

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

CR-1635-2021

Reserved on: September 01, 2023

Date of Pronouncement:- 19.09.2023

VIRINDER NAYAR

..... Petitioner

Versus

JATINDER SINGH (DECEASED) THROUGH HIS LRS

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Amit Jain, Sr. Advocate with
Mr. Varun Parkash, Advocate for the petitioner.

Mr. Gaurav Chopra, Sr. Advocate with
Mr. Divyanshu Jain, Advocate for the respondents.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition, challenge has been laid to the judgments dated 06.03.2019 and 03.08.2021 passed by the Rent Controller and the Appellate Authority, Chandigarh, whereby, an eviction order has been passed against the petitioner from the tenanted premises i.e. semi-industrial shop No.40, Sector-15 D, Chandigarh, upholding the bona fide need of respondents No.2 and 3.

2. Briefly stating, the tenanted premises comprised of semi-industrial shop no.40, Sector 15-D Chandigarh besides 20% share in the Industrial Shed No.73, Industrial Area, Phase-I, Chandigarh were originally owned by Smt. Gurbinder Kaur wife of Harmohinder Singh. Earlier on 11.05.2007 a rent petition was filed at the instance of Smt. Gurbinder Kaur against the present petitioner seeking eviction on the ground of her personal necessity as well as the necessity of her daughter-in-law namely Paramjeet Kaur for wanting to set up an embroidery centre besides on the grounds of arrears of rent. The said

eviction petition was dismissed by the Rent Controller vide judgment dated 02.05.2012. The same was even upheld by the appellate Authority vide its decision dated 28.03.2014 thereby non-suiting Gurbinder Kaur for having concealed and suppressed material facts besides holding that the bona fide need of Paramjeet Kaur was not made out.

3. Immediately thereafter on 12.06.2014, a transfer deed based on family settlement was executed by Gurbinder Kaur in favour of her son, namely, Jatinder Singh vide which the tenanted premises as well as the 20% share of the industrial plot were recorded in his name. The same was even acknowledged by the estate office on 30.01.2015. Based on the aforesaid family transfer, rent petition No.144 dated 27.02.2015 was filed against the petitioner at the instance of said Jatinder Singh while claiming himself to be the owner-landlord pleading his own bona fide need. Unfortunately, during pendency of the eviction petition, Jatinder Singh expired on 12.05.2018 resulting into impleading of respondents being his successors followed by an amendment of the rent petition seeking eviction on account of bona fide need of his widow Paramjeet Kaur and the elder son Samyukt Singh. Relevant para number 3(i) from the amended eviction petition is reproduced hereunder:-

“3. That the respondent is liable to be evicted from the premises in question describable as Semi Industrial Shop No.40, Sector 15-D, Chandigarh on the following grounds:-

- (i) That the premises in question describable as Semi Industrial Shop No.40, Sector 15-d, Chandigarh is required by the petitioner Nos.2 and 3 i.e. Smt. Parmajit Kaur, widow of late Sh. Jatinder Singh and Samyukt Singh son of late Shri Jatinder Singh for their bona fide personal use and occupation. It is

stated that the petitioner No.2 is an educated lady whereas petitioner No.3 is unemployed. The petitioner Nos.2 and 3 will set up their business in the premises in question. The premises in question is located at a most vantage position in the busy market of Sector 15, Chandigarh, which is considered as a business hub with lot of business avenue. The setting up of the business by the petitioner Nos.2 and 3 in the premises in question shall provide gainful employment to petitioner No.3 who is employed(?) and will also give an opportunity to his mother i.e. petitioner No.2 to concentrate her energy in business rather than sitting at home and going into depression because of the death of her husband late Sh. Jatinder Singh. The business to be set up by petitioner Nos.2 and 3 shall also augment the income of the family. The premises in question is, therefore, required by the petitioner Nos.2 and 3 for their bona fide personal use and occupation. Hence this petition."

