
(2015) 05 P&H CK 0534
In the Punjab And Haryana At Chandigarh
Case No : CR No. 8012 of 2011 (OandM)

Kuldeep Raj Gupta

APPELLANT

Vs

Avtar Singh and Others

RESPONDENT

Date of Decision : 29-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
East Punjab Urban Rent Restriction Act, 1949 — Section 13, 13(3)(a), 13(3)(a)(i),
13(3)(i)(b)

Citation : (2015) 2 RCR(Rent) 662

Hon'ble Judges : Gurmit Ram, J.

Bench : Single Bench

Advocate : Sudeep Mahajan, Advocate, for the Appellant; B.S. Sra, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Gurmit Ram, J.—This revision petition is preferred at the instance of Kuldeep Raj Gupta petitioner herein who was tenant before the learned Rent Controller, Amritsar against the impugned judgment dated 5.12.2011 passed by the learned Appellate Authority, Amritsar vide which the appeal was accepted and the order dated 1.9.2009 passed by the learned Rent Controller was set aside and the petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short-the Act) for the ejectment of the tenant from the demised premises was accepted.

2. The case of the respondents herein (petitioners-landlords) before the learned Rent Controller in nutshell was that the petitioners were owners of the demised shop measuring 22 ft. x 11 ft. built in the total area of 26 sq. yards 8 sq. feet as detailed in para No. 1 of the petition. The respondent is the tenant in the demised shop @ Rs. 120/- per month excluding the roof. The petitioners served a registered AD letter dated 6.5.1998 along with a copy of sale deed upon the respondent for his intimation that they had purchased the demised shop from its

previous owner/landlord vide sale deed dated 18.4.1998 registered in the office of Sub-Registrar, Amritsar on 20.4.1998. There exists as such relationship of landlords and tenant between the parties qua the demised shop. A suit for injunction with counter-claim is stated to be pending in the Court learned Civil Judge (Jr. Division), Amritsar between the parties. The petitioners sought the ejectment of the respondent-tenant from the demised shop on the ground of non-payment of rent w.e.f. 18.4.1998 at the above-said rate of Rs. 120/- per month; that the demised shop has become unsafe for human habitation; that respondent is a source of nuisance since he is using welding set from morning to evening and used to cause vibration and also dangerous gases from the same and also that the demised shop is required by the petitioners for their personal use and occupation. In this connection, it was their plea that at present they are running a business of goldsmith in a shop which is very small one and the same is adjacent to the demised shop. Then it was also their case that the respondent has four shops in the same locality which are rented out to different tenants and hence the present petition.

3. On notice, respondent appeared and filed written statement wherein taking the plea that he is the tenant in the demised shop under Smt. Verra Wali widow of Jiwan Singh w.e.f. June, 1964 @ Rs. 22/- per month and the present rate of rent was Rs. 120/- per month. After the death of said Verra Wali, he used to pay rent to her legal heirs who was landlord of the demised shop. Then he admitted that registered notice dated 26.5.1998 was sent to him, but it did not contain any document. Then it was his plea that it is for the petitioners to prove that they had purchased demised shop from the previous owner Verra Wali vide registered sale deed. In the absence of this proof, there cannot be any relationship of landlords and tenant between the parties. The alleged civil suit and counter claim was stated to be pending before the learned Civil Judge (Jr. Divn.), Amritsar. He paid the arrears of rent for the period w.e.f. 18.4.1998 to 17.8.1998 @ 120/- per month along with interest on the first date of hearing to avoid any complication at later stage. Then it was specifically denied that demised shop was unfit and unsafe for human habitation. Then it was also denied that the answering respondent had been causing any nuisance by using welding set.

