

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R.No.480 of 2017 (O&M)
Reserved On: 12.02.2024
Date of Order:02.05.2024

Rajinder Kumar Sharma
Versus
..Petitioner

Usha Rani Kapoor
..Respondent

C.R.No.6782 of 2013 (O&M)

Usha Rani Kapoor
Versus
..Petitioner
Khurshid Ahmed and another
...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

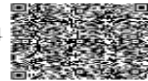
Present: Mr. Sherry K. Singla, Advocate
for the petitioner (in CR-480 of 2017)
Mr. Mayank Mathur, Advocate
for the petitioner (in CR-6782 of 2013)
Mr. Rishav Jain, Advocate
for the respondents (in CR-6782 of 2013)

ANIL KSHETARPAL, J

1. BRIEF FACTS OF THE CASE

1.1 With the consent of the learned counsel representing the parties,
two connected rent revision petitions shall stand disposed of by this common
order.

1.2. In Civil Revision No.480 of 2017, the tenant assails the
correctness of the appellate authority's order directing him to vacate the
premises, whereas in Civil Revision No.6782 of 2013, the landlady
challenges the correctness of the dismissal of her petition filed under Section

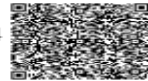


13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the 1949 Act') seeking eviction of the tenant.

1.3. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

1.4. On 14.07.1976, Sh. Suresh Kumar and his son Sh. Pankaj Kapoor jointly purchased a property consisting of various shops. Subsequently, Sh. Suresh Kapoor transferred his share in favour of his wife Smt. Usha Rani. Thus, Smt. Usha Rani and her son Sh. Pankaj Kapoor became owners in equal share. On 04.01.1986, a family settlement was arrived at in which Smt. Usha Rani, Sh. Pankaj Kapoor and Sh. Amit Kapoor, another son of Smt. Usha Rani divided the property by virtue of a family settlement. The three shops fell to the share of Sh. Pankaj Kapoor, who was the owner of half share, whereas two shops fell to the share of Smt. Usha Rani Kapoor and one shop fell to the share of Sh. Amit Kapoor. On 05.09.2006, Smt. Usha Rani Kapoor, filed a petition under Section 13 of the 1949 Act against Sh. Rajinder Kumar Sharma, the tenant (the petitioner in Civil Revision No.480 of 2017) on the ground that she has retired from service in the year 2006 and now she requires the demised premises for her personal use and occupation for running a boutique. It was alleged that she does not own or possess any other shop except the adjoining shop nor she has vacated any such building without any sufficient cause.

1.5. During the pendency of the petition, she also filed a petition seeking ejectment of Sh. Khurshid Ahmed, the tenant in the adjoining shop. She stated that she requires the premises as the shop which is in possession of Sh. Rajinder Kumar Sharma is only 8 feet into 12 feet and she requires to



hire three employees for the job of stitching clothes.

1.6. Both the rent petitions were tried separately before the different Presiding Judges. The tenants in both the petitions contested the petition on the ground that her necessity is not bonafide. In the case against Sh. Khurshid Ahmed, the eviction was also sought on the ground of non-payment of rent and the tenant has sub-let the premises to his son without the written permission of the landlady.

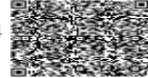
1.7. The two separate Rent Controllers by separate judgments dismissed the petitions. Two separate appeals were filed. The petition filed by the landlady against Sh. Rajinder Kumar Sharma was allowed on 17.11.2016, whereas the appeal filed against Sh. Khurshid Ahmed was dismissed on 21.11.2012.

2. **ARGUMENTS PUT FORTH BY THE LEARNED COUNSEL REPRESENTING THE PARTIES:-**

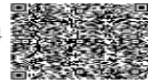
2.1. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record.

2.2 The learned counsel representing the tenant-Sh. Khurshid Ahmed has also filed a written note of submissions in Civil Revision No.6782 of 2013. Its relevant extract reads as under:-

“a. Necessary Ingredient under section 13(3)(a) of the East Punjab Urban Rent Act, 1949 has not been satisfied, as the Petitioner-Landlady nowhere pleaded that she had not vacated any such building without sufficient cause, [Para 10: Pg 25 {Rent Controller), Para 25: Pg 43 (Appellate Authority)]



- b. *As regards, the non-availability of any alternate accommodation, it was noted by both the Adjudicating Authorities below, that the shop adjoining to the Cloth Shop is lying vacant, and closed. The said shop though allegedly had been given in family partition/settlement to the Petitioner's Son: Amit Kapoor for his property dealing business, but it was concluded that the said family partition/settlement is not reliable on the score of contradictory stand of the Petitioner, as regards her relations with her son: Amit Kapoor. [Pg 26, 27, 44, 45].*
- c. *Further, the said third shop adjoining the cloth shop is closed, and vacant, is further reinforced from the fact that Amit Kapoor, himself in his cross- Examination has admitted that no electricity meter is installed in the said shop. The fact that the third shop was given to the Son of the Petitioner, so as to enable him to run business of property-dealer, is belied in the light of the fact that no business can be carried out in the shop where there is no electricity connection. [Pg 26, 44].*
- d. *Nota Bene: The fact that the Landlady had earlier instituted the eviction petition against another tenant: Rajinder Kumar propounding the same*



bona-fide necessity of opening a boutique, and later changed her stance and proceeded against the present Respondent taints her bona-fides as to her necessity.

