

2025:PHHC:103184



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

Decided on:-08.08.2025

1. CR-1463-2024 (O&M)

Kuldeep Jain and anotherPetitioners..
vs.

Smt. ShashiRespondent.

2. CR-1991-2024 (O&M)

Manisha Jain and anotherPetitioners.

vs.
Smt. ShashiRespondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. D.K. Tuteja, Advocate for the petitioners (in both cases)
along with petitioner No.2-Manisha Jain in person.

Mr. Sandeep K. Sharma, Advocate and
Mr. Utsav Sharma, Advocate for the respondent.

HARKESH MANUJA J. (Oral)

1. Vide this common judgment, the aforesaid two petitions are
being decided as the identical facts are involved therein.

1.2 For convenience, the facts are being taken from **CR-1463-2024**.

2. By way of present revision petition, challenge has been laid to
an order dated 12.02.2024 passed by the Appellate Authority, Rohtak
whereby, an eviction order has been passed against the petitioner-tenant
from the demised shop on the ground of bonafide need of the younger son of
respondent-landlady as well as petitioner No.1 having sublet the tenanted
premises in favour of petitioner No.2.

3. Briefly stating, respondent-landlady sought eviction of the petitioners from the demised shop No.986/2014, situated at Delhi Gate, Gohana Stand, Rohtak with the averments that the same was previously owned by her husband and upon his death, the same has devolved upon her on the basis of registered Will dated 19.11.2010. It was further pleaded that a tenancy qua the demised shop was created by the deceased-husband of respondent in favour of petitioner No.1 w.e.f. 01.09.2009 to 31.07.2010 under a rent agreement dated 31.08.2009 @ Rs.10,000/- per month. The ejectment was sought on the grounds that the petitioners herein were in arrears of rent from 01.10.2012 till 31.01.2016 besides, the demised shop was required for the personal necessity of her younger son (Nitin Saini, aged about 28 years, B.com pass) and also that the demised shop had been sublet by petitioner No.1 in favour of petitioner No.2 herein.

3.1 In response, two separate written statements were filed on behalf of the petitioners. Petitioner No.1 in his written statement denied the execution of rent agreement dated 31.08.2009, besides, even denying the rate of rent of Rs.10,000/- per month as pleaded by the respondent-landlady. Contrarily, it was pleaded that the shop in dispute was rented out in favour of petitioner No.2 i.e. wife of petitioner No.1 under a rent agreement dated 25.08.2007 against rent of Rs.5000/- per month, which was later sought to be enhanced to Rs.8000/- per month or to make advance payment of Rs.3 lakhs to the owner. Petitioner No.1 pleaded that since a sum of Rs.3 lakhs was deposited with the owner, as such, the rent remained Rs.5000/- per month only. It was denied that the tenant was in arrears of rent or that shop was required by respondent-landlady for the personal use and occupation of her younger son besides having denied the subletting.

3.2 In the written statement filed on behalf of petitioner No.2 herein, again the execution of rent agreement dated 31.08.2009 as well as rent @ Rs.10,000/- per month were denied and disputed, similarly, it was pleaded that the rent of the demised shop was Rs.5000/- per month, which was later sought to be enhanced to Rs.8000/- per month but upon payment of Rs.3 lakhs as advance security to the owner, the rate of rent continued to be Rs.5000/- per month. Again, it was denied that petitioner No.2-tenant was in arrears of rent or the demised premises was ever sublet or was required for the personal necessity of the son of the respondent-landlady.

3.3 Two separate replications to the written statements on behalf of the petitioners herein were filed at the instance of respondent-landlady mainly reiterating the stand taken in the eviction petition.

4. The learned Rent Controller, vide decision dated 07.01.2022, though non-suited the respondent-landlady on the grounds of bonafide need of her son as well as nuisance at the hands of petitioners, however, ordered the eviction on account of subletting of the demised shop by petitioner No.1 in favour petitioner No.2. It may be noticed here that although the learned Rent Controller recorded a finding in favour of respondent-landlady to the effect that the rate of rent qua demised shop was Rs.10,000/- per month, however, the petitioners having tendered the arrears of rent, the said ground was not pressed by the respondent.

