

(2012) 4 PLR 392

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 756 of 1996 (O and M) , Civil Revision No. 1777 of 1999 (O and M)
and Civil Revision No. 5547 of 1999 (O and M)

Kashetariya Punjab
Khadi Mandal

APPELLANT

Vs

Prem Kumar and
another
 Prem
Kumar and another Vs
Kashetariya Punjab
Khadi Mandal

RESPONDENT

Date of Decision: Aug. 21, 2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Order 2 Rule 2

Citation: (2012) 4 PLR 392

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Puneeta Sethi in C.R. Nos. 756 of 1996 and 1777 of 1999, Mr. Chetan Mittal, with Mr. Kunal Mulwani and Mr. Vishal Garg, in C.R. No. 5547 of 1999, for the Appellant; Puneeta Sethi, Advocate in C.R. No. 5547 of 1999, Mr. Chetan Mittal , with Mr. Kunal Mulwani and Mr. Vishal Garg, Advocates in 756 of 1996 and 1777 of 1999, for the Respondent

Judgement

K. Kannan, J.

All the three revision petitions pertain to the same premises and they have been brought together with the consent of both

counsel. The subject matter in Civil Revision No. 756 of 1996 has been originally instituted at the instance of the Punjab Khadi Mandal and after

the formation of Kashetariya Punjab Khadi Mandal, it was also added as a party. This petition for eviction was dismissed on a technical ground

that the requirement of a landlord of a non-residential purpose was impermissible. The subsequent petition came to be filed by Kashetariya Punjab

Khadi Mandal which is the subject of petition in Civil Revision No. 1777 of 1999. The petition for eviction by the Kashetariya Mandal was for the

same purpose of personal need when they were contending that the portion of SCF 9 which was in the occupation of tenants was also required,

since the existing remaining portion of the property in the hands of the landlord was not sufficient. The third revision petition was at the instance of

the tenants in Civil Revision No. 5547 of 1999 in so far as the tenants' contention, which was rejected, that the subsequent petition filed by the

landlord was not maintainable, being barred by the provisions of Order 2 Rule 2 CPC. There is no contest between the parties that the petition for

eviction could not have been thrown out only on the ground that the personal requirement could not be urged in respect of tenancy for commercial

purpose. The issue that would fall for consideration would only be the point that has been taken which is the subject of revision in Civil Revision

No. 1777 of 1999, namely, where the landlord had established the bona fides of his requirement. The appellate authority had observed, inter alia,

that the petitioner had not brought out the ingredients of Section 13 by a disclosure of the existence of other building which the landlord was in

possession of, at the time when eviction was sought in the same town. This reasoning was on the admitted fact that the landlord owned the shop in

SCF No. 8 which had not been specifically spelt out in the petition as filed. The learned counsel for the landlord would contend that there is no

specific proforma of pleading which the law spells out and by a conjoint reading of the entire body of the petition and the rejoinder filed by the

landlord, it would be evident that the landlord had not concealed in the existence of other shop in SCF No. 8. The counsel would refer to the

decision of this Court in Banwari Lal Versus Ram Parkash and another-(2009) 2 RCR (Rent) 160 where the Court held that though the

ingredients of Section 13(3) themselves are mandatory in nature, but there is no specific form of pleading which was required to be given. The

Court also held that it was always open to the parties to plead the ingredients of Section 13(3) of the Act in any form given under the Act.

2. Section 13(3) in so far as it refers to the bona fide requirement of the landlord would spell out the need in the following words:

13(3)(a)(2)(ii)-In the case of non-residential building or rented land, if (a) he requires it for his own use; (b) he is not occupying in the urban area

concerned for the purpose of his business any other such building or rented land; and (c) he has not vacated such a building or rented land without

sufficient cause after the commencement of this Act, in the urban area concerned.

