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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-.-

CR-4652-2016

Date of decision: 15.03.2023

Joginder Nath Chawla (since deceased) through wife Vijay Chawla

.....Petitioner

versus

Mohan Kalra

....Respondent

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

Present: Mr. Gourav Rana, Advocate for the petitioner
Mr. Sanjiv Kumar Aggarwal, Advocate for the respondent

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Rajbir Sehrawat, J. (Oral)

The present revision petition has been filed under Section 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short 'the Haryana Rent Act') for setting aside the impugned order dated 06.05.2016 passed by the appellate Authority, Ambala whereby the rent appeal filed by the respondent-tenant against the ejectment order dated 11.12.2015 passed by the Rent Controller, Ambala, has been allowed.

The brief facts of this case are that Joginder Nath Chawla, the power of attorney holder of his wife Smt. Vijay Chawla, the landlady and the owner of the property in question, had filed the eviction petition against the respondent-tenant; asserting therein that the petitioner inducted the respondent as a tenant in the shop No. 1463/B, Block No. 4, Naddi Mohalla,

Ambala City on 01.02.1988 @ Rs.500/- per month and a rent note was also

executed in this regard. The rent was agreed to be increased @ 10% after every three years. Accordingly, the last time, the respondent – tenant had paid Rs.900/- per month as rent to the petitioner. However, the petitioner required the shop in question for the purpose of settling her widowed daughter-in-law and two grand sons who are the sons of deceased son of the petitioner. The type of business was stated to be establishing a designed Computer Centre by demolishing all the three shops at the premises and erecting a single big premises by combining all three shops.

Contesting the eviction petition, the respondent-tenant had taken a plea that the requirement of the landlord was not bona fide. In fact, daughter-in-law of the petitioner was already in Government Job, therefore, she did not require the premises for settling herself in the business. The grand sons were only minors, aged about five and ten years, on the date of filing of the petition. It was also pleaded that the petitioner was having other shops in the same urban area. Hence, the petitioner-landlord is not entitled to get the respondent-tenant evicted from the premises in question.

After appreciating the material on record and hearing the parties, the Rent Controller ordered the eviction of the respondent – tenant vide order dated 11.12.2015. Aggrieved against the same, the respondent-tenant filed the appeal; which has been decided in his favour; and the order of eviction passed by the Rent Controller has been set aside. Hence, the petitioner-landlord has preferred the present revision petition. It further deserves to mention that during pendency of the rent petition, Joginder Nath Chawla had died and thereafter the proceedings are being carried out/looked after by the landlady Ms Vijay Chawla herself, for the same

purpose.

Arguing the case, counsel for the petitioner has submitted that the lower appellate Court has wrongly reversed the findings recorded by the Rent Controller. The eviction petition was rightly filed by the petitioner for the bona fide requirement of widowed daughter-in-law, and on the date when the eviction petition was filed, daughter-in-law of the petitioner was not employed anywhere. The eviction petition was filed in the year 2011 whereas the daughter-in-law got Government Job in March, 2012. Hence, the assertion of the respondent-tenant qua the widowed daughter-in-law being employed is not sustainable. Otherwise also, the factum of employment of daughter-in-law of the petitioner is totally irrelevant for the purpose of eviction. The financial capacity of the landlord is not the criteria for denying him the eviction of the tenant. Counsel for the petitioner has further submitted that the lower appellate Court has gone totally wrong in law in deciding the case against the petitioner on the ground that the petitioner had not approached the Court with clean hands. In the first instance, there was no misleading statement made in the eviction petition. Otherwise also, there is no requirement under the statute that a person should come to the Court with so called clean hands. The only requirement in the Act is that the landlord and tenant both should disclose the correct particulars of the property involved in the case. No fact has been wrongly mentioned by the petitioner qua the property in question in the rent petition. Hence, the alleged conduct of the petitioner in not coming to the Court with clean hands could not be made a ground to decline the relief to the petitioner. Qua the assertion of the respondent that the petitioner was

having other shops in the same urban area, it is submitted by counsel for the petitioner that there are four shops in total at the said place. It was specifically pleaded that the landlord-petitioner wanted to demolish these three shops so as to create a show-room to run the Computer Centre therein. The fourth premises, adjoining the house, is being used as a garage. In fact, the shops are on the front side of the house and house of the petitioner is behind the shops at the same place. Hence, there is no misstatement on the part of the petitioner-landlord.

