

(2010) 08 P&H CK 0155
In the Punjab And Haryana At Chandigarh

Gulshan Kumar Pahwa and Maman Chand Mate Ram	APPELLANT
Vs	
Smt. Usha Garg and Others	RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13, 26

Citation : (2010) 08 P&H CK 0155

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Judgement

Mahesh Grover, J.—This judgment will dispose of the above two revision petitions as they involve commonality of facts and law.

2. The petitioners, who are tenants in a commercial premises in Grain Market, Sector 26, Chandigarh, were subjected to eviction proceedings by the respondents-landlords by filing separate petitions. It was pleaded by the landlords that there were number of owners of the demised premises and one of them, namely, Arun Kumar, was doing the business of running an Atta Chakki and sale of spices & cereals and was also assisting his brother-Subhash Chand. Petitioner-Maman Chand Mate Ram was stated to have taken the demised premises on rent from the father of the landlords, namely, Sham Lal, when Anil Aggarwal and Arun Kumar, his sons, were minors, whereas petitioner-Gulshan Kumar Pahwa was inducted as a tenant in the year 1987. The demised premises were pleaded to be required as one of the owners wanted to run his own independent business after having acquired experience of ten years and while the other co-owner being an Advocate desired to set up an office therein for his consultancy. Another ground which was put forward for eviction was that the tenants were in arrears of rent and that material alterations have been made in the demised premises without the consent of the landlords.

3. The need of the landlords for possessing the demised premises was denied by the petitioners. It was pleaded by petitioner-Maman Chand Mate Ram that on earlier occasions, attempts were made by the landlords to seek its eviction by

filing petitions which were dismissed; that the landlords had concealed the fact that the site where an Atta Chakki is being run by Arun Kumar is owned by them to the extent of 1/3rd share; and that the ingredients of Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short, 'the Act') have not been complied with. Both the petitioners had, however, admitted the rate of rent, but denied that they were in arrears. The factum of unauthorised construction or addition and alteration in the demised premises was also denied.

4. The landlords filed their replications to the written statements of the petitioners reiterating the averments made in the eviction petitions.

5. After framing of issues, the parties led their evidence and by separate orders, the Rent Controller, Chandigarh accepted the prayer of the landlords and held that they required the demised premises for their own personal use and consequently, ordered the eviction of the petitioners therefrom.

6. Feeling aggrieved, the petitioners filed separate appeals which were dismissed by the Appellate Authority, Chandigarh by two different judgments passed on 30.4.2010. The instant petitions are the consequence of the subsisting grievance of the petitioners.

7. Learned Counsel for the petitioners have contended that the bona fide necessity of the landlords was not established. It was submitted that Arun Kumar, one of the landlords, was already engaged in his own independent business of running a flour mill while the other landlord, namely, Anil Aggarwal, was a practising Advocate who never intended to set up his office in the demised premises. It was further submitted that the demised premises was unsuitable for the profession of an Advocate as the same were situated in the Grain Market, Sector 26, Chandigarh and were allotted by the Chandigarh Administration for a specific use which could not be altered. Learned Counsel for the petitioners contended that there had been misrepresentation of facts as it was denied that two of the landlords, namely, late Subhash Chand and Arun Kumar were partners in the firm known as Jalandhar Flour Mill, Grain Market, Sector 26, Chandigarh and this belied their case of bona fide need to possess the demised premises. It was next contended that to establish the bona fide need, all the landlords did not step into witness box and this was sufficient for the Rent Controller to have drawn an adverse inference against them. To support this contention, they relied upon a judgment of the Supreme Court in *Iswar Bhai C. Patel @ Bachu Bhai Patel v. Harihar Behera and Anr.* 1999 (2) CCC 1 (S.C.).

8. In so far as the need of one of the landlords, namely, Anil Kumar Aggarwal, who is a practising Advocate, to have his office in the demised premises, learned Counsel for the petitioners submitted that he was in the profession since the year 1982, i.e., much prior to the demised premises was let out to the petitioners and, therefore, it could not be said that his requirement was bona fide. They further submitted that it has come in evidence that there were some strained relations between the brothers, who are amongst the landlords, but this fact was not

mentioned in the petitions and in the pleadings, it was averred that there was no share of one of the landlords, namely, Subhash Chand, in the firm-Jalandhar Flour Mill, but while appearing as a witness, in his cross-examination, he categorically admitted that he was having 30% share in it. Reliance was placed on a judgment of this Court in *Sohan Lal v. Swaran Kaur* 2003 (2) R.C.R. (Rent) 407 (P&H) wherein it was observed that the words "reasonable requirement" postulate that there must be an element of need as opposed to mere desire or a wish and the distinction between "desire" and "need" has to be kept in mind and the need must be sincere and honest in contradistinction with a mere pretence or pretext to evict a tenant.