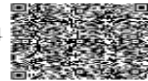
3. Qua the ground of Sub-letting, findings against the Landlady were returned by both the Authorities. The testimony of PW-2 (Purni Devi) had put a dent in the case of the Petitioner qua the ground of subletting as well. [Para 12: Pg 29 (Rent Controller); Para 24: Pg 42 (Appellate Authority)] ”

2.3. In Civil Revision No.480 of 2017, the learned counsel representing the petitioner has also reiterated the same submissions.

2.4. Per contra, the learned counsel representing the landlady in both the cases has supported the judgment passed by the Appellate Authority in Civil Revision No.480 of 2017 and criticized the judgment of the courts below in Civil Revision No.6782 of 2013.

3. **DISCUSSION BY THIS COURT IN CIVIL REVISION NO.480 OF 2017**

3.1 The first argument put forth by the learned counsel representing the petitioner is that there is a third shop which was alleged to have been allotted to Sh. Amit Kapoor, however, the same is lying vacant and closed. He submits that the alleged family settlement dated 04.01.2006, is sham. Moreover, Sh. Amit Kapoor is unmarried and the Appellate Authority has failed to appreciate that in natural course he would be residing with his widowed mother and not separately. He submits that no electricity meter is installed in the third shop which is alleged to have fallen in the share of Sh.

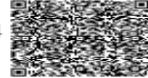


Amit Kapoor.

3.2. This court has considered the submissions of the learned counsel representing the petitioner. It is evident that there are three members of the family. Sh. Pankaj Kapoor, the elder son, is owner of half share. Hence, he has been allocated three shops. Now out of remaining three shops, one shop has fallen to the share of Sh. Amit Kapoor, the younger son, whereas two remaining shops have fallen to the share of the landlady. It has come in evidence that the construction carried out in the remaining shops has already been demolished in order to carry out fresh construction. The landlady has retired from the Government service. She wants to open a boutique in two adjoining shops. It is established that she does not own any other property in the city. There is also no evidence on record that she ever vacated any premises without any sufficient cause in the urban area of Patiala. In these circumstances, even if Sh. Amit Kapoor is not using the shop which fell to his share, the entitlement of the landlady to get the possession of remaining two shops shall not be adversely affected. Once, a shop has fallen to the share of Sh. Amit Kapoor, who has already demolished it along with his brother Sh. Pankaj Kapoor, no other shop is available for necessity of the landlady. The Appellate Authority has appreciated the evidence in a proper perspective. The tenant in normal circumstances, has no right to challenge the correctness of the family settlement that took place between the landlady and her family members.

3.3. Keeping in view the aforesaid facts and discussion, there is no substance in Civil Revision No.480 of 2017.

4. **DISCUSSION BY THIS COURT IN CIVIL REVISION
NO.6782 OF 2013**



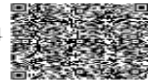
4.1. On a careful study of the judgments passed by the courts below, the authorities have dismissed the landlady's petition on the following ground:-

“The landlady has failed to assert that she has not vacated any such building after commencement of the Act in the Urban Area concerned.”

4.2. It shall be noted here that as per the 1949 Act, the landlady is required to prove that he or she is not occupying any other building in the urban area concerned and she has not vacated the tenanted premises without sufficient cause after the commencement of this Act.

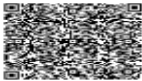
4.3. This court has carefully read the evidence of Smt. Usha rani Kapoor. In her cross-examination, the tenant's counsel has not given her any suggestion that she has vacated the tenanted premises without sufficient cause. Undoubtedly, in the second petition filed by her against Sh. Khurshid Ahmed she has failed to assert the aforesaid two requirements. However, the tenant also did not object to the maintainability of the petition on the ground that the landlady has failed to incorporate certain facts in her petition. The Rent Controller culled out the following issues:-

- “1. Whether the rent tendered is valid tender or not? OPP*
- 2. Whether shop in dispute is required to the landlord for personal necessity?OPP*
- 3. Whether respondent is entitled to pay the house tax?OPP*
- 4. Whether respondent no.1 has sublet the shop in question to respondent no.2?OPP*
- 5. Relief.”*