4. The amended Eviction petition was filed on 16.08.2018. In response, the amended written statement was filed on behalf of petitioner-tenant while raising objections about concealment of dismissal of the previous petition filed at the instance of Gurbinder Kaur besides challenging the merits of the bona fide need of Paramjeet Kaur and Samyukt Singh having pleading that even the details of business sought to be set up by them were not mentioned in the eviction petition and also stating that the respondents were having alternate site in the shape of shed No.73 Industrial Area-I, Chandigarh wherein they possessed 40% share.

5. The Rent Controller vide its judgment dated 06.03.2019 ordered eviction against the present petitioner while recording a finding of bona fide necessity in favour of Paramjeet Kaur and Samyukt Singh. Aggrieved thereof, the petitioner filed first appeal, however, the same was dismissed vide judgment dated 03.08.2021 passed by the Appellate Authority, Chandigarh.

6. Impugning the aforementioned judgments passed by the authorities below, learned Senior counsel for the petitioner Mr. Amit Jain submits that the eviction petition filed at the instance of respondents was liable to be dismissed on account of concealment of material facts. Learned Senior counsel further submits that the previous eviction petition i.e. Rent petition No.510 dated 11.05.2011 was filed at the instance of Gurbinder Kaur seeking eviction from the tenanted premises for her as well as for the bona fide need of Parmajeet Kaur, wherein Gurbinder Kaur was non-suited while recording a positive finding that the need of Paramjeet Kaur was neither bona fide; nor genuine and thus, this fact was required to be disclosed in the present eviction petition. He also submits that in the wake of respondents jointly owning 40% share in the industrial shed No.73, Industrial Area-I Chandigarh, it was incumbent upon them to have mentioned about the nature of business to be carried out by them so as to adjudge as to whether the industrial shed No.73 was suitable for the same or not especially when no objection from the side of other co-sharers of the same about its utilization by the respondents was pointed out on record. Referring to the evidence available on record, learned Senior counsel also submits that the aforementioned industrial shed even remained vacant and in occupation of respondents who never started any business therein. It was further pointed out that all the aforesaid contentions were specifically and categorically raised before the authorities below, however, the same were not dealt with in proper perspective.

7. On the other hand, learned Senior counsel, Mr. Gaurav Chopra who represents respondents submits that there was no material concealment in the pleadings setup by the respondents as the factum of previous eviction petition and orders passed thereupon were duly acknowledged in the replication filed at the instance of respondents. He further points out that the factum of rent petition and the orders passed thereupon was even admitted by respondent No.2 while appearing as PW5 in her cross-examination and moreover, once the previous litigation was with the petitioner-tenant only, no prejudice was caused to him on account of its non-disclosure. Learned Senior counsel also submits that it is always convenient for the Landlord to seek eviction from the premises which is exclusively owned by him rather than asking setting up a new venture over a portion of the joint property in terms of his bona fide need thereby leaving him at the mercy of co-sharers/co-owners. Learned Senior counsel further submits that all these pleas were duly considered by the First Appellate Court while affirming the eviction order passed by the Rent Controller which thus, warrants no interference. In support of his submissions, learned Senior counsel places reliance upon judgment passed by Hon'ble the Apex Court in case of **"Lingala Kondala Rao Vs. Vootukuri Narayana Rao"** reported as 2003AIR (SC), Page-2077 and also the judgment passed by this Court in case of **"Janta Transport Through its Partner Vs. Amarjeet Singh and Others"** reported as 2016(1) RCR(Rent), Page-473. Para Number 4 of **Janta Transport's case** (supra) is reproduced hereunder:-

“4. The distinguishing factor in both these cases was that the landlord was himself owner of the premises. In the present case what can be seen is that the respondent-landlord is exclusive owner only

of the demised premises while the other properties are owned by his other family members. In the circumstances it is quite possible that even if one premises is lying vacant the other brothers and sisters may not be agree that one of the family should have excessive user and rather may pressurise that the premises should be let on rent so that all of them can get the proportionate share of the rent. In the circumstances I hold that the fact that the respondent did not disclose that he along with his other family members was in possession of other properties is not fatal to his case.”

8. I have heard learned counsel for the parties and gone through the paper-book. I am unable to find substance in the submissions made on behalf of the petitioner.