The above provision stipulates three aspects to be established. The first ingredient, as applied to this case is the requirement of the landlord that the

existing premises were not sufficient and they had to store their articles in the godown at Kharar. The second ingredient is that he was not

occupying in the urban area concerned of any other building. In this case, it is not specifically stated that the Shop No. 8 was in their occupation.

But the counsel for the petitioner points out from the pleadings that worth of the shop in the possession of the tenants was described as Shop No.

8 belonging to the petitioner. In para 3 of petition, it is stated that there was no space available in the SCFs" area with the petitioner, but the

reference to SCFs, according to the petitioner, must be read as the existing area in the SCF No. 8 and the remaining portion of 9. In the rejoinder

filed by the petitioner after the written statement was filed in paragraphs 3 and 4, the landlord had stated that the accommodation which the

petitioner had in SCF and adjoining SCF 8 which constituted the bhandar of the petitioner was not sufficient. I am prepared to go as far as to state

that the pleadings were sufficient with reference to the existence of SCF No. 8 and a portion of SCF No. 9. But, in this case, the learned senior

counsel for the respondent points out that even apart from SCF 8 and remaining portion of 9, the landlord had actually in his possession some

more portions of SCF 9 which were in the hands of two other tenants and the landlord had secured the eviction of two other tenants and inducted

new tenants. This was deliberately not disclosed by the landlord.

3. The learned senior counsel points out to the specific reference in the written statement in paragraph 5 where it is stated that two shops were got

vacated by the petitioner and the same had been re-let at enhanced rent and on that ground itself, the petition was liable to be dismissed. Joining

issues with the contention raised in the written statement, the landlord has stated in the rejoinder that the contention raised in paragraph 5 was

wrong and denied. It is added, ""after the judgment of the Apex Court, no shop was let out."" I find this to be rather a case of "clever pleading" as if

to state that after the judgment of the Supreme Court allowing for the provisions of the Punjab Act extending the requirement of the landlord for

non-residential building also to be extended to Chandigarh, the tenant had not let out any property. u/s 13(3), any property that had been in the

occupation of the tenant which the landlord had vacated should be set forth. The learned counsel for the petitioner would read this provision u/s

13(3) to mean that the landlord must have vacated himself some other building in his occupation and if not, this provision will not apply. I would

hold the reading of the Section in the manner canvassed by the counsel to be erroneous. The expression ""he has not vacated such building or

rented land"" as found in clause (c), referred to above, must be understood as either a property which the landlord vacated and kept vacant in its

occupation or any building which is in the occupation of any tenant of the landlord which he had got vacated. I would feed into the expression, ""he

has not vacated"" also to include a situation of a property that is ""got vacated"" by the landlord. In this case, if the landlord had two other tenants

after the formation of Kashetariya Mandal and they vacated the portions of the property that fell vacant and they had been rented out afresh to

tenants, then the non-disclosure of that event must be taken as crucial. It cannot be contended even without pleading that other portions of

property which he had secured eviction were not suitable.

4. It is essentially a matter of pleading that any other property which the landlord was in possession of or any other property which the landlord

could obtain possession of after the eviction was not suitable and therefore the property in the possession of tenants was required for bona fide

use. In this case, the evidence of AW1 reads thus,

Previously SCF 8 and 9 were Punjab Khadi Mandal since 1993. They are in the name of Kashetariya Khadi Mandal....It is correct that before

1993 Punjab Khadi Mandal was receiving the rent.... Besides respondents, there are two other tenants in the front portion whose names are

Suresh Kumar and Radha Krishan and Rajesh Kumar and Suresh Kumar is the tenants since 26.06.1993 (sic).