Counsel for the petitioner has further submitted that, in any case, under the Act, there is no requirement of any '*bona fide*' being proved by the petitioner for seeking eviction of the respondent-tenant. Counsel has relied upon the judgment of this Court in **CR-1678-2007** titled as ***Surjit Singh and another vs. Sahni Hardware and Sanitary Store, Shahabad (M), District Kurukshetra through its owner Sat Pal Sahni***, decided on 31.01.2023. The petitioner was required only to plead and prove the ingredients of the provision under which the eviction had been sought. Once, the petitioner has presented and projected the personal requirement before the Court, it was not for the tenant to dictate the terms qua necessity of the landlord or the same being '*bona fide*' in any manner. Hence, the order passed by the lower appellate Court deserves to be set aside, the order passed by the Rent Controller deserves to be restored and the respondent-tenant deserves to be evicted from the property in question.

On the other hand, counsel for the respondent-tenant has submitted that the said daughter-in-law of the landlord is already in Government service, yet the same has been denied by the petitioner. Rather

it was asserted in the replication that she was in a private job and not in government service. Not only that, even during cross examination, it has not been denied that the daughter-in-law is employed. Hence, since the petitioner had not come to the Court with clean hands, therefore, the lower appellate Court has rightly reversed the findings of the Rent Controller and the petitioner has rightly been declined relief of eviction. Counsel for the respondent has relied upon a judgment of this Court rendered in '***Inder Singh son of Jawahar Singh vs Smt. Sudarshan Sood and another***', 1980 (1) R.C.R. (Rent) 560, to buttress this argument. Counsel for the respondent has further submitted that since the petitioner was having other shops in the same urban area, therefore, the eviction petition itself was not maintainable. If the petitioner so intended to establish the business for his daughter-in-law, the petitioner was free to utilize the two other shops; which could have been available with him. In any case, the requirement of the landlord was not '*bona fide*'. Therefore, the petitioner was not entitled to get eviction of the respondent.

Having heard counsel for the parties, this Court finds substance in the arguments raised by counsel for the petitioner-landlord. It is not even in dispute that Smt. Vijay Chawla is the landlady and the respondent is the tenant of the demise shop since 1988. The landlady has pleaded the requirement of settling her widowed daughter-in-law and two grandsons, who are the sons of deceased son of the landlady; as the reason for requirement; and the said requirement has been duly proved on record. It is not even in dispute that the said daughter-in-law had got employment only in the month of March, 2012 i.e. after filing of the eviction petition.

Therefore, there is no question of the daughter-in-law not being in requirement of the premises on the date when the petition was filed. Although the daughter-in-law might have been employed subsequently in the government service, however, the grand son have become major in the meantime. Therefore, their requirement still survives. Otherwise also, no law bars any other person to settle and run the business for the welfare and benefit of the minor. Hence, no fault can be found with the requirement of the petitioner.

Counsel for the respondent has further submitted that the requirement of the petitioner-landlord was not bona fide and, therefore, the eviction petition deserves to be dismissed. However, this Court does not find any substance in the argument raised by the respondent. This Court has already held in **CR-1678-2007** titled as ***Surjit Singh and another vs. Sahni Hardware and Sanitary Store, Shahabad (M), District Kurukshetra through its owner Sat Pal Sahni***, decided on 31.01.2023, that the landlord is not required to show any 'bona fide' for getting his property back. The only requirement for getting the property or premises back is the requirement for personal use as mentioned in the statute. At this stage, it is appropriate to have reference to the provisions of the Haryana Rent Act, which are as reproduced hereunder:-

“ 13. Eviction of tenants.-

(1) xxx... xxx... xxx...