9. In the present case, the first and foremost plea raised at the instance of petitioner-tenant is the non-disclosure about filing and dismissal of the previous ejectment petition moved at the instance of respondent No.1 for the bona fide need of respondent No.2 herein which as per him amounts to concealment on the part of respondents-Landlords thereby making them disentitled for relief of ejectment. At this stage, it may be relevant to understand the term “concealment” and “suppression of fact”. In common parlance, concealment for the purpose of such litigation would mean that a person/party or an individual having exclusive knowledge of any material fact is hiding it deliberately with an ulterior motive of gaining unlawfully whereas “suppression of fact” means an intentional and willful failure to disclose full information by one party to draw unlawful benefit against the opposite party having no knowledge about it. Non-disclosure of any or every fact may not amount to concealment or suppression unless it is

result of deliberate and conscious omission and can materially affect the ultimate decision. Reference in this regard can be made to certain observations made by Hon'ble the Supreme Court in case of **“Continental Foundation Joint Venture holdings, Nathpa, H.P. Vs. Commission of Central Excise, Chandigarh-1, reported as 2007(10) SCC, 337.** Relevant Para 12 thereof is reproduced hereunder:

“12. As far as fraud and collusion are concerned, it is evident that the intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word 'wilful', preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty.' Therefore, there cannot be suppression or mis-statement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to [Section 11A](#). Mis-statement of fact must be wilful.”

10. In terms of the above discussion, in the present set of facts wherein the petitioner himself was party-tenant to the previous litigation qua the same premises, having complete knowledge of its outcome, the non-disclosure thereof merely in the eviction petition though the same having been acknowledged in their rejoinder by the respondents as well as in her cross-examination by respondent No.2 (PW-5) can't be taken to be an act of concealment or suppression of material fact, the same being not an information exclusively known to respondents. Besides it, nothing has been pointed out from the side of petitioner about any prejudice having been caused to him on account of non-disclosure of filing or dismissal of previous ejectment petition. Nonetheless, in the facts and circumstances of the present case, wherein, the previous ejectment petition was filed at the instance of respondent No.1 being

the owner of the demised premises asking for ejectment on the ground of bona fide need of respondent No.2 i.e. her daughter-in-law its non-disclosure, in no manner could help the cause of the petitioner-tenant in the present ejectment petition, wherein the respondents were seeking eviction on account of bona fide necessity of respondents No.2-3 who intended to set up a new venture to keep themselves busy and augment their income in altogether changed circumstances of having lost their earning hand Jatinder Singh who happened to be son of respondent No.1, husband of respondent No.2 and father of respondents No.3-4. Thus the non-disclosure of the previous eviction petition was rightly not considered to be a material concealment by the Authorities below as the outcome of the previous eviction petition in no manner affected or impacted the rights of the parties in the present eviction petition, the same being based on entirely a fresh and new cause of action with material change in circumstances.

11. As regards the submission made on behalf of the petitioner-tenant that the respondents could not have sought his eviction from the demised premises as they were having occupation and possession of 40% share of industrial plot No.73, it may be recorded here that, the said property has been jointly owned by the respondents and the other co-sharers in the ratio of 40% and 60% respectively. No doubt from the evidence available on record, it has been established that respondents remained in vacant possession of the said industrial plot, however, the respondents having exclusively owned the demised property being co-sharers were well-within their rights lead by wisdom of a prudent man

in seeking eviction of petitioner-tenant from the demised premises on the ground of their bona fide need and cannot be non-suited for the reasons of owning 40% share in the industrial plot. In terms of the law laid down in the case of “**Janta Transport through its partner**”(supra), the respondents-landlords who exclusively own the demised premises cannot be left at the mercy of their other co-sharers of the industrial plot, even though there being no evidence of any objection from their side. Moreover, as per the case set up in the ejectment petition, the demised premises which forms part of well-established commercial area of the city has been found in turn to be more suitable by the respondents for setting up of their business which can otherwise be more affordable as compared to setting up of a business in a huge industrial plot which may even cost more to the respondents besides placing them at the continuous grace and leniency of their other co-sharers in the said industrial plot.

