacated any other premises of similar nature in the urban area concerned. Thus, non-pleading of ingredients of Section 13(3)(a)(i) of 1949 Act by the petitioner in the eviction petition never caused any prejudice to the rights of the respondents and as such the authorities below committed illegality while dismissing the eviction petition having non-suited the petitioner-landlord on that count.

10. Equally important, the petitioner-landlord has been able to establish the *bona fide* need qua the demised premises while having appeared as PW-1. The petitioner-landlord who is living in Village Ballo

Majra, District SAS Nagar, Mohali wants to shift to Chandigarh i.e. the demised premises, in order to provide better education to his children and also for their convenience, who are studying at Gian Jyoti Public School, Phase-2, Mohali and have to daily travel a lot for this purpose.

11. In view of the discussion made here-in-above, the impugned judgment dated 04.05.2014 and 25.09.2014 passed by the authorities below are hereby set aside, eviction petition filed by the petitioner-landlord is thus allowed and the respondents-tenants are resultantly directed to vacate the demised premises.

12. Pending applications, if any, stand disposed of.

(HARKESH MANUJA)
JUDGE

20.10.2023

Satyawan

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No