

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

CR No.488 of 2014 (O&M)
DATE OF DECISION : 10th MAY, 2023

Usha Jindal & others

.... Petitioners

Versus

Surjit Kaur (since deceased through LRs) & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. Anupam Gupta, Senior Advocate with
Mr. Deepak Jain, Advocate; Mr. Akshay Jain, Advocate &
Mr. Gautam Pathania, Advocate
for petitioners.

Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate;
Mr. Sahil Mehndiratta, Advocate &
Mr. Ashutosh Dhankar, Advocate
for respondents-tenants.

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RAJBIR SEHRAWAT, J. (Oral)

1. The petitioners have filed this petition under Section 15(5) of the East Punjab Urban Rent Restriction Act, (in short, the Rent Act) impugning the order dated 23.09.2013 passed by Additional District Judge, Chandigarh as Appellate Authority; vide which the order passed by the Rent Controller, Chandigarh; allowing the landlord's petition for eviction, has been reversed; and along with certain other prayers.

2. The eviction petition was filed by landlord Raj Karan Jindal. However, before the decision of eviction petition he expired, and accordingly, now the proceedings are being carried out by his legal representatives. Even the original tenant expired during pendency of proceedings. So even she is being represented by her LRs. But for the

purpose of the present petition, the parties would be referred to as they were described in the original eviction petition filed before the Rent Controller.

3. The brief facts, giving rise to the present petition are that the landlord-Raj Karan Jindal asserted that he was the owner of Bay Shop No.32 Sector 15D, Chandigarh. This property was earlier owned by Smt. Krishna Devi. However, the said property had come to Raj Karan Jindal vide registered exchange deed dated 07.05.2005; in lieu of shop No.37, Sector 15D, Chandigarh. The said transfer was duly entered in the records of the Estate Office of Chandigarh. The shop No.32, Sector 15D was occupied by the tenant-respondent herein. However, the landlord needed the shop in question for establishing himself and his son in the business of small saving agency and the grocery shop. Therefore, the landlord filed petition for eviction of tenant from the said premises on the ground of personal use and occupation.

4. On being put to notice the tenants resisted the eviction petition on the ground that the landlord was having other properties in the urban area of Chandigarh. He had also not disclosed the fact that he was earlier occupying another property and he had vacated the same after coming into force of the Rent Act. Therefore, the landlord had not come to the court with clean hands. It was also asserted that need of the landlord was not *bonafide* and the same had been devised as a collusive exercise.

5. The parties led their respective evidence. After appreciating the evidence on record the Rent Controller passed order of eviction of the tenants. Feeling aggrieved against the same, the tenants preferred

statutory appeal before the lower appellate authority. The appellate authority culled out the points for its consideration as given below:

- (i) Whether the exchange deed dated 07.05.2005 is a sham transaction?
- (ii) Whether petition is barred by the principle of resjudicata?
- (iii) Whether petition is bad for non-compliance of Section 13(3)(a)(i) of the Act?
- (iv) Whether the landlord requires the demised premises for his personal bonafide need?

6. Out of the above points the appellate authority has decided the points No.(i) and (ii) in favour of the landlord, but point No. (iii) and (iv) have been decided against the landlord. Accordingly, the appeal has been allowed and the order of eviction has been set aside. Feeling aggrieved, against the same the LRs of landlord has preferred the present petition.

7. Arguing the case the learned counsel for the petitioners has submitted that the lower appellate court has gone totally wrong in law. It is only on the ground of alleged non-disclosure of the facts qua the landlord having other alleged non-residential property in the urban area of Chandigarh and he having vacated other properties in Chandigarh, that the appeal has been allowed by the appellate authority. However, none of these conclusions are supported by the pleadings and the evidence on file. The lower appellate court has wrongly taken into consideration the another property, i.e., SCO No.609 Dadu Majra Colony, Chandigarh, to come to the said conclusion against the landlord. The said property was never owned by the landlord nor was the same occupied by him as a tenant or otherwise on the date of filing of the petition. Even as per the

