

225 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-7025-2015 (O&M)
Decided on:-12.07.2023

Mohini Devi

....Petitioner..

VS.

Ajit Singh

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Divyanshu Jain, Advocate for the petitioner.

Mr. Saurabh Sharma, Advocate and
Mr. Sukesh K. Jindal, Advocate for respondent.

HARKESH MANUJA J. (Oral)

1. By way of present petition, challenge has been made to the judgment dated 08.09.2015 passed in Rent Appeal No.366 of 17.11.2014 filed at the instance of petitioner-landlady, whereby, an appeal presented by the respondent-tenant, challenging the order of eviction passed by the Rent Controller, Chandigarh on 19.09.2014 came to be allowed.

2. In the present case, dispute relates to the tenanted premises i.e. House No.533, Sector 40-A, Chandigarh, owned by petitioner-landlady.

3. As per the averments, the tenancy started in the year 2004, at the rate of Rs.3000/- per month being the rent with an understanding that an increase of Rs.100/- shall be there on yearly basis. Subsequently, the petitioner-landlady filed an eviction petition *inter alia* on the ground of personal necessity, stating that she along with her husband is living in House No.533, Sector 40-A, Chandigarh besides his son, daughter-in-law and three grand children as well, whereas the same consists of two rooms only.

Relevant para 7 from the eviction petition is reproduced hereunder for reference:-

“That the petitioner and her husband are living in a two rooms house owned by their son, who is living their with his family consisting of his wife, two daughters and one son. Now the daughters are grown up aged about 16 years, 14 years and son aged about 6 years. It has become difficult for the petitioner and her husband to live with the family of their son in a small two rooms house. Therefore, the petitioner requires the above said tenanted house for their personal occupation and the requirement of the petitioner is bonafide.”

4. In response, the respondent-tenant filed his objections/written statement while submitting that the plea of bonafide necessity as raised by the petitioner-landlady was not made out and further that she was having sufficient accommodation with her and property in question was not required for her personal use and accommodation.

5. Not agreeing with the contention of the respondent-tenant, the learned Rent Controller, Chandigarh vide order dated 19.09.2014, passed an eviction order against him, holding the plea of personal necessity/bonafide requirement of petitioner-landlady in her favour. Though as regards the ground of non-payment of rent, the same was not pressed whereas the plea of material impairment was recorded against the petitioner-landlady.

6. Aggrieved of the judgment passed by the Rent Controller, Chandigarh, two separate appeals were filed i.e. Rent Appeal No.334 of 27.10.2014, at the instance of respondent-tenant, challenging his eviction whereas Rent Appeal No.366 of 17.11.2014 was filed at the instance of petitioner-landlady, challenging the findings qua material impairment. Vide composite order dated 08.09.2015, both the appeals came to be decided by

the learned Appellate Court, Chandigarh, whereby, the appeal filed by the petitioner-landlady was dismissed, however, the appeal filed at the instance of respondent-tenant was allowed.

7. Feeling dissatisfied with aforesaid judgment, the present petition has been filed by the petitioner-landlord.

8. Learned counsel for the petitioner submits that though the issue of personal necessity of petitioner-landlady has been found in her favour even by the appellate authority, however, she has been non-suited on the ground of non-pleading of necessary ingredient of Section 13(3)(i)(a) and (b) of the East Punjab Urban Rent Restriction Act, 1949, (for short, "1949 Act"), which required her to plead that she was not in occupation of other residential building in the urban area concerned or she had not vacated any such building without sufficient cause after commencement of 1949 Act in the said urban area. In this regard, learned counsel for the petitioner submits that no objection as regards the non-mentioning of the aforementioned ingredients in the eviction petition was raised by the respondent-tenant in his written statement, which resulted into waiver on his part and thus, the petitioner-landlady could not have been non-suited on this account. In support, reliance has been placed upon the judgment of this Court passed in CR-6665-2016, titled as "***M/s Vishal Sarees and Dresses and another vs. Maninder Kaur and others***", decided on 17.08.2022.

He further places reliance upon the judgment of this Court passed in case of "***Kesho Ram vs. Jagan (deceased) represented by his LRS Om Parkash and others***", 1977(1) RCR (Rent) 622. Relevant extract from para 4 thereof is reproduced as under:-

“.....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 issued 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 not touch the question of the exercise of discretion by the Appellate or the revisional court.”

