

(2013) 08 P&H CK 0668

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 8114 of 2011 (O and M)

Ram Paul

APPELLANT

Vs

Vijay Kumar and Others

RESPONDENT

Date of Decision: Aug. 6, 2013

Acts Referred:

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

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Advocate: Jaideep Verma, for Ms. Upinder Kaur Bedi, for the Appellant; H.S. Tuli and Mr. S.S. Rangji, for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.

This is tenant's revision petition challenging the judgment dated 21.10.2011 passed by the Appellate Authority, whereby while accepting the appeal against the order dated 19.12.2008 of the Rent Controller, Ludhiana, eviction of the petitioner has been ordered from the demised premises on the ground of personal necessity of the respondent-landlord. Respondent-landlord Piara Lal (since deceased) sought ejectment of the petitioner on various grounds including that of personal necessity of the landlord. The Rent Controller, vide order dated 19.12.2008, dismissed the ejectment petition holding that the respondent has failed to prove his case. However, the respondent-landlord filed an appeal against the aforesaid order and the same was accepted vide order dated 21.10.2011 of the Appellate Authority on the ground that demised premises is required by the landlord for his bonafide personal necessity and the petitioner was directed to hand over vacant possession of the shop in dispute to the Legal Representatives of appellant-Piara Lal.

2. The petitioner-tenant has challenged the aforesaid judgment dated 21.10.2011 on the ground that in the ejectment petition, the respondent-landlord has nowhere

pleaded that the demised shop is needed for settling his two sons who are earning their livelihood by ironing the clothes on a cart, as stated by him in the examination in-chief. It is further case of the petitioner that in the cross-examination of Dharam Pal son of Piara Lal, he has admitted that another shop was lying vacant prior to the filing of eviction petition; however, the aforesaid fact has not been mentioned in the eviction petition and thus, the landlord has concealed material facts from the knowledge of the Court, which has disentitled him to the relief claimed. Moreover, the landlord has failed to plead necessary ingredients for eviction of the ground of personal necessity. It is further case of the petitioner that in view of the aforesaid facts, the need of the landlord cannot be held to be genuine, real and honest; and thus, the instant revision petition be accepted and the impugned judgment of the Appellate Authority be set aside while dismissing the eviction petition of the respondent-landlord.

3. However, learned counsel for the respondent has vehemently argued that bonafide need of the respondent-landlord stands proved from the evidence on record. Moreover, the petitioner is not entitled to any relief as he has failed to make payment of rent for the last five years.

4. I have heard learned counsel for the parties and perused the impugned judgment of the Appellate Authority.

5. At this stage, order dated 09.01.2012 passed by this Court, be noticed, which reads thus:

Learned counsel for the petitioner, inter alia, contends that PW3 Dharam Pal son of the landlord has admitted in his cross-examination that his father had constructed two shops, out of which, the shop in question is in possession of the petitioner, whereas the other shop is lying vacant for the last 5 years. She submits that the eviction petition was filed on 21.03.2004 and Dharam Pal was cross-examined on 15.08.2006, meaning thereby that the other shop was already available when the eviction petition was filed, but it was not disclosed by the landlord in his eviction petition that he has some other vacant premises in the same urban area.

Notice of motion for 01.02.2012.

In the meantime, dispossession of the petitioner shall remain stayed.

6. It is also useful to refer to the relevant part of the judgment of the Appellate Authority, which reads as under:

11. On going through the evidence, it is however found that the landlord has produced cogent and convincing evidence to prove that he was in bonafide need of the demised shop. As per him, he wants to settle two of his sons in the demised shop. They want to start a business of ironing and dry cleaning in the demised shop as well as in the adjoining shop which is lying vacant. At present, his sons are doing the ironing work on a cart (rehri). The business of dry cleaning cannot be run in the

other shop which is small in size. Sudarshan Kumar (PW2) has also deposed on the same lines. Dharampal (PW3) who is son of the landlord, has also stated that the demised shop is required by him and his brother Surinder Pal for doing the business of ironing and dry cleaning. At present, both of them are earning their livelihood by ironing the clothes by moving from one place to the other. One shop which is already lying vacant, is small in size. Bhagwan Singh (PW4) has also stated that Dharampal and Surinderpal are the two sons of the landlord. They are doing an ironing work from one place to the other. Tenant Ram Paul has admitted during his own cross-examination as the RW1 that the adjoining shop owned by the landlord is small in size. He also admitted that the landlord wants his sons to start the business of dry cleaning and ironing. Two of the sons of the landlord are doing the ironing work. Ramesh Kumar (RW2) has also admitted that two of the sons of the landlord are doing the ironing work near the bridge. Both of them are learning the dry cleaning work. He also admitted that the demised shop is small in size. Even the adjoining shops which are lying vacant, are of small size. He also admitted that a big shop is required for the dry cleaning work.