case put up by the tenants-respondents the said property belongs to the wife of the landlord. It is well settled law that the other property owned by his wife cannot be put as a defence to defeat the eviction petition filed by a landlord. The appellate authority has wrongly treated the vacating of shop No.37, Sector 15D by the petitioner as not disclosed in the rent petition, and was wrongly come to the conclusion that same was vacated without sufficient cause. The factum of the petitioners getting Shop No.32, Sector 15D, Chandigarh in exchange of Shop No.37, Sector 15D, Chandigarh is duly disclosed in the eviction petition. Hence it is obvious that the petitioner had to vacate the Shop No.37 Sector 15D, Chandigarh because of the exchange transaction. The said transaction has even been held to be a *bonafide* transaction even by the lower appellate authority. Hence it cannot be said that the petitioner had vacated the Shop No.37, Sector 15D, Chandigarh without sufficient cause. So far as non-mentioning and vacating property bearing SCO NO.609, Dadu Majra Colony, Chandigarh is concerned, the same is totally irrelevant. As submitted earlier; the said property is owned by the wife of landlord. The landlord had not occupied the said property in any specified capacity. Rather the wife had permitted the landlord to use that property temporarily as a family member. Thereafter the wife had got the possession of the same and rented it out to a liquor vend. So neither there was any necessity of disclosing this aspect nor the said vacation of the premises can be said to be without sufficient cause. Hence the appellate authority has totally erred in holding that the landlord had not fulfilled the requirements of Section 13(3)(a)(i) of the Rent Act; and thus the need was not proved to be *bonafide*. The landlord has fulfilled all the

requirements prescribed in Section 13(3)(a)(i). Still further, the counsel has relied upon the judgment rendered by this court in ***CR No.2095 of 2016*** titled as ***Vimal Jindal Versus Surinder Singh Shillon & others*** passed on 22.03.2023, to submit that otherwise also the tenant cannot dictate the terms to the landlord. It is the simple requirement of the landlord which is sufficient for him to seek eviction of his tenant. No *bonafide* qua his requirement is required to be proved by landlord. It is for the landlord only to decide as to what use he/she wishes to put his/her which property. Even the plea of alleged concealment of facts could not have been made a ground by the lower appellate court to reverse the well reasoned judgment and order passed by the Rent Controller.

8. On the other hand, the counsel for the respondents-tenants has submitted that the need of the landlord was not *bonafide*. Since there was already a litigation qua Bay Shop No.32 Sector 15D, Chandigarh; and in which the then landlord had even lost in eviction petition upto the High Court; the same was exchanged by the present landlord with his own property, i.e., Bay Shop No.37, Sector-15D, Chandigarh, which happened to be in the same urban area and thus, this property was vacated by him without sufficient cause and with *malafide* intention. Therefore, filing the petition after the exchange, clearly shows that neither the need was *bonafide*; nor was the landlord entitled to seek eviction because he had vacated another property after commencement of the Rent Act. Not only that, after the exchange, in the earlier petition initiated by the then landlord, the present landlord had even filed application for becoming a party in the CR No.3002 of 1989 which was pending before this court; but the same was declined by this court vide

order dated 27.08.2007. Hence, it is clear that the property had been exchanged by the landlord only to get the tenants evicted from the property in question. The counsel has reiterated that there was another property, i.e. SCO No.609, Dadu Majra Colony, Chandigarh also; which the landlord occupied earlier, however the said fact was not disclosed in the eviction petition. Even the said property was vacated by the landlord without sufficient cause. Therefore, even on the ground of non-disclosure of correct facts the landlord have rightly been non-suited by the lower appellate court. The landlord had not come to the court with clean hands. Regarding that property even landlord had not even disputed that earlier he was occupying it and later on it was his wife who had rented out the said property. Hence, the lower appellate court has rightly denied eviction of tenant. The present petition deserves to be dismissed.

9. Before proceeding further it is apposite to have a reference to the language of the Section 13(3) and 13(4) of the Punjab Rent Act under which the landlord has filed the eviction petition, which reads as under:

“13(3)(a) A landlords may apply to the Controller for an order directing the tenant to put the landlords in possession—

*(i) in the case of a residential [* * *] building if—*

(a) he requires it for his own occupation;

*(b) he is not occupying another residential [* * *] building, [* * *] in the urban area concerned; and*

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;

[(d) it was let to the tenant for use as a residence by reason of his being in the service or employment of the landlords, 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 workman who has been discharged or dismissed by the landlords 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 landlords.]

[(i-a) In the case of a residential building, if the landlords is a member of the armed forces of the Union of India and requires it for the occupation of his family and if he produces a certificate of 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 the Act.