5. Aggrieved of the decision dated 07.01.2022 passed by the learned Rent Controller, two separate appeals were preferred; RA-1-2022 preferred at the instance of petitioners herein challenging the eviction on the ground of subletting, besides, RA-2-2022 preferred at the instance of respondent-landlady assailing the findings recorded by the learned Rent

Controller about rejection of her claim qua ejection sought on the ground of bonafide need of her younger son as well as nuisance etc. at the hands of petitioners herein. Both the appeals were decided by the Appellate Authority at Rohtak vide its decision dated 12.02.2024. RA-1-2022 filed at the instance of petitioners herein titled as ***“Kuldeep Jain and another vs. Smt. Shashi”*** was dismissed, whereas, RA-2-2022 titled as ***“Smt. Shashi vs. Kuldeep Jain and another”*** was allowed thereby passing an order of eviction against the petitioners herein on the grounds of bonafide need of the son of respondent-landlady as well as the premises being sublet at the hands of petitioner No.1 in favour of petitioner No.2 herein.

6. Dissatisfied with the findings recorded by the Appellate Authority, the following two civil revisions have been preferred at the instance of petitioners:-

(A) CR-1463-2024, titled as ***“Kuldeep Jain and another vs. Smt. Shashi”*** arising out of decision dated 12.02.2024 passed in RA-1-2022

(b) CR-1991-2024 titled as ***“Manish Jain and another vs. Smt. Shashi”*** arising out of decision dated 12.02.2024 passed in RA-2-2022.

7. Impugning the judgment passed by the learned Appellate Authority, Sh. D.K. Tuteja, learned counsel submits that in the given facts and circumstances and on the basis of material available on record, the subletting of the demised shop was not established. Learned counsel argues that the subletting was proved only in case possession of the premises was parted with for consideration. While referring to the pleadings of the respondent in the eviction petition, learned counsel for the petitioners submits that there was no mention of any kind of consideration. He also

submits that even in the legal notice (Ex. P-Y) which was served at the instance of respondent, the subletting of the demised shop was never alleged therein.

7.1 Learned counsel also points out that, at the time of tendering of rent by petitioner No.2 in terms of the provisional assessment made by the learned Rent Controller, the same was accepted by respondent-landlady without raising any kind of objection and thus, the subletting was not proved. It has also been argued that even from the statement of respondent-landlady (PW-2), who herself deposed that it was Kuldeep Jain, who used to open the shop and shut down the same, thus, the subletting was not established on record.

7.2 As regards the ground of personal necessity, learned counsel for the petitioners points out that the very basic ingredient of Section 13(3) (a) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (***hereinafter to be referred as “1973 Act”***) was neither pleaded in the eviction petition nor even proved on record. Learned counsel submits that, as per Section 13(3) a of the 1973 Act, it was required to be pleaded that the landlord needed the demised premises for his own occupation and was not occupying any other building in the urban area concerned, and has not even vacated any such building without sufficient cause after the commencement of 1949 Act in the same urban area, however, the respondent herein did not make the necessary pleadings in this regard, which is clearly discernible from para 5(II) of the eviction petition wherein it was rather pleaded that *“The petitioner is not occupying any rented building and has not vacated any such building without sufficient cause after the commencement of 1949 Act in the said Urban area nor she owns any other commercial property suitable for*

starting the business by her younger son.”