Then it was further denied that the demised shop is required by the petitioners for their personal use and occupation as alleged in the petition. In this connection, it was pleaded that petitioners are running the business of goldsmith in an accommodation 12 ft. x 34 ft. which is sufficient for the purpose of above said business. Then it was also the stand of the respondent that petitioners had not come to the Court with clean hands. They were having number of properties other than the demised shop which they did not disclose in the petition and the same are as under:--

i) One commercial plot measuring 275 square yds bearing Khasra No. 2350/602 situated at Jawahar Nagar, Partap Bazar, Chheherta, owned by Shri Avtar Singh

son of Amrik Singh, by way of registered sale deed dated 25.9.1995 where there is a boundary wall and is commercial property.

ii) Two shops situated in Amar Singh Sabziwala Market, opposite co-operative Bank, Chheherta which are lying vacant.

iii) One plot No. Khasra No. 294 in the name of Devinderjit Singh, situated at Dharampura at the back side of Piara Singh Are Wala where there is one shop on the ground floor and there is residential accommodation on the upper portion and is measuring 10 marlas of property.

iv) One shop measuring 20" x 14" fully constructed on the ground floor and complete construction on the first floor which is lying vacant bearing khasra No. 1574/672 min, which is now owned by the petitioners after the death of their father, situated at Kartar Nagar, Partap Bazar, Chheherta.

v) One house situated at Jawahar Nagar, Baba Deep Singh Gali in the name of Avtar Singh where there is a shop on the ground floor and residential accommodation on the first floor which bears Khasra No. 559 measuring 10 marlas of the property.

vi) One shop bearing No. 183, opposite stairs of the property in possession of the petitioners in Hargobind Market which was run by father of Avtar Singh and after his death, the shop is in possession of the petitioners. The said shop was purchased in the year 1990 which measures 15" x 15" and is lying vacant where electric meter is in the name of Davinderjit Singh and it bears khasra No. 1321/554.

vii) One commercial plot measuring 125 square yds. fully constructed owned by Avtar Singh where karigars of the petitioners used to manufacture gold articles in the premises situated at Wadali Guru, Chheherta.

Rest of the averments were also denied by the respondent.

4. In the replication, the petitioners denied the above said averments made in the written statement and reiterated their stand as taken in the petition. Then it was also denied that the properties as detailed by the respondent in the reply stated to be owned by the petitioners other than the demised shop are the commercial properties. These were stated to be situated in the abadi area wherein no work could be done.

Then it was further case of the petitioners that the respondent also got so many properties besides the property in dispute which were detailed in the replication as under:--

1) Kuldeep Raj got one shop situated at Wadali Road, near Railway Phatak, Opp. Gill PCO, measuring 12" x 6 "and is constructed building in two marlas with house.

2) One plot consisting of five commercial shops of 25" x 60" wherein the

respondent has installed power looms in the said plot and factory.

3) The respondent has also tenanted shop to R.K. Confectionery.

4) He has also tenanted shops to shoe maker one to machine repair and one shop to Davinder Singh Jaj which is situated in the main bazar at Chhehrata, Partap Bazar, one is situated at Dharampura locality, Gali No. 2 and 8 shops have also been constructed over there, Opp. Arora Nursing Home, Chhehrata.

5) That the respondent has also got one kothi in Dharampura, Chhehrata, Gali No. 2, measuring 150 sq. yds. wherein one shop was also constructed which is lying vacant. The respondent has also got two sheds measuring 150 x 150 sq. yds. He has also installed screw factory there.

5. The learned Rent Controller after hearing the learned counsel for the parties and going through the records, recorded his findings on all the issues against the petitioners and dismissed the ejectment petition vide impugned order dated 1.9.2009.

6. The petitioners-landlords preferred an appeal against this order of learned Rent Controller before the learned Appellate Authority, Amritsar. The learned Appellate Authority affirmed the findings of the learned Rent Controller on issues No. 1, 2 and 4 and reversed the findings of learned Rent Controller on issues No. 3 and 5. Resultantly the learned Appellate Authority accepted the appeal whereby setting aside the order passed by the learned Rent Controller and petition under Section 13 of the Act for ejectment of the respondent-tenant from the demised shop on the ground of personal necessity was accepted.

7. Aggrieved from the judgment of learned Appellate Authority, Amritsar, the petitioner herein (tenant) has come up before this Court by way of the instant revision petition. Records of both the Courts below were also requisitioned and perused.

8. I have heard the learned counsel for the parties and have also perused the records with their able assistance.

9. No revision has been filed by the respondents herein (landlords) against the impugned judgment vide which the findings of learned Rent Controller on issues No. 1, 2 and 4 had been affirmed. So the scope of the instant revision petition is only with regard to the issue of personal necessity.