Explanation.- For the purposes of this subparagraph—

(1) the certificate of the prescribed authority shall be conclusive evidence that the landlords is serving under special conditions; and

(2)"family" means such relations of the landlords as ordinarily live with him and are dependent upon him;]

*(ii) in the case of [****] rented land, if-*

(a) he requires it for his own use;

*(b) he is not occupying in the urban area concerned for the purpose of his business any other such [****] rented land, [****]; and*

*(c) he has not vacated such [****] rented land without sufficient cause after the commencement of this Act, in the urban area concerned;*

[(iii) in the case of any building or rented land, if he requires it to carry out any building work at the instance of the 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;]

(iv) in the case of [any residential building] if he requires it for use as an office, or consulting room by his son who intends to start practice as a lawyer or as a "registered practitioner" within the meaning of that expression as used in the Punjab Medical Registration Act, 1916, or for the residence of his son who is married, if –

(a) his son as aforesaid 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

(b) his son as aforesaid has not vacated such a building without sufficient cause after the commencement of this Act, in the urban area concerned:

Provided that where the tenancy is for a specified period agreed upon between the landlords and the tenant, the landlords [shall not, except under sub-paragraph (i-a), be entitled] to apply under this subsection before the expiry of such period:

Provided further that where the landlords has obtained possession of [a residential building or rented land] under the provisions of sub- paragraph (i) or sub-paragraph (ii) he shall not be entitled to apply again under the said sub-paragraphs for the

possession of any other building of the same class or rented land:

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

13(4) *Where a landlords who has obtained possession of a building or rented land in pursuance of an order under subparagraph (i) or sub-paragraph (ii) of paragraph (a) of subsection (3) [does not himself occupy it or, if possession was obtained by him for his family in pursuance of an order under sub-paragraph (i-a) of paragraph (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-paragraph (iv) of paragraph (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 where a landlords who has obtained possession of a building under subparagraph (iii) of the aforesaid paragraph (a) 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 he shall be restored to possession of such building or rented land and the Controller shall make an order accordingly.*

[(4-A) Where a tenant is evicted from a residential building or scheduled building in pursuance of an order made under section 13-A and the specified landlords or, as the case may be, the widow, widower,

child, grandchild or widowed daughter-in-law of such specified landlords,-

(a) does not occupy it for a continuous period of three months from the date of such eviction;

or

(b) within a period of three years from the date of such eviction of the tenant, lets out the whole or any part of such building, from which the tenant was evicted, to any person other than the tenant;

such evicted tenant may apply to the Controller, for an order directing that the possession of the building shall be restored to him and the Controller shall make an order accordingly.]”

10. Having heard the counsel for the parties and having perused the case file, this court finds substance in the arguments of counsel for the landlord. It is not even in dispute, rather, is an admitted fact, that the petitioners had become the owner and the landlord of the premises in question, upon which the respondents had been continuing as a tenant from the days of earlier landlord. Hence, landlord and tenant relationship is not in dispute. The landlord had put forward his personal requirement for setting-up his business along with his son. The necessary ingredients; as required under Section 13(3) of the Rent Act have been duly pleaded in the rent petition. The landlord duly appeared before the Rent Controller to depose the fact pleaded by him in the eviction petition. Therefore, the ingredients of the Section 13(3) of the Rent Act duly stand proved. The lower appellate court has recorded that the landlord had not satisfied the requirements of Section 13(3)(a)(i). However, the record

shows that this finding is not rightly recorded. This section prescribes that the landlord can apply for eviction if:-

- (a) *he requires it for his own occupation;*
- (b) *he is not occupying another residential building in the urban area concerned;*
- (c) *he has not vacated such a building without sufficient cause in the urban area concerned after the commencement of this Act.*

