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**(1988) 11 P&H CK 0012**

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

**Case No:** Civil Revision No. 2878 of 1981

Kahan Chand

APPELLANT

Vs

Smt. Veena and others

RESPONDENT

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**Date of Decision:** Nov. 28, 1988

**Acts Referred:**

- East Punjab Urban Rent Restriction Act, 1949 - Section 13(3)(a)(iv)

**Citation:** (1989) 1 RCR(Rent) 225

**Hon'ble Judges:** J.V. Gupta, J

**Bench:** Single Bench

**Advocate:** Ashok Bhan and Mr. B.R. Mahajan, for the Appellant; H.L. Sarin and Miss Ritu Bahri, for the Respondent

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

J.V. Gupta, J.

This is landlord's revision petition in whose favour eviction order was passed by the Rent Controller, but was set aside in appeal by the appellate authority.

2. The landlord Kahan Chand sought the ejectment of his tenant Dhanpat Rai who died during pendency of the litigation and his legal representatives were brought on the record. The ejectment application was filed on January 3, 1977. The ejectment was sought inter alia on the ground that the landlord bona fide required the premises, in dispute, for the residence of his married son Harnam Dass who was not occupying any other property in the urban area concerned in his own right, nor he had vacated any such property in the urban area concerned after the commencement of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called the Act). The landlord has four sons, named, Thakur Dass, Harnam Dass, Narinder Kumar and Sham Sunder. Thakur Dass is a widower and is living separately in a house, site plan, Exhibit R. 1, consisting of two rooms and a tin shed. Harnam

Dass has got his wife and three children whereas Narinder Kumar has got his wife and two children. Sham Sunder is a handicapped person. In the written statement filed on behalf of the tenant the stand taken was that there was sufficient accommodation with the landlord in the house which was in his occupation. It consisted of nine nooms. Moreover, the accommodation in the occupation of Thakur Dass who was living separately was much more for his needs and if both the accommodations were taken together, the landlord had no bona fide requirement for his married son. The learned Rent Controller after discussing the entire evidence came to the conclusion that the requirement of the landlord was bona fide. He required the demised premises for the accommodation of his married son Harnam Dass, as contemplated u/s 13(3)(a) (iv) of the Act. Consequently, the eviction order was passed. In appeal, the appellate authority reversed the said finding of the Rent Controller and came to the conclusion that the landlord had got 12 members of his family in all and there are 12 rooms in his occupation, which, in its opinion, were quite sufficient for the accommodation of his family and for the necessity of his married son Harnam Dass. According to the appellate authority, Harnam Dass was married 20 years back and, therefore, the landlord could not seek ejectment of the tenant for the requirement of his married son as he was not recently married. The appellate authority was also of the opinion that the landlord had not mentioned the extent of the accommodation then in his occupation in the eviction application and he had nowhere pleaded that the accommodation in possession of his married son Harnam Dass was not sufficient. It also found that the house in occupation of Thakur Dass consisted of two rooms which could be got vacated from him and even to Harnam Dass for his separate residence. In view of these findings, the appeal was allowed and the eviction order was set aside. Aggrieved against the same, the landlord has come up in revision to this Court.

3. The learned Counsel for the Petitioner submitted that u/s 13(3)(a) (iv) of the Act, a landlord can seek the ejectment of his tenant for the residence of his son who is married and is not occupying any other building in the urban area concerned for his residence and has not vacated any such building without sufficient cause after the commencement of the Act in the urban area concerned. Thus, argued the learned Counsel, the Rent Controller rightly found that the landlord required the premises for the occupation of his son and that the said finding has been reversed in appeal arbitrarily and illegally. The learned Counsel cited *Shri Sewa Ram v. Des Raj* (1986) 90 P L. R. 222., in this behalf. On the other hand, the learned Counsel for the tenant-Respondents submitted that on the appreciation of the evidence, the learned appellate authority has found as a fact that the requirement of the landlord was not bona fide and it being a finding of fact, could not be interfered with in this revision petition.

4. After hearing the learned Counsel for the parties and going through the relevant evidence on the record, I am of the considered opinion that the whole approach of the appellate authority in this behalf was wrong and misconceived. It was not for the

appellate authority to suggest that the house occupied by Thakur Dass, site plan, Exhibit R. 1, should be got vacated from him and given to Harnam Dass. It is in evidence that Thakur Dass is living separately since long, though, he is a widower. There is no evidence on the record that Harnam Dass is occupying any separate accommodation in the urban area. It is not disputed that the landlord has got 12 members of the family and he requires the premises, in dispute, for his married son Harnam Dass who has got a wife and three children. His eldest son was 19 years old when the eviction application was filed in the year 1977. It is stated at the bar that the said son has also been married during the pendency of these proceedings. The learned Rent Controller after discussing the entire evidence rightly came to the conclusion:

Moreover in this case, I find that the family of the Appellant has a growing tendency. There is no sufficient accommodation to house as many as 12 members of the family in the house presently occupied by him. His future needs are also to be taken into consideration. The children of Narinder Kumar are growing. Sham, another son, is to be got married. If Harnam Dass and his family members are given a separate accommodation, the applicant would be able to have a sigh of relief. Family of Harnam Dass has also to develop and his requirement includes the requirement of his family members.

The view taken by the appellate authority that Harnam Dass was married 20 years back and it is not the case of the landlord that he requires the accommodation in dispute for his son who was recently married, is not warranted by the provisions of Section 13(3)(a)(iv) of the Act. The landlord is entitled to get the demised premises vacated for his married son whether married recently or earlier; provided the case is covered under the said provision. Likewise, a landlord may require the premises for his married son either immediately or after some time when the need arises, within the ambit of the statutory provisions. Thus, the approach of the appellate authority was misconceived. Taking into consideration all the facts and circumstances of the case, I am of the opinion that the requirement of the landlord to seek ejectment of the Respondents from the premises, in dispute, for the residence of his married son is amply proved on the record.

5. Consequently, this revision petition succeeds and is allowed. The impugned order of the appellate authority is set aside and that of the Rent Controller directing ejectment of the Respondents is restored with costs. However, the Respondents are allowed three months time to vacate the premises; provided an undertaking, in writing is given before the Rent Controller within one month that after the expiry of the said period vacant possession of the premises would be handed over to the landlord and the rent for this period will be paid regularly in the first week of every month.