12. Last but not the least, in the facts and circumstances of the present case, the plea raised by the petitioner-tenant to the effect that nature of business sought to be set up by respondents was required to be disclosed by them in their eviction petition so as to test their genuine need and the suitability qua the demised premises is also devoid of merits. The genuineness and need of the respondents to start new venture has been duly established in the facts and circumstances of the present case wherein the respondents have lost their bread-earner namely Jatinder Singh and respondent No.2 being his widow whereas respondent No.3 being the elder son intend to set up their own business so as to earn their livelihood, increase their income and prospects in life

as well as to keep themselves busy. That apart, no specific mention of any business was required to be pleaded on their behalf in the ejectment petition regarding which they being the landlord are at liberty to decide even after obtaining vacant possession of the tenanted premises, keeping in view their changed circumstances, especially the financial and commercial aspects in the constantly changing market conditions. Mere pleadings and proof of their bona fide intendment to setup their own business in the demised premises was sufficient enough for non-suiting of the petitioner. Moreover, in the present case, the respondent No.3 while appearing as PW6 expressed his mind about the nature of business to be set-up while deposing that he was fond of cooking and would manage an experienced chef. My above-said view is even derived from the judgments passed by this Court in **“Ganga Saran Gautam and Anr. Vs. Mulkraj Kumar”** reported as 2015(1) L.A.R, Page 135(Law finder Doc I.D.678571), **“Kewal Krishan Vs. Amrik Singh”** reported as 2001(1) Rent Law Reporter, Page 349 and **“Wasakhi Ram @ Surinder Kumar and Ors. Vs. Kundan Lal through his LRs”** reported as 2017(4) Recent Civil Reports, Page-477. Relevant portion of **“Ganga Saran Gautam’s case”** (Supra). Para 12 thereof is reproduced hereunder:-

“12. It is not disputed that the landlord has retired from Military services. He wants to start business in order to supplement his family income. It is nowhere required under law to project as to what business the landlord wants to carry out in the demised premises. A person can think of starting business only when he has a premises to start the same. There is no purpose of planning to start a business without having the premises. A particular business which may be suitable at a particular point of time, may not be alluring with the passage of time. Many changes and developments take place in the market, as such, it is appropriate to consider starting of a particular business only when one has to start it. So

far as the plea of learned senior counsel for the petitioner that respondent did not possess any experience to carry any business also do not have any merit. A person even without any experience in commercial and industrial fields may not only be very successful and even some times cause wonder as we have witnessed in the recent times that some of the business tycoons of this country have risen to great heights despite having no experience in business and with limited means. The wish of the respondent-landlord to start the business to supplement his income cannot be doubted on the mere ground that he has not disclosed the business he wants to start or his means to start the business.”

Similarly, the relevant paragraphs 9 and 10 of **Kewal Krishan’s case (Supra) are** reproduced hereunder:-

“9. Hon’ble Supreme Court in **Raj Kumar Khaitan and others v. Bibi Zubaida Khatun and another, 1995(1) RCR (Rent) 495 (SC): AIR 1995 Supreme Court 576**. Pointed attention of this Court was invited to the following observations made by the Apex Court:

It is clear from the averments made in the above quoted paragraphs that the plaintiffs asserted that there was no other means of livelihood with them and as such they wanted to set up their own business in the premises in dispute. The High Court, however, came to the conclusion that apart from above quoted pleadings it was necessary to plead the nature of the business which the appellants-plaintiffs wanted to start in the premises. We are of the view that the High Court fell into parent error. It was not necessary for the appellants-landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody could bind the landlords to start the same business in the premises after it was vacated.”

10. In view of the determination of the apex Court extracted above, it is clear that it is not incumbent upon the landlord to express the precise business which is sought to be set up in the premises.

13. As such, in view of the discussion made hereinabove, especially in terms of the limited revisional jurisdiction as envisaged under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949, finding no justified reasons to interfere with the concurrent findings recorded by the Authorities below, the present revision petition is hereby dismissed and the eviction orders dated 06.03.2019 and

03.08.2021, passed by the Ld. Rent Controller as well as the First Appellate Authority are affirmed/upheld.

14. All pending applications stands disposed of.

19.09.2023
tejwinder

(HARKESH MANUJA)
JUDGE

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