11. It is not even in dispute that the landlord had applied for eviction order on the ground of his own occupation. So the first condition is undisputedly fulfilled. Qua second condition, the landlord has duly pleaded that he was not occupying any other such building, and he has duly appeared as witness to support this assertion. So he has discharged his burdent of proof. Beyond that; the landlord could not have proved the negative of a fact. The tenant has not led any evidence to show that the landlord was occupying any other similar building on the date of filing of the petition. Hence, even the second condition stands fulfilled. However, the lower appellate authority has tried to look into the possession of similar building by the landlord at some earlier point of time; to record that this condition was not fulfilled. But the Act uses words “is not occupying” in the Section, which obviously means that he should not be occupying another building on the date when he is filing eviction petition. His earlier occupation of such building is not relevant for this clause of this Section. Otherwise also this requirement has been diluted to a great extent through judicial pronouncements, wherein the requirement of landlord to extend his business by reclaiming possession of his accommodation under a tenant, at the same place where he/she is already occupying another building; has been recognized. Even this

court had an occasion to consider this aspect in case of **Vinod Kohli Vs. Keemti Lal**, in **CR No.7906 of 2017** decided on 31.01.2023, which reads as under :

“Moreover, as is mentioned above, it is well established by now that the tenant cannot dictate the terms to the landlord qua the personal requirement of the landlord. Although, there are certain facts which indicate that the son of the petitioner has been sitting on the counter of the shop adjoining the premises involved in the present petition, however, even if the son is running the business in the adjoining shop, there is nothing to prevent him to enhance his business by getting the shop in question vacated and merging the same with the another shop so that he can enlarge the scope of his business. Needless to say that the landlord is under no legal obligation to remain poor only for the sake of ensuring riches to the tenant. Only prohibition in the Act is that landlord seeking eviction from commercial property himself should not be occupying any other commercial property as a tenant. Having another self owned commercial property is no bar to file an eviction petition. Even the landlord has a right to utilize his properties for enlargement of his business as such. There is no scope for infusing any extra socialism into the Act, other than already embedded in the provisions of the Act, by the Court interpretations. There is already more than sufficient socialism embedded in the Act, where under Section 19, a landlord can be sent to jail even for using his own property as per his desire, just to please a tenant. Moreover, the record itself shows that the respondent-tenant has been

utilizing the shop for the past about 50 years, thereby, depriving the landlord of full benefits of his property, and the law cannot be any more indifferent to the plight of the petitioner-landlord.”

12. The third requirement is that landlord should not have vacated another similar premises in the same urban area after commencement of the Act. Read as it is, this portion of the Section has become un-implementable now. This portion of the Section was meant for use for a limited period after enactment of the Act, qua the tenancies which were in existence at the time of enforcement of the Act. The very fact that the date of commencement of the Act has been made the referral date clarifies this aspect. If this clause, as it is, is taken as mandatory condition then it will produce totally absurd and irrational results. Take for example; a case of a landlord who himself was tenant in the year 1952 and vacated that premises in the year 1955, may be without sufficient cause. Then he himself purchases a property in the same urban area in the year 1995 and inducts a tenant on that in the year 2010, after he himself having used that property for about 15 years. In the year 2015 he required this property for his own use and occupation. Now one can see the consequences. If this clause is read literally and with its plain language; then the landlord cannot get the eviction qua his premises because he had vacated some premises in the same urban area in the year 1955. Therefore, he is to be denied possession by eviction of his tenant even qua that premises which he had purchased after 40 years of he having vacated some other premises in the urban area concerned, and despite the fact that he had occupied such purchased premises for about 15 years. Hence this clause of the Section has been rendered totally void

and unconstitutional; being absolutely irrational and absurd. Even if this clause is to be given some effect with its mutilated language or purposive interpretation, then also it can, at the best, be taken to be a requirement that the landlord should not have, in the reasonably recent time, vacated without sufficient cause any other similar premises in the urban area concerned, on which such landlord himself was a tenant. One can take a cue in this regard from the provision as contained in Section 13(3)(ii) wherein it is so specifically prescribed qua eviction from the commercial land. Although this stipulation is equally absurd because it denies a right to the landlord to vacate some other premises on which he himself is a tenant; so as to take possession of his own premises from his own tenant. That means it forces a landlord to remain a tenant under some other landlord despite the fact that he owns a similar premises in the same area but it is under a tenant. By any means; the condition in clause (c) cannot even be applied to the so called vacation of self-owned properties of the landlord. If this is applied to vacating of the self owned properties of the landlord then, again, hugely absurd results will ensue. Take for example a case of a landlord who own four shops in the same urban area, out of which one is less advantageous for a business. He occupies and carries business in this shop and one of other three shops. For some family circumstance he has to shrink his business, therefore he vacates and rents out the shop in which he was carrying his business. Later on feeling need for more money he rents out remaining two shops, as well. After some time he feels requirement of expansion of his business again and, therefore, needs one of his shops. However he cannot get anyone of his shop. The two shops which were rented out subsequently cannot be

reclaimed by him because he had vacated another shop in the same urban area which he rented out first. The shop first rented out cannot be got vacated because he was occupying one other shop and he had also rented out two other shops after this shop. Therefore scope of condition No.3 cannot be interpreted to include vacating any premises; simpliciter. Rather the same has to be read as vacating by the landlord any other premises on which he himself was a tenant under some other landlord.