9. On the other hand, learned counsel representing respondent-tenant submits that although no specific objection as regards the non-pleadings of necessary ingredients was raised in the written statement, however, a specific plea, stating that the petitioner-landlady did not approach the Rent

Controller with clean hands and intentionally made false averments in the petition was taken. Besides it, he refers to an affidavit dated 17.10.2013 filed by the respondent-tenant in evidence as Ex.RA, wherein, the objection regarding non pleading of essential ingredients of Section 13 of the 1949 Act was specifically taken. Learned counsel further submits that in her eviction petition, the petitioner-landlady has to stand on her own legs rather than relying upon the weaknesses of respondent-tenant's case. As regards the non-pleading of necessary ingredient of Section 13(3)(i) (a) & (b) of the 1949 Act, he places reliance upon Full Bench judgment of this Court passed in **"Banke Ram vs. Smt. Sarasvati Devi" 1977(1) RCR (Rent) 595** besides judgment passed by Hon'ble the Supreme Court in case of **"Onkar Nath vs. Ved Vyas" 1980(1) RCR (Rent) 304**. The relevant portion from para 1 of **Onkar Nath's** case (supra) is reproduced hereunder:-

".....It is common ground that there are three requirements to make out a case of action for eviction under that provision, and indeed this is apparent from a bare reading of the subsection. In the present case the finding is to the effect that the landlord requires the residential building of his own occupation. But, the legislation has taken care to insist upon two more conditions, namely, (a) that the landlord is not occupying any other residential building in the area concerned; and (b) that he has not vacated such a building without sufficient cause. There is not a scintilla of evidence nor indeed there is any averment in compliance with these latter conditions. The necessary consequence follows that nor merely is there inadequacy of pleadings sufficient to make out a cause of action but total absence of proof of two vital requirements."

10. I have heard learned counsel for the parties and gone through the paper book as well as records provided by both the parties. I find merit in the

submissions made on behalf of the petitioner-landlady.

11. Although, the appellate Court has gone onto upheld the findings recorded in favour of the petitioner-landlady as regards her bonafide personal necessity qua the tenanted premises, yet, she has been non-suited, on account of non-pleading of necessary ingredient of Section 13(3)(i)(a) and (b) of the 1949 Act.

12. A perusal of the written statement filed on behalf of respondent-tenant shows that no specific or categoric objection as regards the non-mentioning of necessary ingredient of Section 13(3)(i)(a) and (b) of the 1949 Act, was raised therein, which thus resulted into waiver on his part. Even no specific issue was ever pressed upon by the respondent-tenant in this regard during trial and therefore the appellate authority could not have permitted him to raise any such plea at the stage of first appeal and that too, when nothing has pointed out to show that any such plea was ever raised in the grounds of first appeal. In short, the petitioner-landlady could not have been taken by surprise before the first appellate Court by setting up a new plea.

In the given facts, the petitioner-landlady could not have been thus non-suited merely on account of non-pleading of necessary ingredients in Section 13(3)(i)(a) and (b) of the 1949 Act. My aforesaid view is also derived from latest judgment passed by this Court in ***M/s Vishal Sarees case (supra)***. Relevant para 18 thereof is reproduced hereunder for reference:-

“In that context, the matter is required to be examined. For the first time, the tenant objected to the maintainability of the petition on the ground of lack of necessary pleadings of the ingredients at the time of final arguments before the Rent Controller. In such

*circumstances, the tenant will be deemed to have acquiesced or abandoned his objection, particularly when neither in the written statement nor in the evidence, this fact was ever pointed out. As per the settled principles of law here in India, it is crystal clear that the pleadings are laconic and the pleadings alone should not be literally examined to non-suit a party, particularly, when no prejudice is caused. It is also well settled that ambiguity in the pleadings regarding the necessary ingredients set out in Section 13 (3) (a) of the Act, if made good in the evidence is the sufficient compliance of the statutory requirement. Reliance in this regard can be placed on **Bhatia Cloth House vs. Dr. Raj Kumar Gupta 2008 (4) RCR (Civil) 250**, **Dr.S.S.Mann vs. A.K.Sharma 2013 (4) RCR (Civil) 1054** and **Daulat Ram vs. Hari Ram 1980 (2) RCR (Rent) 108.**”*

13. Nonetheless, while non-suiting the petitioner-landlady for want of specific pleadings qua the ingredients of Section 13(3)(i)(a) and (b) of the 1949 Act, no finding on merits has been recorded by either of the Courts below, based on any evidence led by the respondent-tenant as regards her non-fulfillment of any of the two conditions as contemplated under the above mentioned sub-clauses. In addition, in the cross-examination, respondent-tenant while appearing as RW-1 even stated to the following effect:-

“....I have no knowledge about the other properties of the petitioner, again said the petitioner had property in Kharar but I do not know the particulars of the other property...”