(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 Homeopathic 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. *For the purposes of this sub-clause "family" means such relations of the landlord as ordinarily live with him and are dependent upon him;*

(b) in the case of rented land, if he requires it for his own use, is not occupying in the urban area concerned for the purpose of his business any other rented land and has not vacated such rented land without sufficient cause after the commencement of the 1949 Act;

(c) in the case of any building or rented land, if he requires it to carry out any building work at the instance of the State Government or local authority or any improvement trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation:

Provided *that where the tenancy is for a specified period agreed upon between the landlord and the*

tenant, the landlord shall not, except under sub-clause (v) of clause (a), be entitled to apply under this sub-section before the expiry of such period:

Provided further that where the landlord has obtained possession of a residential building or rented land under the provisions of sub-clause (i) or sub-clause (v) of clause (a) or clause (b), he shall not be entitled to apply again under the said provisions for the possession of any other building or rented land of the same class:

Provided further that where a landlord has obtained possession of any building under the provisions of sub-clause (ii) of clause (a), he shall not be entitled to apply again under the said sub-clause for the possession of any other building for the use or for the residence, as the case may be, of the same son.

xxx...xxx... xxx...

13(6) Where a landlord, who has obtained possession of a building or rented land in pursuance of an order under sub-clause (i) of clause (a) or clause (b) of sub-section (3), does not himself occupy it or if possession was obtained under sub-clause (v) of clause (a) of sub-section (3), his family does not occupy the residential building, or if possession was obtained by him on behalf of his son in pursuance of an order under sub-clause (ii) of clause (a) of sub-section (3), his son does not occupy it for the purpose for which possession was obtained, [for a continuous period of twelve months from the date of obtaining possession or if possession was obtained under sub-section 3-A he does not occupy it for his exclusive personal use,

for a continuous period of three years] or where a landlord who has obtained possession of a building under clause (c) of sub-section (3) puts that building to any use or lets it out to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that the possession of such building or rented land shall be restored to him and the Controller shall make an order accordingly.

xxx... xxx... xxx...”

Though learned counsel for the respondent has laid much stress upon the necessity of the petitioner being not *bona-fide*, however, as is clear from the above mentioned provisions, the Act does not require any *bona-fides* on the part of the landlord for getting his property back. The Clauses of Section 13(3)(a)(i) and Clause (b) of Section 13(3) the Act are totally neutral to the intention of the landlord. Clauses of Section 13(3)(a)(i) and Clause (b) prescribe only that the landlord may apply for getting possession of a property if he 'requires' it for his own occupation, if he is not in occupation of any other residential building and he himself has not vacated another premises without sufficient cause, in case of residential premises, and if he himself is not occupying any rented premises, in case of commercial land. No element of 'necessity' is introduced by the Act and no restriction of requirement being *bona-fide* is prescribed under the Act. The Clause (a) (i) of Section 13(3) introduces some element of discretion of the Court to see whether the landlord had not vacated any other similar building without 'sufficient cause'. But even in that case *bona-fides* in vacation of other premises is to be seen and not in the

requirement of the present premises. Beyond that, there is no requirement of proving any '*bona-fide*' qua the requirement of the landlord. Therefore, except in a case where the landlord had vacated some other premises on which he himself was earlier a tenant; just to file the eviction petition against his tenant qua his own premises, there is no scope of reading the ingredient of "requirement" of landlord being '*bona-fide*', into the language of the Act. Needless to say that the only provision made in the Act to ensure the *ipso facto bona-fide* of the landlord at the time of eviction of the tenant is; as contained in Section 13(6) of the Act, which requires that in case, the landlord rents out the premises within a period of 12 months, after getting it vacated through the Rent Controller, then the tenant would be having a right to get the possession back. Besides this requirement, there is nothing in the Act to read into it the condition of any *bona-fide* intention in the personal requirement of the landlord. Beyond that he could not be burdened with the proof of his '*bona fide*' intention or the necessity of the requirement as such; which are very subjective and indeterminate terms, the standard of which may vary from person to person. The condition of the requirement of landlord being '*bona-fide*' is being unnecessarily introduced into the provisions of the Act by various judgments of various Courts, which otherwise, is neither included in the language of the Act nor the same was intended by the legislature. Hence, the fact that the landlord might have come to the Court with perceivably not bona fide intention, cannot be a ground for declining him the relief of eviction.