If Radha Krishan and Rajesh Kumar (or Suresh Kumar) had been tenants since 13.06.1993, it should be a case of either some other tenants in the

respective portions had vacated and the landlord obtained possession of the property available to rent it out by fresh tenancy or it could be a

situation where the landlord himself was actually in possession of the property and was creating a new tenancy in favour of these two persons. In

this case, I find the exact location where Radha Krishan and Rajesh Kumar were tenants have not been clearly disclosed anywhere in the

evidence. That precisely is the issue. The landlord cannot allow for any vagueness either in the pleadings or in evidence. If he had two other tenants

(or three ?) and those two persons had come about in the respective portions only on 29.06.1993, it ought to have been set forth in the petition as

to how other portions of property which had fallen vacant came to be rented out subsequent to the commencement of the Act and how they were

not fit for being occupied for their additional need which they were claiming now in order that they evicted the tenant. The requirements of clauses

(b) and (c) were definitely not fulfilled.

5. The learned counsel for the petitioner refers to me several decisions and I would set them out only to point out to the irrelevance. The decision

cited in the judgments in Rajan Versus Poil Raghavan- 2009 (1) RCR (Rent) 429; Matadin s/o Datadin Versus Smt. Manoramabai-1997 (1) RCR

(Rent) 379; National Spiritual Assembly of India Versus Mah. State of Khadi and Vill. Ind. Board-1995 (2) RCR (Rent) 130; and Maganlal son

of Kishanlal Godha Versus Nanasaheb son of Udhaorao Gadewar-2009 (1) RCR (Rent) 16 must be only discarded for the only reason that the

language employed under clauses (b) and (c) are peculiar which I do not find in the other respective State enactments which the above decision

deal with. All these decisions relate to the examination of the content of bona fides. I do not want to compare the reasonings of the bona fides

contained in the decisions with this case, when the petition fails in its fundamental requisite of what is required to be stated to prove the bona fides

in the manner contemplated in the local State enactments.

6. In Ram Nath Vs. Des Raj and Others, the Court was examining the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973. In

that case, the bona fide requirement was examined in the context of the landlord requiring a shop for premises as iron merchant and the landlord

owned two other shops, both of which were in independent occupation by tenants. The sons of landlord were actually carrying on their business in

adjoining shops and the premises in dispute consisted of a courtyard that could store iron rods, girders etc. The landlord's choice of the particular

premises was shown to be most suitable for his necessity and, therefore, the Court found that the eviction sought by the landlord in respect of a

particular property adjoining the shop that he had in possession already was justified. I have already observed that it is essentially a matter of

pleading which the landlord ought to make to exhibit his bona fides. If the property in the hands of the Suresh Kumar, (Radha Kishan?) and Rajesh

Kumar were not in any way suitable to the landlord, he was bound to state so either in the petition or if it was a matter of only evidence, in his

evidence. He cannot make a vague pleading, without giving the details of the tenants in possession and state only at the time of cross-examination,

the fact that two tenants were evicted and some tenants were evicted in the year 1993. He was bound to disclose how the property that fell vacant

was not fit for the additional need which the landlord was giving out through the rent control petition. The counsel for the petitioner also wants me

to consider an observation made by this Court in Mohinder Kaur Versus Balwinder Kumar- 2010 (1) RCR 460, where the Court held that the

landlord was the best judge in regard to his bona fide need. When I find that the landlord's petition ought to fail for the absence of necessary

ingredients regarding the bona fide need and the evidence that was necessary in terms of Section 13(3)(ii)(b)(c), to harp on the landlord being

eminently a person who alone can decide the bona fides would become meaningless. I reject this contention as well. I do not feel constrained to

examine the tenants' revision in Civil Revision No. 5547 of 1999 only because the landlord's petition has been found to be not bona fide and

consequently, the finding of the court below regarding the maintainability of the petition itself would not be required to be examined. I hold that the

landlord's petition for eviction on the ground of bona fides of requirement as not established and both the Civil Revisions 756 of 1996 and 1777 of

1999 are devoid of merits and they are dismissed. In the Civil Revision No. 756 of 1996, the finding regarding the non-maintainability of the

petition for commercial purpose is alone vacated. The petition for eviction on the ground sought for however, ought to fail. The Civil Revision No.

5547 of 1999 filed by the tenants would require to be also disposed of as unnecessary.