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**(1979) 11 P&H CK 0003**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 923 of 1979

Harbans Singh

APPELLANT

Vs

Gurdas Mal Mittal

RESPONDENT

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**Date of Decision:** Nov. 13, 1979

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) " Order 17 Rule 3

**Citation:** (1979) 11 P&H CK 0003

**Hon'ble Judges:** M.M. Punchhi, J

**Bench:** Single Bench

**Advocate:** R.S. Cheema, for the Appellant; H.L. Sarin, Mr. R.L. Sarin and Mr. M.L. Sarin, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Madan Mohan Punchhi, J.

Harbans Singh, tenant has filed the present revision petition to challenge an order of eviction passed by the

Rent Controllor, Chandigarh, and maintained by the Appellate Authority, Chandigarh. He has been ordered to be evicted from a portion of house

No, 70, Sector 20-A, Chandigarh, comprising of two rooms apart from a kitchen, together with necessary appurtenances.

2. Gurdas Mal landlord filed an application for ejectment of the tenant Petitioner on April 3, 1976 on two grounds, namely, that the tenant was in

arrears of rent and that the premises were required by Him for his own use and occupation. Elaborating the second ground, it was averred (hat

only one room in the said premises was in his occupation and that was not sufficient for his family which was intended to be shifted to Chandigarh

from Patiala. The petition was contested by the tenant Petitioner while setting at rest the ground of non payment of rent by timely payment thereof.

On the second ground, it was contended that the personal requirement of the landlord was not such so as to warrant eviction and in any case, the

requirement was not bona fide. Two issues were framed on the pleadings of the parties, but the contention one which survives till the disposal of

this petition is whether the Petitioner requires the premises in question for his personal use and occupation. There is concurrent finding of the courts

below in favour of the landlord and this has been sought to be upset by the tenant by means of this petition.

3. During the pendency of the ejectment application a new fact intervened. The landlord, who was an employee of the State Bank of India, was

transferred from Patiala to Chandigarh and assumed charge here on June 24, 1977. In view of this supervening circumstance, amendment to the

ejectment petition was sought for, and was allowed by the Beat Controller. In the amended petition dated August 5, 1977, the need of the landlord

expressed earlier in the unamended petition was highlighted further by stressing that on account of his transfer, personal requirement of premises

had become a compulsive necessity to him It was, however, added therein that the landlord by the date of the amended petition had come in

occupation of house No. 253, Sector 15 A, Chandigarh, on payment of rent at the rate of Rs. 400/- per mensem and the Bank was contributory

towards the payment of such sum.

4. During the course of the trial of the case, the defence of the tenant had to be closed by the Rent Controller vide his detailed interim order dated

September 22, 1978. Though it purports to be an order passed for closure of evidence under Order 17, Rule 3, Code of Civil Procedure, yet it is

well settled that this rule of the Code of CPC is not applicable to the proceedings before the Rent Controller under the East Punjab Urban Rent

Restriction Act, 1949. The preceding order dated June 3(sic), 1978, had put responsibility on the tenant to produce his entire evidence on

September 22, 1978, and that was the last opportunity. The tenant was forewarned that no further adjournment would be granted in any case.

Despite the clear terms of the order to produce the entire evidence to defend his case, the tenant-Petitioner sent a diagnose/prescription slip of Dr.

D. D. Sharma, In-charge, Civil Dispensary, Mani Majra, showing that he was suffering from D. M. Diarrhoea and that he had been advised rest

for the two days, i.e. 22nd September, 1976 (the date of hearing) and 23rd September 1978 (a day thereafter). This diagnose/prescription slip

was not relied upon by the Rent Controller and he chose to close the evidence as aforesaid.

5. The learned Counsel for the Petitioner challenged the approach of the learned Rent Controller as affirmed by the Appellate Authority in closing

the evidence of the tenant. It was vehemently contended that the Petitioner had been denied the opportunity of putting forward his defence

evidence, especially when he had deposited process fee on June 5, 1978, and that the court had to bear the responsibility for summoning the

witnesses and to have examined them despite the absence of the tenant. It is pertinent to note that the process-fee was filed on the date suggested,

but it was unaccompanied by any list of witnesses which were to be summoned on that process-fee. If assumptively it be said that the process fee

pertained to the witnesses already summoned in the list submitted on earlier dates, even then the Petitioner was not absolved from the responsibility

of disclosing that the process was to be issued to those witnesses. The office of the Rent Controller could not remain devoid of clarity on that

behalf. No such steps were taken by the Petitioner and the warning given to him in the interim order dated June 3, 1978, was ignored by him. As is

patent from the record no witnesses could be summoned on account of apathy of the Petitioner. Even the absence of the Petitioner on the date of

hearing is unaccounted. The certificate dated September 21, 198, disclosed his illness to be D.M. Diarrhoea with the advice of rest for the

following two days. Though the Real Controller and the Appellate Authority have interpreted it to mean that on September 21, 1978, he was not

advised rest and it was only for the subsequent two days, yet this view of the reading of diagnose/prescription slip is hypertechnical. What was

deducible therefrom was that on September 21, 1978, the illness of the Petitioner was not such that it could not be curable by the date of hearing

i.e. September 22, 1978. The rest advised was not compulsive. The Petitioner had further to show that on September 22, 1978, he remained

unable to go to the Court of the Rent Controller to defend his case and for that purpose there is no medical certificate. The Real Controller was

justified in closing the case of defence of the Petitioner.

6. It was then contended and rather this was the only contention raised in the courts below, that the bona fide requirement of the Petitioner as

reflected in the unamended petition did not specify the element of need, so essential for the maintenance of the petition for eviction. At best it only

reflected the mere wish of the landlord to shift from Patiala to Chandigarh. Without expressing any opinion on this aspect of the case, it would be

sufficient to dispose of this petition in view of the supervening circumstance i. e. the transfer of the landlord from Patiala to Chandigarh. What may

have been a wish to begin with, had become a case of dire need. It is not disputed that, the Rent Controller could go into the facts and

circumstances which had come into being during the pendency of the petition. The Courts below rightly answered the contentious issue in favour of

(the landlord that he was in bona fide need of the premises in dispute. It was also contended that the tenant was already in occupation In his own

right another premises which he had taken on rent. Complete reading of the statement of the landlord makes it clear that it is the State Bank of

Patiala who is the tenant of the premises, which he is occupying as being its employee for other wards, he is not occupying the premises even as a

tenant in his own right but at the sufferance of the Bank. At best what can be said for the tenant is that the landlord is occupying that house as a

tenant and tenancy does create some rights. That contention cannot prevail in view of the two decisions of this Court reported in Ram Singh v. Sita

Ram, (1959) 61 P. L. R. 132 and Hari Krishan Daroga v. Arjan Singh, (1973) 75 P.L.R. 658.

7. No other point was argued. Consequently, the petition fails and is dismissed with no other as to costs. The tenant is allowed to vacate the

premiss on or before December 31, 1979.