10. The learned counsel for the petitioner herein (tenant) has contended that the respondents herein (landlords) are guilty of concealment of material facts from the Court and as such they are not entitled to get an ejectment order for evicting the tenant from the demised shop. It is his contention that the landlords owned several commercial properties other than the demised shop within the limits of urban area concerned at the time of filing of this instant ejectment petition, but they did not make any disclosure about the above-said properties as allegedly owned by them. Herein he has submitted that the disclosure regarding the said

commercial properties owned by the present landlords was made by the tenant in his written statement in para No. 4 sub para (iii). As per his disclosure made by him in this para the respondents herein (landlords) owned seven commercial properties other than demised shop situated almost in the area of Chheherta, Amritsar at the above-said relevant time. In support of his above contention he has cited an authority of this Court as laid down in Shankar Lal Vs. Madan Lal and Others, . In this case law, the landlord sought the ejectment of tenant from the demised shop on the ground that he required the same for the business of his son. The landlord owned other two shops also which fact was concealed by him. It was held that the landlord is guilty of concealment of fact and as such the eviction petition was dismissed inter alia on the ground of concealment of fact. Then he has also referred to another authority of this Court as delivered in Ravinder Sood and Another Vs. Mohan Lal, . In this case, it was held that if the requirement of the landlord for the demised premises is that his family is large and as such he requires the same and if any other member of that family on whose behalf he is making a claim has properties, the landlord is at least expected to explain as to how the ownership of other buildings in the names of his wife and son for whose behalf as well he makes a claim for personal requirement are not sufficient. The landlord in this situation must place appropriate evidence that other buildings are not sufficient or convenient in order to meet the personal requirement of the landlord and his family members.

11. Admittedly, in the case in hand the landlords did not make any mention of above properties in the petition alleged to be owned by them as pointed out by tenant in his written statement, but in the replication they took the plea that these properties are not of commercial nature. Regarding properties No. 1 and 5, it was their stand that these properties are situated in the residential area and are not commercial one. Regarding property No. 1, it was alleged by them that it is a vacant plot. Then it was also their plea that respondent No. 1 herein (petitioner No. 1) is having his residence in the above said property No. 5. Regarding property No. 2 it was denied that any shop was situated in Amar Singh Sabziwala Market. Regarding property No. 3, it was their stand that there exists no shop in this property nor it is commercial one. Petitioner No. 2 is having his residence over this property, and plot is having only the area of 7 marlas. Regarding property No. 4, they took the stand that this property belonged to their mother and whereas property No. 6 belonged to their father, which is also not commercial one. Regarding property No. 7, it was pleaded that it was their ancestral house built by their father and now the same is being owned and possessed by all the LR's of their father (since deceased).

12. So two of the properties as above pointed out by the tenant belonged to the parents of the petitioners and other two properties are being used by the present landlords for their respective residence, one property is stated to be an ancestral house owned and possessed by all the LR's of the father of landlords (since deceased). Then one property is stated to be situated in the abadi area not fit for commercial purpose. Then the landlords have denied the fact that the alleged

two shops are situated in Amar Singh Sabziwala Market. Then in the case in hand, the demised shop is adjacent to the shop wherein the landlords are running their business of goldsmith at present. Since the demised shop is adjacent to the said shop so as such its suitability in order to meet the alleged personal requirement of the landlords for their goldsmith business cannot be denied. So in the case in hand, the landlords have given sufficient explanation as to how the above said properties as pointed out by the tenant are not suitable to meet out their alleged personal requirement qua the demised shop. So the case in hand cannot be said to be a case of concealment of material facts on the part of landlords. They made clear description about the extent and nature of these properties in the replication. They could be held guilty of the concealment about the factum of the above said properties, if they did not make any mention about the same in the replication. So the principle laid down in Shankar Lal's case and Ravinder Sood's case cited supra cannot be attracted to the case in hand. Hence the above contention of learned counsel for the petitioner herein (tenant) is held to be not sustainable either on facts or under the law.

13. Then the learned counsel for the petitioner herein has laid much stress on the subsequent events and has contended that judicial notice of the same can be taken for proper adjudication of the matter in controversy. Herein he has contended that about three years back, respondents-landlords had purchased another shop from one Ghardeep Singh vide a registered sale deed dated 7.8.2009 which is of the area of 11".6" x 10".6" which space has now been added by them in their existing shop whereby making it of the dimensions of 45" x 12" approximately. Then it was also his contention that thereafter respondents-landlords have also raised two more storeys over the existing shop which are now fully furnished and currently functional for their use and occupation for running the goldsmith business. In support of his contention the learned counsel for the petitioner has also referred to an authority as delivered by this Court in Lalita Gupta Versus Mahesh Kumar Gupta, 2008 (1) R.C.R. (Rent) 499 . In this case law, it has been held that normally the rule is to determine the rights and obligations of the parties on the date of petition and subsequent events can be taken into consideration provided these are of a nature and dimension as to completely eclipse the need and make it lose significance altogether. Then there is another authority on this point as relied upon by the learned counsel for the petitioner titled as Vishal Garg Vs. Kanwaljit Kaur and others, wherein it has been laid down in nutshell that it is now well settled that Court at any stage of proceedings can take into consideration subsequent events and mould the relief in accordance thereof as per law.

14. The petitioner has mentioned the above mentioned facts in para No. 7 of the revision petition without bringing on the record copy of alleged registered sale deed dated 7.8.2009. Even he also did not file any application under Order 41 Rule 27 CPC for bringing on the record this sale deed or its copy as per the law of evidence. Plea regarding the raising of two more storeys over the demised shop is also alleged, whereas there is no evidence on the file in support of this

contention also. So for want of any kind of evidence in support of the above contention as raised by the learned counsel for the petitioner in this revision, it is difficult to believe the same or to act upon such like pleading being not substantiated on the record as required by law. Herein I want to discuss the case law titled Gulabbai Vs. Nalin Narsi Vohra and others, . In this case, the landlady required the demised premises for her husband for Tax Consultancy Office. The learned lower Court passed the order of eviction of tenant. Then during the pendency of the appeal, the landlady constructed a spacious bungalow which was suitable for their requirement. It was held that taking into account the subsequent events, the tenant cannot be ejected. Then it was also held that additional facts can be brought to the notice of the Court by moving an application under Order 41 Rule 27 , CPC. But in the case in hand as above-said, the petitioner herein (tenant) does not make any effort to bring on record the above-said sale deed dated 7.8.2009 and any other evidence to show that during pendency of the proceedings, the landlords had raised construction of two more storeys over the shop which was already in their possession and the shop allegedly purchased by them vide said sale deed dated 7.8.2009 either before the learned Appellate Authority or before this Court. So, the above contention of learned counsel for the petitioner has no leg to stand and resultantly the same is also declined.

15. Then it is also the contention of learned counsel for the petitioner that in the case in hand there is non-compliance of the provisions of Section 13(3)(a)(i) of the Act and on this account also, this ejectment petition was not tenable in the eyes of law and the learned Appellate Authority without considering this fact has wrongly accepted the appeal whereby ordering the ejectment of the tenant from the demised shop. In order to lend support to his above contention, he has again referred to the authority as delivered by this Court in Shankar Lal's case cited supra. In para No. 77 of this authority, it was held that the reading of the pleadings in the rent petition as well as in the replication clearly shows, that the ingredients of Section 13(3)(i)(b) and (c) have not been pleaded and the ejectment petition was dismissed.

Now it is required to discuss the pleadings of the case in hand relevant for the proper appreciation of the above contention of the learned counsel for the petitioner herein (tenant). Para No. 4(iii) of the petition is held to be relevant for this purpose which is reproduced as under:--

"4(iii) That the shop in dispute is required to the petitioners for their own use and occupation as the accommodation is very small wherein the present petitioners are working as a Goldsmith in the adjacent shop to the shop in dispute and the petitioners require the shop as one of the petitioner want to sit in the disputed shop namely Davinderjit Singh. The petitioners have not vacated any such building without sufficient cause after the commencement of this Act in the Urban area of Amritsar and the shop which is in possession of the applicants is very small shop. The respondent have already got four shops in the same

locality from whom the respondent is realising the rent as the four shops have been tenanted by the respondent Kuldeep Raj to M/s. R.K. Confectionery, Mr. Parkash and another shop to one Davinder Tea Shop, one shop to Machine repair man."

16. On the perusal of the above pleadings of the landlords (respondents herein), it is found that they took the plea before the learned Rent Controller that they required the demised shop for their own use and occupation since accommodation already in their possession is very small. Then they had also pleaded the ingredients as provided under the above-said section 13 of the Act. So it is difficult to say that in the case in hand, there is non-compliance of the provisions of above-said Section 13(3)(a)(i) of the Act. Regarding the other properties stated to be owned by the landlords as pointed out by the tenant in the written statement, the matter has also been discussed above in para Nos. 11 and 12 of this judgment. So there is no need to discuss the same again here in order to avoid repetition.

17. On the other hand, the learned counsel for the respondents-landlords has denied the above contention of the learned counsel for the petitioners and has contended that all the ingredients as provided under the provisions of Section 13(3)(a)(i) of the Act are mentioned in the petition and the same cannot be dismissed on this score. Then he has also referred to the case law as laid down by this Court in Bhatia Cloth House Vs. Dr. Raj Kumar Gupta and Another, , wherein it was held that if there is any ambiguity in the pleadings regarding the ingredients as set out in Section 13(3)(a) of the Act and the same is made good in the evidence then it is sufficient compliance of the statutory provisions.

18. AW1 Malkiat Singh, AW2 Gurdial Singh, AW4 Satish Kumar and AW6 Joginder Singh had stated consistently that the demised shop is required by the landlords for their personal use and occupation. It was also in their statements that the shop in which the landlords are running their business of goldsmith at present is small one. Then AW1 Malkiat Singh and AW4 Satish Kumar also stated that the landlords do not have any other shop except the shop in which they are running their business at present. Then there is statement of one of the petitioners - landlords Avtar Singh as AW8 who brought on the record his duly sworn affidavit Ex. AW8/1 as a part of his statement wherein he fully reiterated his stand as taken by the petitioners-landlords (herein respondents) in this petition.

19. In the light of the above discussion, the above contention of the learned counsel for the petitioner herein (tenant) is held to be not survivable and the same is declined accordingly.

20. Learned counsel for the petitioner has further contended that it is the case of the respondents herein (landlords) that demised shop is required by them for running the business of goldsmith independently by respondent No. 2 herein i.e. one of the landlords. In this regard, it is his contention that neither it is pleaded nor proved that said landlord is not occupying any such premises nor he vacated

any such premises without sufficient cause. Then he has also submitted that said landlord Davinderjit Singh also did not appear as a witness to prove his claim as pleaded in the petition and hence finding recorded by the learned Appellate Authority that the demised shop is required by the respondents herein (landlords) for their personal necessity are liable to be set aside. In support of his contention, he has cited an authority as delivered by the Hon''ble Apex Court in *Ajit Singh and Another Vs. Jit Ram and Another*, . In this case the landlord filed ejectment petition for the eviction of the tenant from non-residential premises for use of his son for business. It was held that in such like a case, it would be mandatory for the son to plead and prove that he was not occupying any other such building nor he has vacated such building without sufficient cause.

Herein I want to discuss the pleading of the landlords as put forth by them in their petition relating to the above contention of the learned counsel for the petitioner. Relevant para No. 4(iii) of petition is already discussed in para 16 of this judgment which makes it clear that respondents herein (landlords) had taken the plea in their petition that they have not vacated any such building without sufficient cause after the commencement of this Act in the Urban area of Amritsar. The shop which is in their possession at present is very small shop. They required the demised shop for their personal use and occupation for business purpose. Then the case of the landlords qua the above-said fact is supported by the respondent No. 1 herein i.e. landlord Avtar Singh while appearing as AW8 in his affidavit Ex. AW8/1 as well as by his remaining AWs i.e. AWs No. 1, 2, 4 and 6. So in the light of these circumstances, the above contention of learned counsel for the petitioner herein (tenant) is also held to be not tenable and the same is declined.

21. Then the learned counsel for the respondents herein (landlords) has cited an authority of this Court as delivered in *S.P. Sethi Vs. R.R. Gulati and Others*, . In this case, the landlord filed an ejectment petition for the use and occupation of his grandsons. It was held that mere non-examination of the grandsons would not, in any case, weaken the case of the landlord.

22. Then the gist of evidence pertaining to the personal necessity as alleged by the landlords qua the demised shop has already been discussed in para No. 19 of this judgment. The sole statement of petitioner herein (tenant) as RW3 in the shape of his affidavit Ex. RW3/A is not found to be up to the mark to rebut the above evidence of the landlords either to dislodge their claim or to hold that the same is not genuine one. AWs No. 1, 2, 4, 6 and 8 were cross examined at length, but nothing had come out in their cross examinations to find any kind of favour to support the plea of the tenant.

23. Then the learned counsel for the respondents herein has referred to some case laws in order to justify that plea of personal necessity of the landlords for their own use and occupation of the demised shop is genuine one having an element of need. The same are discussed as under:--

(i) Ram Nath Vs. Des Raj and Others, .

In this case law the landlord owned 10 other shops which all were under the occupation of tenants. Eviction of the tenant from particular shop was sought as this was on the main road. The sons of the landlord were carrying on their business in the adjoining shop. It was held that it would be natural to expect the landlord to start the business in the tenanted premises. In the case in hand also, the demised shop is adjacent to the shop wherein the landlords at present are running their business of goldsmith.

(ii) Iqbal Singh and Others Vs. Sunil Arora and Another, .

In this case husband and wife were running their respective business from same shop. The wife was doing business in gifts and fancy items. She wanted separate shop to expand her business for which the existing shop was not sufficient. It was held that need of the landlord for the expansion of the business of his wife is bona fide one. It was further held that the landlord is the best judge of his needs if he considers the existing accommodation insufficient and his need is more for commodious accommodation. The tenant cannot dictate his terms and it is not for the Court to go into such a question to arrive at a different conclusion.

(iii) Sait Nagjee Purushotham and Co. Ltd. Vs. Vimalabai Prabhulal and Others, .

In this case it was held that it is the privilege of the landlord to choose the nature of the business and the place of business. The tenant cannot advise the landlord in this regard.

(iv) Hardeep Singh and Others Vs. Manjit Kaur, .

In this case the husband of the landlady was carrying on business and son was working with his father. Need of the landlady for her son was held to be bonafide. It was further held that it is the landlady's prerogative to do what she deems appropriate for the betterment of her family and nobody can be allowed to interfere in her endeavour for starting of said business. Every person intends to rise in his life and have a better living and if for the said fact, a person intends to start business by settling her son there could not be any harm in same.

24. Then it is the case of the petitioner herein (tenant) that the respondents herein (landlords) had purchased some other properties within the limits of urban area concerned vide sale deed Ex. R41 dated 8.1.1992 and sale deed Ex. R42 dated 25.9.1995. Vide these sale deeds, the properties which were purchased by the present landlords were pertaining to khasra No. 1574/672 and 2350/602. As per the record the demised shop is pertaining to khasra No. 605 min. So these sale deeds also do not serve the purpose of the petitioner herein (tenant) from any angle.

25. So in the light of the above discussion and the principles laid down in the case laws cited supra, the need of the respondents herein (landlords) qua the demised shop is held to be bonafide one.

26. The mere fact that the respondents herein (landlords) had filed the instant petition within two months from the date of purchase of the demised shop is no ground to disbelieve their version. If any person purchases any property for a particular purpose, then certainly he will execute his design after its purchase in order to achieve that very purpose.

27. The properties of the petitioner herein (tenant) as pointed out by the respondents herein (landlords) need not to be elucidated, since that fact has no bearing of any kind in the adjudication of the matter in controversy.

28. In the light of the above discussion, the instant revision petition is held to be devoid of any merit. So, it stands dismissed and disposed of accordingly.

Since the main revision petition has been disposed of, the miscellaneous application, if any, also stands automatically disposed of having been rendered infructuous.