Another fallacy being introduced in the language of the Act is that 'requirement' of the landlord is being read as 'necessity' to be proved by him.

There is no legal warrant for this interpretation as well. The word used in the Act is 'requires' for his own 'occupation', in case of residential building and for his own 'use', in case of commercial land. None of these words or phrases envisages 'necessity' of the landlord. Needless to say that etymologically the term 'requirement' represents element of volition or exercise of voluntary option for one out of several available options, whereas 'necessity' is emerging from element of compulsion or lack of any other option. Therefore, for filing eviction petition the landlord is not required to plead or prove 'necessity' or lack of any other option to him. He can very well seek eviction of tenant by way of exercise of option, if he finds it more suitable to him. He is free to plead any requirement which he deems appropriate, and if he has proved other facts mention in the section, then it is not for the Courts to look into the genuineness of his requirement. This aspect has been clarified even by the Hon'ble Supreme Court in the case of '**Balwant Singh @ Bant Singh and another vs. Sudarshan Kumar and another**' in **Civil Appeal Nos.231-232 of 2021**, decided on 27.01.2021, wherein it is reiterated that the tenant cannot dictate terms to the landlord. Needless to say that the landlord is under no obligation to remain poor by restricting the scope of his own business only to ensure that the tenant flourishes and becomes rich at his cost. It is for the landlord to decide about the scope and expense of his personal requirement as envisaged by Section 13(3)(a)(i) and under Section 13(3)(b) of the Act. The tenant cannot dictate the terms to the landlord just for his own benefit and to deprive the landlord of the benefit of his own property. There is no clog upon the right of the landlord to get the property vacated and to use the same as per his desire except the clog of section 13(6) of the Act; as

mentioned above. There is no scope for adding more socialism into the Rent Act than what is already contained therein, by creating extra-statutory superlative rights in favour of the tenant. And there is already sufficient socialism embodied in the Act, whereunder, the landlord can be subjected to penalties and punishment for using his own property as per his desire.

Moreover, in the present case, as mentioned above, the requirement of the landlord is even '*bona fide*' because two sons of the deceased son of the landlady should be provided with some means of livelihood. The mere fact that the widowed daughter-in-law of the petitioner has got employment would not deprive even her to create some additional income from the business, which could be carried out in the premises in question. So far as the requirement of the landlord is concerned, it is not available to the tenant to plead sufficiency of the other available premises with the landlord. In the rent petition, the landlady has pleaded that she wanted to demolish all the shops so as to construct a big showroom for settling his widowed daughter-in-law and two grandsons by setting up a designed Computer Centre. In view of the above proposition of law, the petitioner could not be denied the relief of eviction only because the petitioner might be having some other but smaller space in the area.

So far as the argument of the counsel for the respondent qua concealment of fact on the part of the petitioner is concerned, even that argument deserved to be rejected. Our system of adjudication being of adversarial adjudication, the parties are entitled to have even the alternative pleas. The adversarial system assumes that the best way to get to the truth of a matter is through a competitive process involving assertions and

