

**(1993) 07 P&H CK 0024**

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

**Case No:** Civil Revision No. 1 of 1987

Bal Kishan

APPELLANT

Vs

Sat Parkash Sood

RESPONDENT

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**Date of Decision:** July 29, 1993

**Acts Referred:**

- East Punjab Urban Rent Restriction Act, 1949 - Section 13(3), 15(5)

**Citation:** (1994) 106 PLR 71 : (1994) 1 RCR(Rent) 246

**Hon'ble Judges:** S.S. Sodhi, J

**Bench:** Single Bench

**Advocate:** M.L. Sarin, Hemand Sarin and Vikas Jain, for the Appellant;

**Final Decision:** Allowed

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**Judgement**

S.S. Sodhi, J.

The challenge here is to the order of ejectment passed against the tenant on the ground that the landlord required the premises for his personal use and occupation.

2. The demised premises are part of a double story building situated in Anaz Mandi, Sirhind. They consist of two rooms, a kitchen and a bath room besides a court-yard. The remaining portion of the building, namely a room and shop on the ground floor and two rooms on the first floor being in the possession of Kishan Dev, the nephew of the landlord and his son Anil Kumar. It has come on record that Kishan Dev and Anil Kumar are in occupation of this accommodation merely on a care taker basis. It being specifically stated by Kishan Dev that they were not in occupation either as tenant or licensee. This being so, counsel for the petitioner rightly contended that the landlord must be deemed to be in constructive possession of this portion or, in other words, occupation of this portion by Kishan Dev and Anil Kumar must be deemed to be for and on behalf of the landlord.

3. Admittedly, the landlord Sat Parkash Sood is an old resident of Bombay where he was in business. Ejectment of the tenant was sought by him on the ground that he

had suffered a heart attack in 1982, as a result of which he lost his business too and had to close it down and on this account he now needs the demised premises to shift for permanent residence at Sirhind.

4. In support of the plea that the landlord had suffered a heart attack, AW.4 Dr. P.K. Modi was examined. A reading of the testimony of this doctor shows that it is founded upon what was stated to him by the landlord. He did no investigation like electro cardiogram test with regard to the heart ailment that the landlord had spoken of. In his statement the doctor had no doubt made mention of some diagnosis slips of the doctor in Bombay but none of these slips is forthcoming. All that has been produced to corroborate the statement of the doctor in his O.P.D. slip but that too without the corresponding entry in the register of the doctor. Besides, this, we only have on record, the oral testimony of the landlord and his witnesses to say that he has been a heart patient.

5. Even if it be assumed that the landlord did indeed suffer a heart attack, the relevance of it was stressed on two accounts, one that it led to loss of business resulting in closure of business in Bombay; and second that he required the demised premises, they being on the ground floor, as he was not permitted to climb stairs.

6. In order to establish loss of business reliance in support of the oral testimony, was upon the Income Tax returns for the years 1981- 82 and 1982-83 which show a drop in income from Rs. 14,1000/- odd in 1980-81 to Rs. 820/- in 1982-83. What is pertinent to note, while dealing with this aspect of the matter, is that there is no evidence forthcoming of any sale of business or premises where the landlord had been carrying on business in Bombay. It may be pointed here that the landlord has no business in Sirhind nor is there anything to show that any attempt has been made by the landlord till date to shift to Sirhind.

7. As regards the other aspect of the matter, namely, that the landlord required the premises on the ground floor as he was not permitted to climb stairs, it deserves note that during the hearing of the petition it was stated by the counsel for the respondent-landlord that in lieu of the demised-premises the landlord was prepared to give to the tenant. The tenant accepted this offer and the matter was then adjourned to enable the parties to finalise this settlement between them, namely, that the tenant would shift to the first floor while the landlord would get the accomodation on the ground floor. On the next date of hearing, however, when the landlord was present in person along with his counsel, he stated that this compromise was not acceptable to him. The petition was consequently directed to be taken up for hearing on merits. This cannot but give rise to the inference that the landlord is more concerned with getting the tenant evicted from the demised premises rather than living on the ground floor. It is significant to note here that the landlord came forth with no reason to explain his refusal to exchange accomodation the first floor with that of the tenants" on the ground floor.

8. Keeping in view, therefore, the totality of the circumstances of this case as discussed, in the context of the material on record, there can be no escape from the conclusion that the landlord has failed to make out personal necessity for seeking eviction of the tenant from the demised premises for his own occupation. The order of the Appellate Authority to the contrary is hereby set side and that of the Rent Controller restored. This revision petition is, thus accepted with costs. Counsel's fee Rs. 500/-