4.4. It is evident that in absence of objection from the tenant, there was no issue on this aspect of the matter. In such situation, there was neither any objection nor an issue or evidence to this effect. In **Navyug Goods Carrier vs. Manpreet Singh and another** (Civil Revision No.5722 of 2018 , decided on 07.09.2018), this court has explained that the petition filed by the landlord cannot be dismissed unless there is some evidence to prove that the landlord has intentionally failed to make assertions to this effect. The relevant discussion reads as under:-

*“It is nowhere provided in the Act that the pleadings have to be any specific format wherein these three requirements must be pleaded. No doubt, a Full Bench of this Court in **Banke Ram Vs. Shrimati Sarasvati Devi, 1977(1) RCR (Rent) 595** had held that such requirements have to be fulfilled by the landlord. However, it is apparent that thereafter the aforesaid Full Bench judgment has been diluted and it has been held that if during evidence, even in the absence of any pleadings, it is proved that the landlord fulfills the requirements of the statute, the petition filed by the landlord would not be dismissed. Reference in this regard can be made to the judgments passed by this Court in **Gurbaj Singh Vs. Parshotam Singh and others, 2011 (3) PLR 653, M/s Bhatia Cloth House Vs. Dr. Raj Kumar Gupta and another, 2008(4) RCR (Civil) 250, Karnail Singh Vs. Vidya Devi, 1980 (2) RCJ 188** and many other decisions of this Court. However, the learned counsel for the petitioner, while relying upon the judgment passed by the Hon’ble Supreme Court in the case of **Ajit Singh and another Vs. Jit Ram and another, 2008(9) SCC 699**, has submitted that it is necessary to plead all the ingredients with respect to the dependent for whom the eviction is*



being sought. It will be noted that the Act uses the words “for his own use”. These words were interpreted by the Hon’ble Supreme Court in the case of Ajit Singh (supra) in the following manner:-

XXX XXX XXX XXX XXX
XXX XXX XXX XXX

(2)The expression - landlord requires for "his own use" is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord himself but also of the normal "emanations" of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on a variety of factors such as interrelationship and interdependence - economic or otherwise, between the landlord and such person in the background of social, socio-religious and local customs and obligations of the society or region to which they belong.”

In the case of Ajit Singh (supra) cited by the learned counsel for the petitioner, father and son had filed eviction petition. It was pleaded in the petition that in a family partition, the property had fallen to the share of son, who was appellant No.1 before the Hon’ble Supreme Court. In that context, Hon’ble the Supreme Court held that the ingredients as required with regard to son are to be pleaded, because the son is the landlord. In the case of Ajit Singh (supra), the landlord was in the appeal before Hon’ble the Supreme Court and his appeal was allowed.

A judgment passed by the Hon’ble Supreme Court is no doubt binding under the Article 142 of the Constitution on all the Courts. However, the judgment



passed by the Court with greatest respect, has to be read in the context it has been delivered. The judgment passed by the Hon'ble Supreme Court cannot be read as a statute. It is ratio decidendi in a judgment which is binding not each word or sentence.

*Learned counsel for the petitioner further drew attention of the Court on two judgments of this Court in the cases of **Manmohan Lal Vs. Shanti Parkash Jain, 2014 (5) RCR (Civil) 667** and **Rajiv Gupta Vs. Jiwan Ram, 2015 1 RCR (Civil) 762** to contend that it has been held that it is necessary to incorporate the pleadings with respect to the dependent in the petition itself.*

*On careful reading of the aforesaid judgments, it is apparent that the Court has relied upon the case of Ajit Singh (supra). The facts of the case of Ajit Singh (supra) are entirely different. Still further, even with respect to the landlord, this Court after the judgment passed by the Full Bench, has taken a consistent view that the landlord is required to prove the ingredients, however, it is not necessary that those ingredients must be pleaded. Even if the requirements are not pleaded but those are proved by leading evidence, it is sufficient compliance of the 1949 Act. Although, the view on this aspect is consistent, however, reference can be made to a judgment in the case of **M/s Bhatia Cloth House Vs. Dr. Raj Kumar Gupta and another, 2008(4) RCR (Civil) 250** and para 16 thereof is extracted as under:-*