13. In the present case the landlord has duly pleaded that he had not vacated any other premises without sufficient cause. He has deposed to that effect as witness also. Beyond that he could not have proved the negative of a fact. The tenant has, again, not led any positive evidence to rebut this assertion. The lower appellate authority has tried to infer against the landlord on this aspect for the reason that he vacated the Shop No.37, Sector 15D Chandigarh and SCO No.609, Dadu Majra Colony, Chandigarh. However, so far as Shop No.37, Sector 15D, Chandigarh is concerned, the same had to be vacated because it was to be given in exchange transaction, which has been held to be *bonafide* even by the lower appellate authority. So it cannot be said to be without sufficient cause. Moreover, it was his own property and was not occupied by him as a tenant. Similarly the SCO No.609, Dadu Majra Colony, Chandigarh was also not under his tenancy. That was owned by his wife who had permitted the present landlord to use the same temporarily as a family member, but then got it vacated and rented it out to some other person for liquor vend. Therefore, this clause of the Section is neither attracted qua vacation of this premises, nor was the same violated by the landlord. Hence the lower appellate court is wrong even on that aspect.

14. Having shown his personal requirement and having proved the facts which are mandated by this Section to be disclosed or proved by the landlord, nothing more was required to be done by the landlord to get his property back. This Court has already held in **Vinod Kohli (supra)** that the tenant cannot dictate the terms to the landlord qua the sufficiency or genuineness of the requirement of the landlord. There is not even requirement under the Act for the landlord to show his *bonafides* qua his own requirement; for getting the tenant evicted. The relevant part of the judgment is reproduced hereinbelow:

“Learned counsel for the petitioners has laid much stress upon the necessity of the petitioners being not bona-fide, however, the Act does not require any bona-fides on the part of the landlords for getting his property back. The Clauses (a) and (b) of Section 13(3)(a)(i) and Clause (ii) of Section 13(3)(a) the Act are totally neutral to the intention of the landlords. Clauses of Section 13(3)(a)(i) and Clause (ii) prescribe only that the landlords 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, in case of residential premises, and if he himself is not occupying any rented premises, in case of commercial property. No element of 'necessity' is introduced by the Act and no restriction of requirement being bona-fide is prescribed under the Act. Only Clause (c) introduces some element of discretion of the Court to see whether the landlords had not vacated any other similar building without 'sufficient cause'. 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 landlords. Therefore, except in a case where the landlords 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 and other premises, there is no scope of reading the ingredient of 'requirement' of landlords 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 landlords at the time of eviction of the tenant is; as contained in Section 13(4) of the Act, which requires that in case, the landlords 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 landlords. This condition of the requirement being 'bonafide' is being unnecessarily introduced into the provisions of the Act by various judgment of various Courts, which otherwise, was never intended by the legislature.

Another fallacy being introduced in the language of the Act is that 'requirement' of the landlords 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 property. None of these words or phrases envisages 'necessity' of the landlords. Needless to say that pedagogically the term 'requirement' represents element of volition or exercise of voluntary option for one out of several options, whereas 'necessity' is emerging from element of compulsion or lack of any other option. Therefore, for filing eviction petition the landlords is not

required to plead or prove 'necessity' or lack of option 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 landlords."