7.3 Learned counsel further submits that a specific objection with respect to the insufficient pleadings was raised by the petitioners in their written statements, however, the respondent-landlady even while appearing as PW-2 did not make up the said deficiency in her deposition. Learned counsel also points that in the written statements a specific plea was raised to the effect that the respondent-landlady was owning other properties as well and the said fact was even admitted by her in the cross-examination wherein she went on to admit the ownership of one Hotel Lagan besides other shops situated on the backside of the demised premises. Learned counsel goes on to submit that in the present case once the eviction was sought on account of bonafide need by the respondent-landlady qua her son, he was at least required to appear and depose in support of his need and in the absence thereof, adverse inference was required to be drawn qua his claim. On the basis of aforesaid submissions, learned counsel for the petitioners submits that the impugned judgment dated 12.02.2024 passed by the Appellate Authority needs to be set aside.

8. On the other hand, learned counsel for the respondent submits that the subletting of the demised shop was duly established from the pleadings as well as the evidence available on record. He also submits that as per the rent deed dated 31.08.2009, which was proved on record as Ex. P-1, the demised shop was rented out in favour of petitioner No.1, whereas in the two separate written statements filed on behalf of the petitioners herein, it was contrarily pleaded that the shop in dispute was under tenancy of petitioner No.2-wife; meaning thereby that the possession of the shop in question was with petitioner No.2, whereas, it ought to have been in

possession of petitioner No.1 as per the rent agreement (Ex-P-1) and thus, subletting was established.

8.1 Learned counsel also submits that the pleadings in the eviction petition are not to be strictly construed. He thus submits that from the contents of para 5(II) of the eviction petition as well as the cross-examination of PW-2-respondent, the statutory requirement as laid down under Section 13 (3) (a) of the 1973 Act, has been duly made out as it was clearly proved that the landlady was not owning any other commercial property suitable for starting business by her younger son. He submits that the non-appearance of the son of respondent-landlady was not to be taken fatal to his cause once his bonafide need was duly established on record from the statement of her mother PW-2 as well as his cousin Arvind Kumar (PW-5) and as such, no interference was called for with the judgment dated 12.02.2024 passed by the learned Appellate Authority.

9. I have heard learned counsel for the parties and gone through the paper book.

10. With respect to the ground of subletting of the demised shop by petitioner No.1 in favour of petitioner No.2; in the humble opinion of this Court, the same has not been made out from the records in view of the specific and categorical admission made by respondent-landlady in her replications filed to the two separate written statements of the petitioners herein. The relevant portion from the replication dated 07.03.2017 filed with respect to the written statement of petitioner No.1 herein is extracted hereunder:-

“The respondent No.2 has never been tenant of late Ashok Kumar/the present petitioner. The respondent No.2 is not in

possession of shop in question. It has been illegally and unauthorizedly sub-let by the respondent No.1 to her to which he has no right. In fact the respondent No.1 has been carrying business under the alleged name and style of Richa Garments and it is not run by respondent No.2. The respondent No.2 being wife of respondent No.1 must be helping him.”

10.1 Once the factum of business being run in the demised premises under the name and style of “*Richa Garments*” by petitioner No.1 herein with the factum of petitioner No.2 being the wife merely helping him in the said business was pleaded as a fact in the replication, it was apparent that the plea raised by the respondent-landlady in her eviction petition with respect to the subletting of demised premises by petitioner No.1 in favour of petitioner No.2, was actually abandoned there & then and was thus no more available to the respondent-landlady.

11. In view of the discussion made herein above, the findings recorded by the Appellate Authority on the point of subletting of the demised premises by petitioner No.1 in favour of petitioner No.2 are herein reversed.

11.1 As regards the plea of bonafide necessity been raised by the respondent-landlady qua her son; the submission made on behalf of the petitioners to the effect that the ingredients of Section 13(3) a of the 1973 Act were not made out, the same does not carry merit. In the facts and circumstances of the present case, upon conjoint reading of the averments made by respondent-landlady in para 5(II) of the eviction petition; para 5(II) of the replication as well as her cross-examination, it has been established on record that she did not own any other suitable shop for starting of the business by her younger son. Relevant portion of para 5(II) of eviction

petition and that from replication to written statement filed by petitioner No.1 are reproduced hereunder:-