counter-assertions, so as to determine the correctness of the facts and decide the claims in accordance with law. Our system also does not have dual and parallel stream of Court, like the Chancery Courts and the Common Law Courts; as it once prevailed in the Britain. Denial of relief to a suitor in Courts' discretion is concept of Equity Courts, and not of the Court of law. We have 'Rule of Law' as the basic feature of our Constitution. Hence, we have only Courts of Law. Before a Court of law, if a suitor has availed a legal remedy to claim a legal right and has proved the claim as per the law of evidence to the satisfaction of the Court; then he cannot be denied the relief only because, perceivably, he has not disclosed something, which Court thinks he should have. There is no such discretion available to the Courts of law in exercise of their legal jurisdiction. However, our system is not totally bereft of the equity jurisdiction; as well. But in our system, equity is applicable only to the extent the same is embodied in the statutory law. There are some equity statutes in India, like, The Specific Relief Act, 1963. Beside this, there are equity principles, which are included in various statutes, but to varying extents. Requiring parties to the litigation to honestly disclose facts regarding the dispute brought to the Court is one of such principles, which in its metaphorical expression, is known as '*coming to the Court with clean hands*'. However, deviation from this principle, does not, always bring the consequences of inviting adverse orders from the Court. The consequences of the deviation from this principle vary from statute to statute, and even within the same statute various reliefs. For example, under some statutory provisions, parties are required to come to Court with clean hands, generally. Under some other

statutes, they are expected to come with clean hands specifically qua some aspects but without any consequences for default. Whereas, under some statutes; or for some of relief under the same statute, adverse consequences, including denial of relief is prescribed. Under the Specific Relief Act; for other relief, conduct of the party, though is expected to be honestly equitable, yet is not prescribed to be a ground for denial of relief. Rather, qua relief of Specific performance, the conduct of plaintiff is not made available as a defence to the defendant under Section 9, nor the Court is authorized to deny relief to plaintiff on this ground. But under Section 41, the Court is authorized not to grant relief of 'injunction' when the conduct of plaintiff is not clean. Hence, the discretion of Court to deny relief on the ground of party not coming to the Court with clean hands is not of any general application. Rather, it is by way of only exception, and only when specifically provided for in a statute. If there is no provision in the concerned statute, then it cannot be read inbuilt in the general or inherent power of the Court of law. Doing so would negate the 'Rule of Law'. Under the Haryana Rent Act as well, there is a provision requiring the landlord and tenant, both, to disclose certain aspect honestly, however, consequence of deviation from such honest disclosures is not prescribed to be the authorization for the Court to deny relief to a defaulting party. Section 21 of the Haryana Rent Act reads as under:-

*“21. **Landlord and tenant to furnish particulars.** - Every landlord and every tenant of a building or rented land shall be bound to furnish to the Controller, or any person authorized by him in that behalf, such particulars in respect of such building or rented land as may be*

prescribed.”

Section 21 of the Act requires only disclosure of the correct particulars of the property involved in the petition; as prescribed; and nothing more. It does not authorize the Court to decline relief only if a party does not give all particulars correctly. Therefore, the party cannot be deprived of the legal remedy; or the right to or right in property; only because such party might have distracted from the correct facts out of fear of losing the property. Therefore, the person not coming to the Court with clean hands; cannot be the basis for declining the eviction to a landlord under the Haryana Rent Act.

In view of the above, finding case of the petitioner to be justified and the findings recorded by the lower appellate Court to be totally non-sustainable, the order dated 06.05.2016 passed by the appellate Court is set aside and the order dated 11.12.2015 passed by the Rent Controller is restored.

Although the respondent-tenant is required to vacate the premises immediately, however, at this stage, counsel for the respondent has submitted that the respondent be granted some reasonable time to hand over the vacant possession of the premises in question to the petitioner–landlady.

Counsel for the petitioner has opposed the said prayer and has submitted that, in any case, if the respondent is to be granted some time, that should not be unreasonably long time; and, further, the respondent should be bound down to vacate the premises in question and to hand over

the same to the petitioner; within a time bound frame.

Accordingly, the respondent-tenant is granted time to hand over the vacant possession of the premises to the landlady on or before 16.05.2023. However, it is clarified that on or after 17.05.2023, the landlady shall be entitled to take possession of the shop in question by getting the police help without the requirement of any further order from any Court. It is further ordered that any items/articles found lying in the premises on 17.05.2023, shall be deemed to have been forfeited in favour of the landlady and the petitioner shall be entitled to appropriate the same as her own property.

(Rajbir Sehrawat)
Judge

15.03.2023
mohan bimbira

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