12. It is well settled that a landlord is the best judge of his own requirement and also that the question of bonafide requirement is to be construed liberally. Similarly, the mere fact that an adjoining shop or two small sized shops are already lying vacant and are available with the landlord, is not to be considered as a factor to discount his requirement. Even under the normal circumstances, if a landlord considers that the existing accommodation is insufficient and he requires a better and more spacious accommodation, such a need has to be seen from the angle of the landlord and not from the view point of the tenant. As already mentioned above, in the instant case, tenant Ram Paul (RW1) as well as Rakesh Kumar (RW2) have admitted that two of the sons of the landlord are doing the ironing work by moving from one place to the other and they are learning the dry cleaning work; the adjoining shops as well as the demised shop are very small in size and further that a more spacious premises is required for running the dry cleaning business. Under these circumstances, it can safely be held that landlord Piara Lal has discharged the onus of proving that he requires the demised shop for the bonafide personal necessity of his sons. Therefore, the finding to the contrary given by the Id. Rent Controller is not sustainable in the eyes of law.

13. In the light of the above discussion, the finding of the Ld. Rent Controller on the issue No. 1 is partly set aside by holding that the landlord has been in a position to prove that the demised shop is required by him for the bonafide personal necessity of his sons. Consequently, the appeal is allowed and the landlord is held entitled to the possession of the demised shop as more described in the ejectment application on account of the bonafide personal necessity by his sons. As such, the tenant is directed to hand over the vacant possession of the demised shop to the legal representatives of the landlord who himself has since died, within two months from the date of this judgment, failing which the legal representatives of the landlord

shall be entitled to get the possession of the demised shop in accordance with the provisions of law.

7. A perusal of the aforesaid observations of the Appellate Authority would show that even the petitioner's witnesses have admitted the fact that two of the sons of the respondent-landlord are doing the ironing work by moving from one place to the other. Another fact, which has been established on record, is that the size of the shop in dispute and the other shop alleged to be vacant and in possession of the landlord, is very small.

8. It is well settled that a landlord is the best judge of his requirements. The mere fact that an adjoining shop of a small size is lying vacant, cannot be considered to disentitle the respondent-landlord for the relief sought by him; and in case the landlord considers the existing accommodation insufficient and he requires a better and more spacious accommodation, such a need has to be seen from the angle of the landlord and not from the view point of tenant.

9. In these circumstances, it can safely be held that respondent-landlord has discharged his onus of proving that he requires the demised shop for the bonafide personal necessity of his sons. The right of the respondent-landlord to evict the petitioner-tenant on the ground of personal bonafide necessity cannot be denied on the basis of the arguments, as raised before this Court, which are hyper-technical. Not only this, admittedly the argument as raised before this Court was not raised by the petitioner before the Appellate Authority. It is not the case of the petitioner that such an argument was raised and the same has not been discussed by the Appellate Authority. In view thereof, the argument raised before this Court in support of the case of the petitioner cannot be sustained.

10. At this stage, it may also be noticed that even if the necessary ingredients of Section 13(3)(a)(i) of the East Punjab Urban Rent Restriction Act, 1949 have not been pleaded strictly, the same is not fatal to the decision of the case as both the parties knew the case of each other and led the evidence accordingly. This view finds support from the judgment of Hon'ble the Supreme Court and this High Court in [Bhatia Cloth House Vs. Dr. Raj Kumar Gupta and Another](#), wherein it has been held as under:

It is consistent position in law that ambiguity in pleadings regarding the ingredients, set out in Section 13(3)(a) of the Act, if made good in the evidence, is sufficient compliance of the statutory provisions.

11. In [Raj Kumar Vs. Budha Mal](#), it was held that:

Having perused the judgment in Banke Ram's case (supra), this Court is of the opinion that of course ingredients of sub-section (b) and (c) of Section 13(3)(a)(i) of the 1949 Act are to be necessarily pleaded in the eviction petition, however, as held by the Full Bench in paragraph 12 of the judgment, this Court is of the opinion that it

should not be understood that under no circumstances, in the absence of pleadings, the evidence regarding the ingredients envisaged under sub-section (b) and (c) can be looked into. Hence, in the opinion of this Court, if parties were fully aware about the ingredients of sub-section (b) and (c) at the time of leading evidence and both the parties have led evidence on these issues, then petition cannot be thrown out merely because the landlord has failed to plead ingredients of sub-section (b) and (c) in the eviction petition.

12. It may further be noticed that even the petitioner has not come to the Court with his hands clean, as it could not be denied before this Court that the petitioner is in arrears of rent for the last many years.

13. No other argument has been raised.

14. In view of the aforesaid, this Court finds no merit in this revision petition. Dismissed.