9. I have thoughtfully considered the contentions/ submissions of the learned Counsel for the petitioners and have perused the impugned judgments, as also the copies of the statements of the witness which were produced before me during the course of arguments.

10. The petitioners dispute the bona fide need of the landlords, who, in my opinion, have more than amply demonstrated their need to utilize the demised premises for setting up an independent venture of one of them, namely, Arun Kumar and also for using a portion thereof for establishing a consultancy office of Anil Kumar Aggarwal, who is a practising Advocate for more than a decade. The need for the demised premises is explicit when Anil Kumar Aggarwal during his testimony as PW1 in the eviction petition preferred against petitioner-Gulshan Kumar Pahwa, categorically stated in response to a question put to him in cross-examination that even though there was a partnership in the business of running a flour mill and they were owners of the premises where it was being run, to the extent of 1/3rd but only 1/6th of the 1/3rd was in their possession. In the wake of this, when one of the members of the family, who was assisting his brother-Subhash Chand, is desirous of setting up an independent venture of sale and purchase of pulses and cereals, it cannot be said that it is a mere wish and not a genuine need.

11. The question of need of a landlord is essentially to be viewed from the perception of the landlord and in the instant case when all the landlords of the demised premises were given to business activities, they would naturally, as prudent businessmen, always think of undertaking new ventures and expanding the existing resources. It is, therefore, not unnatural for brothers in the family to think of having more space in the business and hence, as a consequence thereof, the need to acquire the demised premises in order to accommodate the aspiration of a larger business.

12. The plea that Arun Kumar Aggarwal did not testify before the Rent Controller and hence, an adverse inference ought to have been drawn against the landlords is also meaningless for the simple reason that the other two brothers, namely, Subhash Chand and Anil Kumar Aggarwal, who were equally conscious and aware of the need of the family, had appeared as witnesses and deposed about the requirement of the demised premises and merely because one of the landlords

did not step into witness box, does not mean that the factum of the need was alien to other two brothers, who testified. It is understandable if a person is totally a stranger to the facts of the case and he testifies about the need of the landlord, but if the relationship of the landlords / co-owners is so intericate, then no adverse inference can be derived for merely a non-deposition.

13. In *Sarla Ahula v. United India Insurance Co. Ltd.* 1998 (2) R.C.R. (Rent) 533 (S.C.), it has been held by the Supreme Court that the Rent Controller should not proceed on the assumption that the requirement of the landlord is not bona fide. According to the view taken in the said judgment, once the landlord shows a prima facie case, a presumption of bona fide requirement can be raised in his favour and it is not for the tenant to dictate terms to the landlords as to how they could adjust themselves.

14. In *Ajit Singh and Anr. v. Jit Ram and Anr.* (2008) 9 S.C.C. 699, the Supreme Court observed as under:

When the demised shop is sought to be vacated on the ground of the landlord's son's requirement, in the eviction petition, the son must plead that he was not occupying any other building and that he had not vacated an occupied building without sufficient cause. In the present case, it was pleaded and proved that the demised shop was required by the son. Therefore, the pleadings of the son in regard to the aforesaid mandatory requirements were satisfied. A non-residential premises, if required by a son for user by him would cover the requirement of the words used in the section i.e. "for his own use" in reference to a landlord....

15. Having regard to the aforesaid observations and the fact that the landlords have sufficiently demonstrated their bona fide need, I am of the opinion that their wish and desire to have the demised premises for their own use and occupation is strong enough and needs to be respected than the wish of the petitioners who cleverly want to cling on to it in complete deference and destruction to the respectful relationship of tenants and landlords, more-so when in developing economy, necessary infra-structure in the shape of residential and commercial establishments are easily available as alternatives.

16. On the basis of the above discussion, I do not find any infirmity in the findings recorded by the Rent Controller and the Appellate Authority. There is, thus, no merit in the revision petitions and the same are dismissed. In view of this, all pending civil miscellaneous applications are also dismissed. However, the petitioners are allowed one year" time to hand over the physical vacant possession of the demised premises to the landlords subject to their furnishing of an undertaking within three weeks from today before the Rent Controller in the following terms:

1. That they shall hand over physical vacant possession of the demised premises to the landlady on or before 13.8.2011.
2. That they shall pay all arrears of rent up to date to the landlords within two

months.

3. That they shall continue to make payment of rent at the agreed rate till the physical vacant possession of the demised premises is handed over to the landlords.

4. That they shall not commit any default in payment of arrears of rent or the monthly rent and that even a single default will disentitle them to the benefit of this order.

5. That if the arrears of rent or the monthly rent is not paid as aforesaid, the landlords shall be entitled to execute the eviction order forthwith.

6. That the physical vacant possession of the demised premises shall be handed over to the landlords in the condition as it is.

7. That if they make an attempt to deviate from the undertaking, the landlords shall be entitled to apprise the Rent Controller, who shall proceed to get the demised premises vacated and to hand over the physical vacant possession thereof to them by granting police assistance.