“The first contention relates to the assertion by counsel for the petitioner that the respondents have failed to plead that they are not occupying any other building and have not vacated any such building without sufficient cause, within the urban area of Ambala City. A perusal of the ejectment petition discloses that in sub-para (b) of para 5



and para 6 of the ejectment petition, the landlords pleaded that they are not in possession of any other shop within the urban area of Ambala City. In the written statement, the aforementioned averment was not denied. Further more, it is consistent position in law that ambiguity in pleadings regarding the ingredients, set out in Section 13(3)(a) of the Act, if made good in the evidence, is sufficient compliance of the statutory provisions. Reference in this regard may be made to Daulat Ram v. Girdhari Lal, 1980 (2) RCR(Rent) 108, Romesh v. Mukand Lal, 1982(2) RCR 66 and Baldev Raj v. Ram Lal, 2006(2) RCR(Rent) 193 : 2006(4) CCC 264. Respondent No. 1 admittedly, does not occupy any shop within the urban area of Ambala City. He is in occupation of a residential premises. Ejectment in the instant petition has been sought from a shop. Requisite and necessary evidence has been led to establish that respondent No. 1 is not in occupation of any other shop in the Urban Area of Ambala City. The sale of the adjoining shop, initially occupied by respondent No. 1 for his clinic, would not adversely affect the merits in any manner. The shop was sold in the year 1994, whereas the ejectment petition was filed in the year 2001. Respondent No. 1 sold and vacated the shop housing his clinic on the bona fide belief that he could carry on his clinic at his house and in furtherance of his belief, opened a clinic at his residence. Respondent No. 1 has been compelled to pray for ejectment, as he faces an imminent threat of resumption of his house. The tenant has not denied, whether by pleadings or by evidence, that respondent No. 1 is not in



occupation of any commercial premises in the Urban Area of Ambala City and, therefore, as the necessity pleaded is commercial in nature, and as the landlords are not in occupation of any commercial premises in the urban area of Ambala City and have not vacated any commercial premises without just cause, they have satisfied the ingredients of Section 13(3)(a) of the Act. The argument, raised with regard to the failure to comply with the statutory ingredients of the Act, must, therefore, fail and the concurrent findings, returned by the learned Courts below, must be upheld. An argument that as the landlords did not disclose the sale of the adjoining shop and other properties, while filing the ejectment petition, would merit dismissal of the ejectment petition for concealment of material facts, cannot be accepted. All material evidence, namely, with respect to the sale of the adjoining shops and the other properties, was adduced before the Rent Controller.”

If one carefully reads the judgments passed by the Court in the cases of Manmohan Lal (supra) and Rajiv Gupta (supra), it is apparent that the attention of the learned Judge was not drawn to the consistent view of this Court in the judgments referred to above. As noticed earlier, the 1949 Act does not require any particular form of pleadings and there is no format of the rent petition provided under the 1949 Act. The Court is required to examine the pleadings and the evidence and then find out whether sufficient facts have come on record to prove that the landlord fulfills those ingredients.”

4.5 The objection to the maintainability of the rent petition on this



ground stood waived if the tenant did not take any objection.

4.6. With reference to the second argument of the learned counsel, it may be noticed that the third shop fell to the share of Sh. Amit Kapoor. He may not be doing any business, however, that would not be sufficient to dismiss the landlady's petition. She is asserting her bonafide requirement.

4.7. With reference to argument no.(c), it may be noted that Sh. Amit Kapoor is the independent owner of the third shop. Hence, the landlady's petition cannot be dismissed on the ground that the shop belonging to her younger son is lying vacant. Even if Sh. Amit Kapoor is unmarried, it was not appropriate for the Court to dismiss the landlady's petition because she is entitled to open her boutique in her own shops other than requesting her son to give the shop.

4.8. The argument no.(d) is also lacks substance because in the beginning she filed a petition against Sh. Rajinder Kumar, assuming that her requirement shall stand fulfilled. However, subsequently she realized that she would need the adjoining shop for carrying her boutique business. Hence, she filed second petition against Sh. Khurshid Ahmed. Hence, the same does not amount to change of a stance.

4.9. It may be noted here that though the scope of interference in such cases is limited, however, in this case both the concurrent judgments of the authorities while dismissing the landlady's petitions suffer from perversity. Both the authorities have failed to appreciate that while deciding such cases, the Rent Controller or the Appellate authority are not required to doubt every assertion made by the landlord/landlady. It may be noted here that when Smt. Usha Rani Kapoor appeared in evidence, there was no



suggestion to her that she has not incorporated certain assertions. Sh. Khurshid Ahmed, the tenant while appearing in evidence did not allege that the landlady is in possession of another shop.

4.10. In this case, the landlady's requirement is with regard to two adjoining shops. The revision petition filed by the tenant in the adjoining shop has already been dismissed. If this petition is not allowed, she will not be able to use the premises. Hence, the present petition is allowed and the concurrent orders passed by the Rent Controller which in appeal has been affirmed by the Appellate Authority shall stand set aside.

5. DECISION

5.1 Keeping in view the aforesaid facts, Civil Revision No.480 of 2017, filed by the tenant is dismissed and Civil Revision No.6782 of 2013, filed by the landlady is allowed.

5.2. All the pending miscellaneous applications, if any, are also disposed of.

02nd May, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO