



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

108

CR-3472-2016 (O&M)
Date of decision : 08.01.2025

M/s Narula Motor Stores & ors.

..... Petitioners

vs

Bhupinder Singh & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Ashwani Kumar Chopra, Sr. Advocate
with Mr. Vidul Kapoor, Advocate
for the petitioners.

Mr. Divanshu Jain, Advocate
Mr. Minkal Rawal, Advocate
Mr. Abhinav Goel, Advocate and
Mr. Arjun Sangwan, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

1. Tenant is in revision aggrieved of the judgment passed by the Appellate Authority, Yamuna Nagar dated 25.02.2016. The appeal preferred by respondent No.1-landlord-Bhupinder Singh has been allowed. Findings recorded by Rent Controller, Yamuna Nagar in its judgment dated 08.08.2013, whereby the eviction petition filed by the landlord was ordered to be dismissed stand reversed. Petitioner-tenant has been ordered to be evicted from demised premises.

2. In order to avoid confusion, parties hereinafter are referred to by their status in the relationship i.e. the petitioners as the tenants and respondent No.1 as the landlord.



3. Landlord filed eviction petition under Section 13 of the Haryana Urban Control of (Rent & Eviction) Act, 1973 (hereinafter referred to as the '1973 Act'). Ejectment of the tenants was sought from the demised premises on the grounds of non-payment of arrears of rent and bonafide need of the landlord. Landlord claimed that he is in transport business. Presently, he is running his business from Chobara. The same is not suitable for his business and thus, he needs demised premises for his own need.

4. Tenant disputed landlord-tenant relationship. Bonafide need as projected by the landlord was also controverted, pleading that the landlord is in occupation of other commercial buildings within the same urban area. It was also pleaded that the landlord has deliberately concealed of him being in possession of other commercial building within the same urban area and thus, the eviction petition needs to be dismissed.

5. Provisional rent was assessed by the Rent Controller. Tenant made legal tender thereof. The ground of eviction qua non-payment of arrears of rent ceased to exist.

6. The parties led their respective evidence. Rent Controller after analysing the evidence, came to the conclusion that the landlord was guilty of concealment. He failed to disclose fact of him being in occupation of other shop within municipal limits of Yamuna Nagar. Rather, a specific plea was raised in the eviction petition that the landlord neither owned nor is in possession of any other shop in the concerned urban area. The eviction petition filed by the landlord was thus, ordered to be dismissed. Rent Controller further found that during



pendency of the proceedings, an application was moved by the tenant on 31.05.2012 seeking amendment of written statement. Tenant proposed to incorporate the fact regarding landlord being in occupation of shop at Jagadhri road in his written statement. Landlord filed reply thereto admitting the fact of being owner of one shop previously in possession of tenant Multani Fruits and admitted that the shop came under his title on 10.10.2007, when release deed was executed by his mother in his favour. Once the landlord admitted that he owns other shop and got the same vacated from Multani Fruits, he is proved to be in occupation of the other shop. Despite being in knowledge of the said fact, the landlord is guilty of having concealed the said fact and is thus, not entitled to claim bonafide need.

7. In appeal preferred by the landlord, the findings recorded by the Rent Controller regarding concealment stand reversed. Appellate Authority re-appreciated the evidence to conclude that non-disclosure by landlord being in possession of other shop is not fatal to his case. Appellate Authority held that evidence has come on record that the shop in question was not appropriate for the landlord to run his business and was thus, not suitable. Reversing the findings recorded by the Rent Controller, Appellate Authority allowed the eviction petition.

8. Mr. Chopra, senior counsel appearing for the tenants has eloquently argued that the impugned judgment passed by Appellate Authority is in teeth of settled law and thus, cannot be sustained. Rent Controller returned specific finding regarding there being no relationship of landlord-tenant between the parties, yet Appellate Authority has allowed the eviction petition. The aforesaid contention



raised by Mr. Chopra sans merit and cannot be accepted. Mr. Chopra is not in a position to dispute that qua demised premises, release deed has been proved by the landlord. It has been proved that landlord holds title to the property. In terms of the provisions as contained under Section 2(c) of 1973 Act, 'landlord includes owner'. Owner being a paramount title holder cannot be precluded from maintaining eviction petition. In view of above, the contention raised by Mr. Chopra cannot be accepted.

9. Mr. Chopra while assailing the findings recorded by the Appellate Authority on the issue of bonafide need, submits that the authority reversed the findings recorded by the Rent Controller without meeting the reasoning recorded by the Rent Controller. It has been contended that in view of ratio of law laid down by Full Bench of this Court in the case of ***Banke Ram Vs. Shrimati Sarasvati Devi, 1977(1) RCR (Rent) 595*** as followed by this Court in ***Sardari Lal (since deceased) through his LRs Vs. Rattan Lal (since deceased) through his LRs & ors*** passed in CR No.3589 of 2016 decided on 26.09.2024, the landlord is under obligation to plead the ingredients of Section 13. In the absence of the said pleadings, eviction petition itself will not be maintainable and no evidence can be looked into. The landlord is under obligation to plead and prove the necessary ingredients as contemplated under Section 13(3)(a) of 1973 Act.

10. I have heard counsel for the parties and have carefully gone through the records of the case.

11. There cannot be any dispute regarding settled proposition of law. Section 13(3) statutorily obligates landlord to plead and prove occupation/vacation of any other premises within the concerned urban



area. Section 13(3) reads as under:-

“13. (3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession -

- (a) in the case of a residential building, if, -
- (i) he requires it for his own occupation, is not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area;

[(ii) he requires it for use as an office or consulting room by his son who intends to start practice as a lawyer, qualified architect or chartered accountant or as a "registered practitioner" within the meaning of that expression used in the Punjab Medical Registration Act, 1916, the Punjab Ayurvedic and Unani Practitioners Act, 1963, or the Punjab Homoeopathic Practitioners Act, 1965, or for the residence of his son who is married :
[Substituted by Haryana Act 16 of 1978.]

Provided that such son is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be, and has not vacated it without sufficient cause after the commencement of the 1949 Act.]

(iii) it was let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment :

Provided that where the tenant is a workman who has been discharged or dismissed by the landlord from his service or employment in contravention of the provisions of the Industrial Disputes Act, 1947, he shall not be liable to be evicted until the competent authority under that Act confirms the order of discharge or dismissal made against him by the landlord;

(iv) the tenant has already in his own possession a residential building or subsequently acquires possession of, or



erects, such a building reasonably sufficient for his requirement in the urban area concerned;

(v) he is a member of the armed forces of the Union of India and requires it for the occupation of his family and produces a certificate, from the prescribed authority referred to in section 7 of the Indian Soldiers (Litigation) Act, 1925, that he is serving under special conditions within the meaning of section 3 of that Act.”

12. The same has been interpreted by this Court in the case of **Sardari Lal (supra)**, following the dictum of Full Bench in **Banke Ram’s case (supra)** observing as under:-

“11. It is thus evident that where landlord applies for eviction of tenant invoking Section 13 (3) (a) of the 1949 Act he is required to prove :-

a) bona-fide need

b) that he is not occupying any other building in the urban area concerned and

c) He has not vacated any such building without sufficient cause after the commencement of the 1949 Act in the said urban area.

As per settled law need pleaded by the landlord needs to be bona-fide. Mere desire of the landlord cannot be construed as need. Where on the one hand there needs to be element of need as opposed to mere desire or wish of the landlord, on the other hand it is the landlord who is the best judge of his requirement. It is neither for the tenant nor within the domain of the Court to dictate him terms or to advise him about alternate modes to satiate his need.

12. Mere bona-fide need is also not sufficient in terms of the bare provision. The other two ingredients also need to be satisfied. In case any of the other two ingredients stands breached, claim of the landlord is bound to fail. In **Banke Ram Vs. Shrimati Sarasvati Devi, 1977(1) RCR (Rent) 595** Full Bench of this Court while dealing with the question of pleading and proving the said two ingredients concluded as under :-

“12. In the present case, we are concerned only with the question as a principle of law as to whether it is



essential to plead in an eviction application the ingredients of Sub-clauses (b) and (c) and not the question that if in a particular case these ingredients are not pleaded, but the parties have led evidence with regard to them, what will be the effect? In any given case, where facts have not been averred in the pleading, a number of questions can arise as to whether proper evidence has been adduced by the landlord regarding those facts which do not find place in the pleadings and secondly whether such evidence will be admissible or not and lastly, whether the tenant was taken by surprise or not and had led evidence with full knowledge of the requisite contentions raised by the landlord and whether the tenant has in those circumstances been prejudiced or not. The Court would be required to give full consideration to the contentions raised by the respective parties and the facts and circumstances of each case before giving its decision in favour of the landlord or the tenant, tout the decisions of the High Courts or the Supreme Court, in this regard, cannot be of any avail to detract from the validity of the proposition that it is necessary for the landlord to make averments regarding the ingredients of Sub-clauses (b) and (c). However, it may be made clear that when it is held that it is essential to plead the ingredients of Sub-clauses (b) and (c) in the eviction application by the landlord, it should not be understood that under no circumstances, in the absence of pleadings, the evidence regarding the ingredients envisaged in Sub-clauses, (b) and (c) can be looked into. This is not peculiar to the eviction applications. Similar considerations come into operation even in the case of suits which are governed by the specific and detailed provisions of the Code of Civil Procedure regarding pleadings.

13. This Court, the other High Courts and the Supreme Court have had the occasion to make pronouncements one way or the other in cases where the evidence was led by parties in the absence of requisite pleadings. Those decisions will serve as



guides in eviction proceedings under the Act.”

13. The pleadings raised by the landlord in the present case need to be tested on the touchstone of aforesaid legal proposition. The plea raised by the landlord reads as under:-

“4. That after the commencement of 1949 Act the petitioner\land lord bona fide requires the Shop and Godown in possession of the respondents for his personal use and occupation, as the petitioner is not occupying any other non-residential premises except one Chobara over the shops in question within the Municipal limits of MC Yamuna Nagar and has not vacated such building without sufficient cause after the commencement of 1949 Act in the urban area of MC Yamuna Nagar.”

14. The plea satisfies the ingredients as contemplated under Section 13(3). However, issue is concealment. The precise issue that arises for consideration of this Court is:

“Whether on the date of filing of the eviction petition, the landlord was in occupation of the shop related to Multani fruits on the basis of which Rent Controller non-suited the landlord?”

In case landlord was in occupation of the said shop, eviction petition deserves dismissal.

15. The eviction petition was filed on 18.03.2009. In order to prove that the landlord made false statement qua the ingredient of Section 13(3), the tenant is required to prove that the shop relatable to Multani Fruits was vacated prior to 18.03.2009 and the same fell to possession of landlord prior to the said date.

16. The tenant sought amendment of written statement vide application dated 31.05.2012. The proposed amendment reads as under:-



“6. That the alleged release-deed has not been signed by Smt. Harwant Kaur. Smt. Harwant Kaur has always affixed her signatures on the rent receipts and on various ejection applications filed by her earlier against her tenants which clearly shows that the alleged release-deed fabricated by the applicant.

7. That the applicant has also come to know that a similar release-deed has been manipulated in respect of a shop in favour of the applicant which was under the tenancy of Multani fruits and the same has been got vacated by the applicant from Multani fruits on ground of personal requirement. That shop is still lying vacant and has not been used for any business so far. The applicant has concealed the other properties available with him and has filed this application by concealing the properties with ulterior motive. Even otherwise under the provisions of Haryana Urban (Control of Rent & Eviction) Act 1973 a landlord cannot evict more than one tenant on ground of personal requirement and as such the present ejection application on ground of personal requirement is maintainable.”

17. In reply to the aforesaid proposed amendments, the landlord pleaded as under:-

“6. That the proposed Para No.6 for amendment of the written statement as stated is absolutely wrong and hence denied. The release-deed executed by Smt. Harwant Kaur is a registered document and is quite legal and valid and moreover the respondent/tenant has got no right under the law to challenge the same.

7. That the proposed Para No.7 for amendment of the written statement is absolutely wrong and hence denied. The respondent/tenant was already know/knowledge of the alleged shop in possession of the landlord/applicant/respondent before filing the present application as he has already cross examined the respondent on this ground. However, it is submitted that the respondent/landlord is the owner of one shop which was previously in possession of tenant Multani Fruits who has died and after his death the same has been vacated and this shop also was owned by Smt. Harwant Kaur who has



transferred the same through registered release-deed favour of applicant dated in 10.10.07. Photostat copy of the same is attached herewith and as per release deed the area and boundary of the shop which was in possession of Multani Fruits as per registered release-deed is as under:-

East: 5'-8", Jagadhri Road,

West: 3', Common stair,

North: 17'-3", Gall Share-e-am,

South: 17'-3", Shop/house,

Total measuring 8.31 Sq. Yards situated in the Main Bazar, Jagadhri Road, Near Paper Mill Gate, Yamuna Nagar. But the same is a very small shop and cannot be used for the business of transport and is not at all suitable for the purpose of transport business as the shop lying transport vacant is situated in thickly populated commercial area and heavy traffic i.e. trucks etc are not allowed to stand on the road side and as such the said shop cannot be used for transport business even under the municipal law and as such the alleged vacant shop being very small shop and situated in thickly populated commercial area has got no relevancy with the personal bonafide need of the applicant. Moreover, the tenant has got no right to dictate the terms and the landlord is the best judge of his personal bonafide requirement. Moreover, the applicant/tenants are also having an additional commercial property in their possession in which they have been running a School and separate transport business and as such the applicant/tenant is liable to be ejected from the shop in question.”

18. The Rent Controller vide order dated 27.08.2012 dismissed the application filed by the tenant observing as under:-

“xx xx

The present ejectment petition has been filed in the year 2009 and issues were framed in on 19.01.2010. Thereafter, petitioner has led entire evidence. Petitioner stepped into witness box as AW2 and has been examined on 15.03.2011. In his cross-examination, petitioner has been put question regarding the release-deed, power of attorney at length. Petitioner has already been cross-examined at length



with regard to shop situated at Sabji Mandi. Thus, petitioner has already been cross-examined with respect to the amendments which applicant wants to bring on file.

Thereafter, respondent has led its entire evidence against petitioner. Respondent has entered into witness box as RW2 and has tendered affidavit Ex.RW2. In para no.3 of his affidavit, respondent has specifically stated that one shop in the name of Multani Fruits was under tenancy and has been recently vacated by the petitioner.”

19. A perusal of the aforesaid orders reveals that the Rent Controller dismissed the application holding that the shop in possession of the landlord relatable to Multani Fruits as claimed by the tenant will have no bearing on the facts of the present case, as the same came in possession of the landlord recently. The aforesaid order passed by the Rent Controller remained unchallenged. There is no evidence on record to prove that the landlord was in possession of the shop vacated by Multani Fruits, situated at Sabji Mandi on the day the eviction petition was filed.

20. In view of above, this Court finds no ground to hold landlord guilty of concealment. Finding recorded by Rent Controller are without any basis.

21. Pure findings of fact have been returned by the Appellate Authority. The findings recorded by the Rent Controller have been rightly reversed after re-appreciating the evidence.

22. At this stage, Mr.Divanshu Jain, Advocate appearing for the respondent-landlord brings to the notice of this Court that one Vimal Sibbal, who appeared as RW-1 explicitly admitted that landlord has no other shop in his occupation within the Municipal limits of Yamuna Nagar i.e. the urban area concerned. The said cross examination was



recorded on 09.05.2011. The aforesaid being the admitted factual position, this Court finds that the appellate authority rightly reversed the findings recorded by the Rent Controller.

23. As a sequel of discussion held hereinabove, this Court does not find any merit in the present revision petition and the same is thus, ordered to be dismissed.

24. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

08.01.2025

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes