
(2009) 07 P&H CK 0225
In the Punjab And Haryana At Chandigarh

Jain Type Foundary and Others	Vs	APPELLANT
Raj Pal Kapoor and Others		RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13

Citation : (2009) 156 PLR 823

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surya Kant, J.—This revision petition is directed by the tenants who are aggrieved at the orders dated 14.3.2007 passed by the Rent Controller, Jalandhar ordering their eviction from the shop forming part of property No. ED-282, Opposite Dr. Mehta, Adda Hoshiarpur Road, Jalandhar City (in short "the demised premises"). They also assail the order dated 7.10.2008 passed by the Appellate Authority, Jalandhar whereby their appeal against the eviction order has been dismissed.

2. The respondent-landlord filed a petition u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short the Act), seeking the petitioners' eviction from the demised premises, inter-alia, on the grounds that: (i) the tenants are willful defaulter in making payment of the rent and are in arrears since 1.4.2000; (ii) the tenants have become a source of nuisance to the landlord as they have installed a very heavy generator set which is causing serious pollution besides damaging the building; (iii) the demised premises is required by the landlord for his own use and occupation who has retired from the Bank on 20.1.2001 and has received handsome amount towards arrears of retiral benefits which are sufficient to start the business, in which he also wanted to establish his son who was graduate but could not get a job despite best efforts.

3. The petitioners contested the landlord's claim and besides other pleas, also

specifically averred in para 2(c) of the written statement that there is one vacant shop in the middle of the premises on the ground floor which, if at all required, can be used by the landlord for the purpose of starting his proposed business.

4. The Rent Controller as well as the Appellate Authority, both, have concurrently accepted the landlord's plea regarding requirement of the demised premises for his own use and occupation and have ordered the petitioners' eviction, giving rise to this revision petition.

5. Learned Counsel for the petitioner-tenants vehemently contends that: (i) the courts below have wrongly relied upon the affidavit tendered by the respondent-landlord in his examination-in-chief as its verification was admittedly defective; (ii) since no specific averment that the landlord's son was not in possession and/or had vacated any such premises in the urban area before filing of the eviction petition has been made though required u/s 13(3)(iv) of the Act, the evidence led by the landlord in support of such plea, is liable to be ignored; (iii) the respondent-landlord has another shop available to start his business; and (iv) the landlord's son has, in fact, gone to U.K. and the plea that his son is sitting idle or that the landlord had a moral responsibility to start the business for his son, are mere pretence to seek the petitioners' eviction. It is also alleged that the landlord's plea that he requires the shop to start some business, is an afterthought only, inasmuch, as he had retired from service on 20.1.2001 whereas the eviction petition was belatedly filed after a period of more than four years. Shri Parbhakar has placed reliance upon two judgments of this Court reported as (i) Charan Dass v. Kirpal Singh 1977 All IRCJ 924 and (ii) Inder Pal Dua and Anr. v. Yash Garg & Co. (2002) 132 PLR 238. While in the first decision, this Court has held that unless a specific averment in terms of Section 13(3)(a) (iv) is made to the effect that the son of the landlord is not occupying any such premises and/or has not vacated the one in the same urban area, the evidence led with regard to his requirement cannot be taken into consideration. In the second decision, an affidavit suffering with defective verification was held to be inadmissible in evidence.

6. Per contra, learned Counsel for the respondent-landlord urges that the eviction petition has been filed u/s 13(3)(i)(a) and not under 13(3)(iv) of the Act, predominantly on the ground that he requires the premises for his own use and occupation and, therefore, it was not necessary to plead that the landlord's son has not vacated and/or is occupying any other shop in the urban area concerned. He further argued that no such plea was taken by the petitioners in the written statement. Learned Counsel further explained that the requirement of the landlord's son is also the landlord's own requirement falling within the ambit of Section 13(3)(i)(a) of the Act, as held by the Hon'ble Supreme Court in the case of A.K. Jain Vs. Prem Kapoor, wherein their Lordships have held that the expression "for his own use" must receive a wide, liberal and useful meaning rather than a strict or narrow construction which shall necessarily mean that the accommodation required for the son, his wife and their children, would also be a

requirement of the landlord.

7. Learned Counsel further explained that the landlord's son was recruited by the PSEB on contractual basis but his services were terminated in the year 2002 and his challenge to the said order made in CWP No. 8943 of 2002 was also turned down by this Court vide order dated April 26, 2005. Soon thereafter that the present eviction petition was filed by the respondent-landlord without any delay. The landlord has also relied upon a site plan, duly exhibited, in order to contend that there is no third or a vacant shop on the ground floor as claimed by the tenants, inasmuch, there is only a passage being used by the landlord and his family to have access to their residential house located on the first floor. This fact is stated to have been conceded by the tenant (RW1) in his cross examination as well.

8. Having heard learned Counsel for the parties at some length and on perusal of the impugned orders, I do not find any merit in this revision petition. It would be apposite to reproduce the following para 2(c) of the eviction petition, a photocopy of which has been handed over by learned Counsel for the petitioner during the course of hearing:

That the petitioner wants the demised shop for his own use and occupation. The petitioner retired from the banking services on 20/1/2001 and had received handsome amount on retirement as retirement benefits and moreover at present he is idle. The elder son of the petitioner is Graduate and he could not get a job inspite of moving from pillar to post. The petitioner too being idle intends to open his own shop in the premises in question with a moral duty to settle his son. The petitioner is having a sufficient amount for opening the business.

9. It may, thus, be seen that the respondent-landlord had taken a specific plea that the demised premises is required by him for his own use and occupation as after retirement he wanted to set up some business for which he had sufficient means available. He also wanted to accommodate his elder son in the said business who was statedly sitting idle without any job. The eviction petition was, thus, essentially u/s 13(3)(i)(a) of the Act. The respondent-landlord has specifically averred in para 4 of the eviction petition that he "has not vacated any other similar premises without any reasonable and probable cause within the local limits of Jalandhar City". It was not the case of the petitioners in their written statement that the landlord or his son was in occupation of any commercial premises or they have vacated any such premises. The petitioners' plea that there is a shop, lying vacant on the ground floor, is also contrary to the evidence on record, inasmuch, as it is made out from the exhibited site plan that there are only two shops and in the middle there is a passage only.

10. Since the respondent-landlord has not sought eviction on the ground which is additionally available to him under Clause (iv) of Section 13(3), he was not obligated to plead that his son is not in occupation and/or has vacated any such premises within the urban area in question. The view taken by this Court in

Charan Dass's case (supra), thus, is not attracted as that was a case where the landlord sought eviction of the tenant specifically on the ground that the same was required for "occupation of his married son, who had to shift to Patiala".

11. As regards the defective verification of the affidavit filed by the respondent-landlord, the petitioner did take this objection before the appellate authority but the same has been turned down after observing that the landlord as well as his son both have entered the witness box and have been subjected to lengthy cross examination and, thus, no prejudice has been caused to the petitioner on account of the alleged defective verification of the affidavit. No such objection appears to have been raised by the petitioners at the time when the affidavit was tendered in evidence.

12. In somewhat similar situation, in *Surinder Gupta v. Hukam Chand* 2009(1) R.C.R. 541, this Court has held as follows:

5. The second objection relating to the manner of drafting the affidavit without proper verification is with reference to the proof of affidavit given for his chief examination. The expressions which are under caption used before verification of the signatures are "verified that the contents of my affidavit are true and correct to my knowledge and belief". This verification according to the petitioner, is inadequate and does not confirm to the law under Order 19 of the Code of civil Procedure. The learned Senior counsel refers to a decision in *A.K.K. Nambiar Vs. Union of India (UOI) and Another*, which lays down that If affidavits are not properly verified it cannot be admitted in evidence. The Supreme Court was laying down the importance of verification by stating that the test of genuineness and authenticity of allegations and also to make the deponent responsible for allegations contained in verifications and in the absence of proper verification affidavits could not be admitted in evidence. This objection by the revision petitioner, in my view is, frivolous if the contents in the affidavit were subjected to lengthy cross-examination and case is decided not merely on the basis of affidavits but on the basis of evidence that flows out of cross-examination as well the averments in the affidavits. There is a reasonable ground to believe that all the averments in the affidavits are fully met by the person against whom evidence is used. Therefore, no prejudice could be said to be caused to a person by any deficiency in the manner of verification. As a matter of fact, the learned Counsel appearing from the landlord points out that the affidavits sworn to by the tenants contain a verbatim reproduction of how the landlord has verified in his affidavit. 1, therefore, reject the contention of the tenants that the affidavit is not proper and that it could not be relied.

The aforesaid objection is accordingly rejected.

13. Adverting to the petitioners' contention that the landlord having retired from service on 20.1.2001, filed the eviction petition on 30.5.2005 and therefore, the plea that he wanted to start his own business is nothing but to clog to the petitioners' tenancy rights, in my considered view, is liable to be rejected. The

photocopy of the order dated 26.4.2005 passed by this Court dismissing CWP No. 8943 of 2002 reveals that the eviction petitioner's son was employed in the PSEB on contractual basis and his services were terminated on 9.4.2002. Aggrieved, he approached this Court but the writ petition was disposed of without interfering with the termination order, though with an observation that as and when the competent authority would make recruitment, his claim shall also be considered. Soon after the dismissal of the said writ petition, the present eviction petition has been filed by the landlord.

14. The petitioners' plea that the respondent-landlord's son has already gone to UK, the learned appellate authority appears to be right in observing that no such plea has been taken by the petitioners in the written statement nor any suggestion put to Ronan Kapoor, son of the landlord, when he appeared in the witness box on 18.6.2006.

15. For the reasons afore-stated and keeping in view to the scope of interference by a revisional court in the concurrent findings of fact given by the two courts below on appreciation of the evidence on record, I do not find any merit in this revision petition which is accordingly dismissed.

16. However, considering the fact that the petitioners are required to shift to some other premises, it is directed that subject to payment of arrears of rent as well as future rent on or before the 10th day of every calendar month, the petitioners shall hand over the vacant possession of the demised premises to the respondent-landlord by 31st October, 2009.

17. No order as to costs.