

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

CR-64-2018 (O&M)**Reserved on: 14.05.2025****Pronounced on: 19.05.2025**

RAMESH KUMAR @ RAMESH LAL

. . . . Petitioner

Vs.

NIKHIL KUMAR AND OTHERS

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by: - Ms. Anjali Khosla, Advocate, for
Mr. Naresh Jain, Advocate, for the petitioner.

Mr. Vishal Sharma, Advocate, and
Mr. Sunil Doda, Advocate, for the respondents.

DEEPAK GUPTA, J.

Rent Petition bearing *CIS No.RP-02-2016*, filed by landlords - Nikhil Kumar and others (*respondent herein*) under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, seeking ejectment of tenant- Ramesh Kumar @ Ramesh Lal (*petitioner herein*) from the demised shop, detailed and described in head-note of the petition, was allowed by learned Rent Controller, Malout on 18.09.2017 and the said order has been upheld by the Appellate Authority, Muktsar Sahib on 01.12.2017, while dismissing the appeal of the tenant. Against these concurrent findings, the tenant has approached this Court by way of the present Revision petition.

2. The ejectment has been allowed on the ground of *bona fide* necessity of the landlords. The only plea raised by learned counsel for the petitioner herein i.e. tenant, while assailing the impugned orders passed by the Courts below, is that landlords had not pleaded the necessary ingredients about the occupation of other premises in their possession and as such, the rent petition was liable to be dismissed.

3. After hearing learned counsel for the parties at length and after going through the orders passed by the Courts below, this Court does not find any merit in this contention.

4. The relationship of landlords and tenant between the parties is not in dispute, inasmuch as the *respondents herein* are the landlords-owners of the demised shop. Said shop was rented out to the petitioner herein i.e. tenant by Sh. Vijay Kumar, the predecessor of the respondents herein. Ejectment was sought on the ground that Nikhil Kumar (respondent No.1 herein) son of original landlord Vijay Kumar, wanted to start his own business in the demised shop.

5. Learned counsel for the *petitioner herein* i.e. tenant has drawn attention towards para No.4 of the reply to the petition, wherein it was stated that landlords were having another property adjoining to the suit shop, which is on G.T. road with approximately 200 ft. front and that the landlords (*petitioners therein*) had also a service station adjoining to the suit property, but the said contention was denied by the landlords in the rejoinder. It is contended that in his testimony landlord - Nikhil Kumar admitted that behind the demised shop, there is a service station being run by him and further admitted that he is having a frontage of 25 to 30 ft. on G.T. road besides many shops at the site of the demised shop and that they had got a residential house behind the demised shop. Learned counsel contends that in view of the said admission of the landlord - Nikhil Kumar, both the Courts below went in error in ordering the ejectment.

6. The above contention was also raised by the tenant before learned Appellate Authority and it was observed by the Appellate Authority in para No.13 of the order dated 01.12.2017, as under: -

“13. I have evaluated the contention raised by both the counsels. It is the case of the respondents that respondent no.1 to 3 being legal heirs of deceased Vijay Kumar inherited the property, whereas, respondent no.4 is daughter-in-law of deceased. Relationship between the parties as that of landlord and tenant is not denied. Respondents have led evidence that demised shop is

required for bonafide personal necessity of respondent no.1 Nikhil Kumar who being only son of deceased landlord wants to start his own automobile business and the shop in dispute, being situated on main G.T. Road, has the best location to run such a business. In order to assert his need, the respondent no.1 has appeared as AW-2. He was cross-examined and not even single question was asked or suggestion was given to him if his personal need is not bonafide or that he has got no personal necessity at all. Appellant in his cross-examination has admitted that Nikhil Kumar is married and is blessed with minor daughter. He admitted that he has got shop of his own ownership, which he has purchased, which also is situated on the main G.T. Road, which is of the dimensions of 12' x 40' and is situated at a distance of 100 feet only from the demised shop. He is alleging that he cannot run his dairy business in that shop, as that shop is small but admitted that the demised shop is having frontage of 8 feet and it is triangular in shape and towards the end, its width is only 1½ feet. Obviously, the shop of the own ownership of appellant rather is more spacious from the disputed shop. There is nothing on file to suggest if respondent Nikhil Kumar is running business of his own."

7. It is evident from the aforesaid observations, which are based upon the proper appreciation of evidence that when the landlord - Nikhil Kumar entered into the witness box and deposed about his *bona fide* necessity for the demised shop, not even a single suggestion was given to him to the effect that his personal need was not *bona fide*; or that he did not have any personal necessity. On the other hand, when the tenant i.e. petitioner herein entered into the witness box, he candidly admitted that he has got shop of his own, having been purchased by him, which is also situated on the main G.T. road with the dimensions of 12 ft. x 40 ft and the same is at a distance of hardly 100 ft. from the demised shop. Although, the tenant contended that he cannot run his dairy business in that shop as the said shop is small, but admitted that demised shop is having the frontage of 8 ft. and triangular in shape and towards the end, its width is only 1½ feet; whereas the shop owned by the tenant is rather more spacious than the demised shop; and there was nothing to suggest, if the landlord - Nikhil Kumar was running business of his own.

8. As far as the contention of the tenant to the effect that landlord - Nikhil Kumar had other shops, it has been found by the learned Appellate authority that as per the explanation made by the landlord - Nikhil Kumar, the other shops are in dilapidated condition and are not suitable for running the business of automobile.

9. In the aforesaid facts and circumstances and the evidence on record, learned Appellate authority has rightly observed that the Court is to presume the need of the landlord to be genuine and *bona fide*. It is for the landlord to decide as to which premises are suitable for him and in which manner, he should accommodate himself. It is none of the business of the tenant to dictate to the landlord as to how he should adjust himself. Once landlord has testified about his bonafide need, which is to be presumed true, it is for the tenant to prove otherwise and to show that the requirement of the landlord is not genuine. Mere bald assertion in this regard made by the tenant is not sufficient to rebut the presumption.

10. Since the landlord is the best judge of his needs and he considers that the existing accommodation is insufficient and that his need is more for commodious accommodation, the tenant cannot dictate his terms; and it is not even for the Court to go into such a question to arrive at a different conclusion.

11. As far as the contentions of learned counsel for the tenant by relying upon ***Banke Ram Vs. Smt. Sarasvati Devi, 1977 (1) RCR (Rent) 595*** to the effect that necessary ingredients were not pleaded by the landlords, it is important to notice that in the later authority titled ***Kesho Ram Vs. Jagan (deceased) 1977 (1) RCR (Rent) 622***, it has been observed by this Court 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.”

12. In the present case, tenant did not give any specific details of any other premises in the occupation of the landlord. Besides, it has already been found, as discussed above, that landlord Nikhil Kumar has given explanation as to why the other premises are not suitable for him being in dilapidated condition.

13. On account of the entire discussion as above, this Court does not find any ground whatsoever, so as to interfere in the concurrent findings of the Courts below, whereby it has been held that the necessity, as projected by the landlords, was genuine for the demised shop and as such, it is held that both the Courts below have rightly upheld the right of the landlords to seek the ejectment of the tenant.

14. Consequently, holding the present revision to be devoid of any merit, the same is hereby dismissed.

19.05.2025

Vivek

(DEEPAK GUPTA)
JUDGE

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes
No