Para 5(II) of the eviction petition is as under:-

“That the premise in question is required by the petitioner for her personal necessity and bonafide use. The petitioner has two sons. Her elder son is married and settled, but her younger son Nitin Saini is 28 years of age and he is unmarried and unemployed. He is B.com pass. The petitioner wants to settle her younger son Nitin in the shop in question by starting his business in the said shop for earning his livelihood. The petitioner is dependent on her younger son. So the petitioner needs the premises in question for settlement of her younger son who is unemployed and has not been able to get a job even after passing of his B.com examination in the year 2011. The petitioner is not occupying any rented building and has not vacated any such building without sufficient cause after the commencement of 1949 Act in the said Urban area nor she owns any other commercial property suitable for starting the business by her younger son.”

Para 5 (II) of the replication is extracted hereunder:-

That para no.5(ii) of the written statement is wrong and denied and that of the petition is correct and reaffirmed. The petitioner is the best judge of her personal necessity. The petitioner has no other shops/property within Urban Estate/Municipal Area of Rohtak nor any alleged shops are lying vacant or got vacated after commencement of this act.”

In addition to her somewhat casual pleadings in para 5(II) of the eviction petition, she went on to make up for it in her cross-examination; having deposed that the four shops which were existing behind the demised shop were being used as store by the respondent-landlady for keeping her

articles and were even lying closed. In view of the aforesaid, it was established on record that the respondent-landlady neither owned any other shop suitable for setting-up of the business by her younger son nor even she was in occupation of any such premises. Equally important, in their written statements, petitioners no-where made any specific mention about the existence of shops towards the back side of demised premises which fact clearly establishes that they themselves were conscious that the back side portion of the building was being used as godown only for storage purposes.

11.2 Furthermore, learned counsel for the petitioners has not been able to point out any suggestion put to the respondent-landlady, while she appeared as PW-2 to the effect that her son owned/occupied or even had vacated any such building without sufficient cause after the commencement of 1949 Act in the urban area of Rohtak. As such, upon a cumulative analysis of the aforesaid, it can safely be recorded that the requirement of Section 13 (3) a 1973 Act, was duly established.

11.3 As regards the ownership of commercial property in the name of Lagan Hotel by the family of respondent-landlady, it cannot be taken against her, especially, when it had come in her cross-examination that the said property was joint with her brother-in-law. Be that as it may, even if it is presumed that the Lagan Hotel had fallen to the share of the family of respondent with the Banquet, which previously formed part thereof fell to the share of brother-in-law of respondent, the same would not make any material difference to the claim of the respondent as it has already explained by her in the cross-examination that the hotel was being managed and run by her elder son, namely Mohit, who was living separately from the family and the shop in question was required for the bonafide need of her younger son

Nitin, who was unemployed. Moreover, no suggestion at all was put to respondent while appearing as PW-2 to the effect that her son Nitin has been employed or running any kind of business anywhere else. Additionally, petitioner No.1 while appearing as RW1 in his cross-examination went on to admit that at the time of filing of eviction petition, the son of respondent-landlady was unmarried and even unemployed, which itself strengthen the claim of bonafide need in favour of respondent.

11.4 Though, an objection was raised in the written statements to the effect that the pleadings in the eviction petition filed at the instance of respondent were not in terms of the statutory language provided under Section 13 (3) (a) of the 1973 Act, however, the said plea was specifically denied in the replication by making good the pleadings. No issue in this regard was ever pressed by the petitioners before the learned Trial Court and both the parties being fully aware of their respective cases led their evidence, wherein nothing came on record that either the respondent or her son were occupying or vacated any such building without sufficient cause after commencement of the Rent Act in the urban area concerned. As such no prejudice was caused to the petitioners/tenants for want of inadequate pleadings in the eviction petition.

12. In the light of what has been discussed herein above, this Court does not find any merit in the instant revision petitions. As such, the same stand dismissed whereby the findings recorded by the learned Appellate Authority *qua* bonafide need are upheld.

13. Pending applications, if any, also stand disposed of.

08.08.2025

sonika

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/ No