

**(2009) 03 P&H CK 0129**

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

**Case No:** None

Chander Shekhar

APPELLANT

Vs

Bishan Devi

RESPONDENT

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**Date of Decision:** March 2, 2009

**Citation:** (2009) 3 CivCC 251 : (2009) 154 PLR 333 : (2009) 1 RCR(Rent) 386

**Hon'ble Judges:** K. Kannan, J

**Bench:** Single Bench

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### **Judgement**

K. Kannan, J.

The revision is filed at the instance of the tenant, who was ordered to be evicted by the Appellate Authority. The Rent Controller had earlier dismissed the petition filed by the landlord seeking for eviction on the ground of personal necessity under the provisions of the East Punjab Urban Rent Restriction Act, 1949.

2. The dismissal of the petition before the Rent Controller proceeded on a reasoning that the landlord had stated that the property was required for setting up of a business of her son Manohar Lal. But in evidence she admitted that Manohar Lal had gone out of town but came back and was not doing any business due to his ill-health. He would not do the business but she would herself run the business with the financial assistance that she expected to be provided by her son-in-law. The Rent Controller had also considered the fact that the landlady was in possession of a residential accommodation which contained a room that opened into a road and that it would be always possible for using that property for running a business. On such a line of reasoning, the bona fides of requirement of the tenanted premises was found to be not established by the landlord. This reasoning was upset by the Appellate Court which allowed the appeal filed by the landlord.

3. At the Appellate Court, the subsequent event of the death of landlord-Bishan Devi was noted and there was yet another event of the death of her son for whose need the petition was filed for eviction. This Court on 4.10.2005, therefore, observed that the question that required to be seen was whether the bona fide need still

continued to persist and that too especially for the legal representatives of the landlady-respondent Bishan Devi had purported to have executed a Will on 17.02.2004. The Will also made provision for a bequest in favour of another son Kasturi Lal and it was suggested that both of them might carry on business in the demised premises.

4. Having regard to the fact that the grand sons of the original landlord had been brought on record as legal representatives claiming under the Will, the point for consideration would be whether the subsequent events altered the perception regarding the bona fides of the need of a landlord. Predictably, the contentions of the counsel for the tenant and landlord have swung between the extremes of the pendulum, where learned Counsel appearing on behalf of the petitioner would state that the subsequent event of death of both the mother and son had a direct bearing to the final outcome of the petition that must be heard for dismissal; while, on the other hand, learned Counsel for the respondent would state that the needs of the legal representatives have been adequately explained in the affidavit filed at the time of impleadment as LRs and it would be an unnecessary waste of time to examine the bona fides again. The decisions of the Hon"ble Supreme Court referred to by the learned Senior Counsel for the revision petitioner have been outlined in [Kedar Nath Agrawal \(Dead\) and Another Vs. Dhanraji Devi \(Dead\) by LRs. and Another](#), and Raj Kumar Vij v. Hem Singla and Ors. 2007 (2) R.C.R. (Rent) 597. Yet another decision which was adverted to the effect of subsequent event has been the decision in [Prabha Arora and Another Vs. Brij Mohini Anand and Others](#), .

5. From out of these decisions, the proposition that could be culled out shall be: one, the requirement of the landlord and the bona fides of such need shall always be examined in the context of events that took place prior to the filing of the petition. This is particularly so in the Indian context of long delays that litigations entailed in conclusion and the relative merits of the case would never be made to stand in a state of flux on how the events unfold themselves at the final conclusion of the proceedings at the highest Court. The second proposition that emerges from these decisions is that subsequent events cannot be discarded, for the need of a landlord must subsist and shown to exist till the final conclusion of proceedings. To reconcile these two extreme positions, it could only be stated that normally the events at the institution of the petition governed the test of the bona fides of the need of landlord while the subsequent event shall be a factor that may be relevant for consideration. While still not completely eclipsing the need expounded in the petition by reference to the events that have taken place prior to or at the time of filing of the petition, these decisions of the Hon"ble Supreme Court have again come to be interpreted in several decisions including a decision of the Delhi High Court in Dharam Pal Gupta and Ors. v. Anand Parkash 2009(1) R.C.R. 151.

6. I do not wish to further dilate on the various interpretations that would be possible from out of these decisions referred to above but on a fair appraisal of all

the relevant facts, I am of the considered view that the needs of the grand children and son of Bishan Devi namely the needs of the legal representatives that have been subsequently added, which do not find mentioned in the petition shall be examined afresh by a final court of appeal namely the Appellate Authority. The averments raised in the affidavit of the legal representatives have been joined issues in the counter affidavit of the tenant denying such need and therefore, the disputes could never be rested as resolved by mere reference to affidavits or counter affidavits. The veracity of the contentions must be tested by affording to parties a right of cross-examination on the contentions raised. The rent control petition has been filed in the year 1997 and it would be impractical to refer the matter again to the Rent Controller for fresh consideration. To take a pragmatic view of things and to cut short further length of time that litigation could entail, I direct the matter to be remitted to the Appellate Authority namely the District Court at Bathinda before whom the legal representatives shall have an opportunity to bring an amendment of the petition referring to the subsequent events and their perceived need of the building. Needless to state that the tenant shall have the right to counter the same by a statement and evidence will be given only as regards the subsequent events. The right of the landlord to execute a Will itself cannot be challenged by the tenant and it shall rest merely on the averments already made by the landlord. It is requested that the Appellate Authority disposes of the appeal as a final court of fact as expeditiously as possible preferably within six months from the date when the records are received and pass a final order taking due regard to the documentary and oral evidence that are placed on the basis of subsequent events.

7. Under the circumstances, the order of the Appellate Authority 23.11.2002 is set aside and the matter is remitted to the Appellate Authority for consideration in the light of what is stated above. The civil revision petition is disposed of in the above terms. The appearance of the parties before the Appellate Authority is fixed on 31.3.2009.