A perusal thereof shows that admittedly the petitioner did not own any property in the urban area of Chandigarh and thus, she could not have been non-suited for mere non-pleading of such ingredients particularly when no prejudice was shown to have been caused to the respondent-tenant on this

account. Regarding this, support can be derived from the judgment passed in case of **“Om Parkash vs. Mohinder Sachdeva, 2019(2) RCR (Rent) 650.**

Relevant para 12 is reproduced hereunder:-

*“12. There is no doubt a concurrent finding of fact by both the Courts below, that the premises in question is required for the bonafide requirement of the respondent to set up her son in a business. An argument has been raised that the eviction petition is not maintainable as essential ingredients under Section 13 (3) (a) (i) have not been pleaded. It is true that a Full Bench in **Banke Ram vs. Smt. Saraswati Devi, 1977(1)RCR (Rent) 595** has held that “it is mandatory to plead the essential ingredients that he requires the demised premises for his own personal need and that he had not vacated any house in the municipal area where the demised premises is situated and to plead that he was not occupying any other premises in the area, but the petitioner herein did not raise any objection thereto in his written statement”. In the judgment rendered in **Sat Prakash Chaudhry vs. Kewal Krishan Malhotra, 2010(4) PLR 622** it has been held that, “there is no dispute to the proposition of law as enunciated in the Full Bench judgment relied upon by the learned counsel for the petitioner. But, at the same time, the Court cannot be oblivious to the fact that mere non-pleading of a fact, which is enshrined in the statute, can always be rectified if a relevant objection is taken at the initial stage. The petitioner failed to take any such objection in his reply to the petition. The pleadings have to be considered broadly in a rent petition where it is not captive to the strict law of interpretation which may be the situation in a civil suit. In rent proceedings, the Rent Controller is merely obliged to hold an inquiry to look into the averments which have been made in the petitioner.” This view has been followed in a subsequent case **Gurbaj Singh vs. Parshotam Singh (2011) 3 PLR 653.** The argument that the respondent failed to plead or state that he is not occupying any other shop would loose significance since there*

*was no objection taken either in the written statement nor were any issues framed. Moreover, the petitioner was not caught unaware and did put the landlord all relevant questions in this regard. There is substantial evidence on the record to establish that the ingredients of section 13 (3) (a) (i) of the Rent Act have been complied with insofar as evidence has been led and the tenant is not caught unaware. Reliance in this regard may be placed upon the judgment rendered in **M/s Bhatia Cloth House vs. Dr. Raj Kumar Gupta, 2008 (4) RCR(Civil) 250** and **Raj Kumar vs. Budha Mal 2011(2) RCR (Rent) 60**, wherein it has been held that “it is consistent position of law that ambiguity in pleadings regarding the ingredients set out in Section 13(3)a of the Act have made good of the evidence as sufficient compliance of the statutory provisions”. The same view has been taken in the judgment rendered in **S.S. Maan vs. A.K. Sharma reported in 2013(4)RCR(Civil) 154** wherein para 8 it has been held that “It is cardinal principle of law that technicalities are handmaids of justice and they should not be hindrance in imparting substantial justice. In the present case, it has not been shown by learned Counsel for the tenant as to how any prejudice has been caused to him by non-pleading of the ingredients as referred by him in his arguments. No doubt, the pleading of all the ingredients are necessary for any person to seek relief, but at the same time if the party leads positive evidence to prove a certain ingredient, although not pleaded then the Court cannot throw him away on mere technicalities, if it is otherwise proved that no prejudice has been caused to him”. The judgments as relied upon by the petitioner would not be relevant in the facts of the instant case.”*

14. As regards the judgment of Full Bench passed by this Court in **Banke Ram's** case (supra), relied upon by the learned counsel representing respondent-tenant, the same has been duly discussed and distinguished in case of **Kesho Ram's** case (supra) and thus does not apply to the facts and

circumstances of the present case, wherein, the respondent-tenant, without raising the plea of absence of necessary ingredients pleaded in the eviction petition, joined issues with the petitioner-landlady as regards her bonafide requirement and lost the same before the Rent Controller, which finding even came to be upheld in appeal.

15. In view of the law laid down in **Kesho Ram's** case (supra), the first appellate Court went wrong while permitting the respondent-tenant to raise the plea of non-pleading of the ingredients of clauses (a) & (b) of Section 13(3) (i) of the 1949 Act at the appellate stage, I am also not convinced with the argument raised on behalf of respondent-tenant to the effect that the objection as regards non-pleading of necessary ingredients of Section 13(3)(i)(a) & (b) of the 1949 Act, was raised in the affidavit filed by him while appearing as RW-1 particularly when the same got demolished in the cross-examination and consciously no argument on this was raised before the Rent Controller.

16. In view of the discussion made herein above, the present revision petition is allowed and the impugned order dated 08.09.2015 passed by the learned Appellate Court, Chandigarh is hereby set aside, resulting into affirmation to the order of eviction passed against respondent-tenant by the learned Rent Controller vide its order dated 19.09.2014.

17. Pending application(s), if any, shall also stands disposed of.

12.07.2023
sonika

(HARKESH MANUJA)
JUDGE

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