15. Though it is the submission of counsel for the respondents-tenants that the landlord had acquired the property in question just to create a fresh ground for eviction after previous landlord had already failed; right up to this court, however, that argument is not germane in the present case. It is not in dispute that the property stood transferred to the petitioner through the legal process and the transfer of title had been duly entered into the record of the Estate Office of Chandigarh. Thereafter, the purpose of acquiring the property by the landlord would be totally immaterial and it is only the personal requirement of the acquiring landlord which would be required to be seen by the Rent Controller. The personal need which has been put forward by the landlord cannot be eclipsed by any consideration of acquisition of the title, allegedly, being not fair or the same being a sham transaction, as has been argued by the learned counsel for the respondents-tenants. Once the title is legally transferred, it carries with it all the legal rights and liabilities; and can never be a 'sham' transaction, till a competent court declares it invalid for some other reason in some other proceedings. Right to seek eviction of tenant is also such a statutory right attached to

such title, and therefore, can very well be enforced; irrespective of any intention with which the property was acquired by such title holder. Otherwise also, even the lower appellate authority has recorded a finding that the exchange was not a sham transaction. Hence this argument is, otherwise also, totally irrelevant in the present appeal.

16. The last limb of the argument of the counsel for the respondents is that the petitioner had not come to the court with the clean hands; and therefore, has to be non-suited on that ground alone. Hence the appellate authority has rightly non-suited the landlord on this ground. However, even this issue has been considered by this Court in the case of ***Joginder Nath Chawla (since deceased) through wife Vijay Chawla Versus Mohan Kalra, CR No.4652 of 2016*** decided on 15.03.2023 and which has further been relied upon in ***Vimal Jindal (Supra)***, the relevant portion of which is reproduced as under:

“17. Another argument, which has come up on behalf of the tenant, is that the landlords had not come to the court with clean hands in as much as they had not disclosed the fact that they had vacated another premises by leasing out the same to another tenant after the demised premises was rented out to the present revision petitioner, however, there is no force in this argument, as well. It is obvious from the record and even from the pleadings of the tenant that when the demised premises was given on lease to the tenant-revision petitioner, the landlords were not in requirement of any premises, as such. Therefore, even the other portion of the premises, i.e., SCO No.3015-3016 was given on rent to the other tenant. Giving of one’s own property on rent to

*another tenant, when the landlord does not require the same for his own use; cannot be stretched to the mischief of Section 13(a)(i)(b) & (c). The requirement under these sub-Sections, primarily, emphasizes the fact that the landlord must not have vacated such premises without sufficient cause on which he himself was a tenant or which he was occupying for his own actual use. The landlords were not occupying those portions for own actual use at that time. Hence leasing out the same cannot be treated as vacating the property by the landlord for the purpose of Section 13 of the Rent Act. Hence there was no concealment by the landlords. Otherwise also, leasing out by landlord his own property as per his choice; cannot be pleaded by the tenant as the landlord having vacated any other property; for the purpose of Section 13 of the Rent Act. Moreover, there is no such general principle that a person coming to the court with not clean hands has to be denied the relief by the court of law. Even this issue has been considered by this Court in the case of **Joginder Nath Chawla (since deceased) through wife Vijay Chawla Versus Mohan Kalra** passed in **CR No.4652 of 2016** on 15.03.2023, the relevant portion of which is reproduced as under:*

“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 qua 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'."

18. *Under the East Punjab Urban Rent Restriction Act, 1949 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 18 of the Rent Act reads as under:*

"Section 18. Landlord and tenant to furnish particulars. – *Every landlord and every tenant of a building of 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."*

19. *Section 18 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 coming to the Court with not so clean or even soiled hands; cannot be the basis for declining the eviction to a landlord under the East Punjab Urban Rent Restriction Rent Act, 1949."*

17. No further argument was raised.

18. In view of the above, this court finds the conclusion and findings recorded by the lower appellate court, to be totally perverse and not commensurate with the legal provisions or propositions. Therefore, the same are liable to be set aside.

19. Accordingly, the present petition is allowed. The impugned order passed by the lower Appellate Authority is set aside and the order passed by the Rent Controller is restored.

20. Although in view of the above order the respondents-tenants have become liable to handover the vacant possession to the landlord immediately, however, the counsel for the landlord has fairly agreed that the respondents-tenants can be granted a reasonable time to handover the vacant possession of the premises in question. Accordingly, the respondents-tenants are granted time till 10.08.2023 to handover the vacant possession of the premises in question to the landlord, failing which the landlord shall be entitled to get the possession of demised premises with the police help on or after 11.08.2023 without requiring any further orders from any court. It is further ordered that if any items/articles are found lying in the demised premises on or after 11.08.2023, the same shall be deemed to have been forfeited in favour of the landlord; and they shall be free to appropriate the same as their own property.

10th MAY, 2023
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes