

(2011) 02 P&H CK 0079

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No's. 1425, 1569, 5255 and 3041 of 2010

Smt. Rekha Wadhwa and Another

APPELLANT

Vs

Smt. Pushpa Ahuja and Another

RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 13, 13(3)

Citation : (2011) 162 PLR 623

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Judgement

Rakesh Kumar Jain, J.—By this order, I shall be disposing of four revision petitions bearing CR No. 1425 of 2010 titled as "Smt. Rekha Wadhwa and Anr. v. Smt. Pushpa Ahuja and Anr.", CR No. 1569 of 2010 titled as "Smt. Rekha Wadhwa and Anr. v. Smt. Pushpa Ahuja and Anr.", CR No. 5255 of 2010 titled as "Pushpa Ahuja and Anr. v. Smt. Rekha Wadhwa and Anr.", and CR No. 3041 of 2010 titled as "Pushpa Ahuja and Anr. v. Smt. Rekha Wadhwa and Anr.".

2. A few skeletal facts are that two eviction petitions, namely, case No. RBT 20 and case No. RBT 15, both titled as "Smt. Pushpa Ahuja and Anr. v. Smt. Rekha Wadhwa and Anr.", were filed before the learned Rent Controller, Faridabad u/s 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 [for short "the Act"] by the landlords on the ground that the Petitioners/tenants are in possession of two shops No. 4 and 5, measuring 10" x 15" each, out of SCF No. 54, Sector 16, Faridabad as tenants on monthly rent of "5,790/- vide lease deed dated 24.07.1993 for a period of two years w.e.f. 01.07.1998 to 30.06.2000. The landlords sought eviction of the tenants, inter alia, on the grounds of non-payment of arrears of rent, personal necessity, nuisance and material impairment to the value and utility of the demised premises. On the ground of personal necessity, issue No. 3 was framed as to whether the Petitioner requires demised premises for his personal necessity? The learned Rent Controller, vide his order dated 18.05.2009 ordered eviction of the Petitioners/tenants on the grounds of

personal necessity, material impairment to the value and utility of the demised premises and nuisance.

3. Aggrieved against the order of eviction, the tenants filed two appeals before the learned Appellate Authority. During the pendency of the appeals, the tenants filed an application under the Right to Information Act, 2005 [for short "RTI Act"] to the Public Information Officer-cum-Estate Officer, HUDA, Faridabad and came to know vide memo No. 26807 dated 07.09.2009 (Annexure P-6) that Sandeep Ahuja, for whose personal necessity the demised premises was sought to be vacated, already owned Booth No. 81, Sector 15, HUD A, Faridabad besides the other relations, the details of which are as under: -

Sr. No.

Booth No.

Sector No.

Name of owner Husband/Father's name

1

12

15

Smt. DarshnaAhuja w/o Sh. Anil Kumar

2

81

15

SandeepAhujaSh, S.P. Ahuja

3

82

15

Sh. GauravAhujaSh. S.P. Ahuja

4

86

15

Through AshishAhujaSh. Anil Ahuja

5

52

15A

Anil Kumar Ahuja Late Sh. Khashi Ram Ahuja

6

170

9

Smt. Pushpa Ahuja w/o Sh. Sat Pal Ahuja

4. After getting this information, the Petitioners/tenants filed an application dated 21.09.2009 before the learned Appellate Authority under Order 6 Rule 17 of the Code of Civil Procedure, 1908 [for short " CPC "] in order to amend the written statement to incorporate the following two preliminary objections, which read as under: -

i) That the Petitioners have failed to disclose the details of the other properties owned and possessed by the Petitioners before the Rent Controller and have also failed to mention that the Petitioners are not occupying any other building in the urban area concerned and have not vacated such building/premises without any sufficient cause after the commencement of 1949 Act in the said urban area and further that the son of the Petitioner No. 1 Sandeep Ahuja is not occupying in the urban area concerned any other building for his use and has not vacated without any sufficient cause after the commencement of the 1949 Act.

ii) That the petition is liable to be dismissed because the earlier petition tiled by the Petitioners/Respondent on the same grounds is pending adjudication.

5. On the same day, an application was also filed by the tenants for leading additional evidence by way of producing on record letter dated 07.09.2009 (Annexure P-6). The learned Appellate Authority, on the same day, allowed the application for additional evidence, but dismissed the application for amendment of the written statement. This led to the filing of aforesaid four revision petitions, two at the instance of the tenants, i.e. CR Nos. 1425 & 1569 of 2010, wherein they have challenged the order of the learned Trial Court by which their application for amendment in the written statement has been dismissed, and two at the instance of the landlords, i.e. CR Nos. 5255 & 3041 of 2010, by which application filed by the tenants for additional evidence has been allowed by the learned Appellate Authority.

6. Shri Lokesh Sinhal, learned Counsel appearing on behalf of the tenants, submits that it is the pre-requisite under the provisions of Section 13(3)(a) of the Act that the landlord has to disclose categorically in his petition that neither he is in occupation nor has vacated another such building in the urban area concerned without sufficient cause after the commencement of the East Punjab Urban Rent Restriction Act, 1949 [for short "1949 Act"]. He submits that the document Annexure P-6, which has come from the custody of the Estate Officer, HUDA, Faridabad, shows that the landlords have not disclosed that Sandeep

Ahuja, for whose benefit and necessity the demised premises is sought to be vacated, is already in occupation of a Booth bearing No. 81, Sector 15, Faridabad. He further submits that the learned Appellate Authority had committed a material irregularity while dismissing the application for amendment in the written statement and allowing the application for leading additional evidence. It is submitted that if the pleadings are not there, then the evidence would not be considered later on the ground that evidence beyond pleadings cannot be considered.

7. On the contrary, learned Counsel for the landlords has submitted that if the application for amendment in the written statement is allowed, then the trial would be reopened as he would also like to lead his evidence in rebuttal to the evidence which has been allowed to be led by the learned Appellate Authority.

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

9. No doubt, it is the requirement of law that the landlord has to disclose in his eviction petition in case of personal necessity that neither he is in occupation nor has vacated another such building in the urban area concerned without sufficient cause after the commencement of the 1949 Act. Since it is not so pleaded, therefore, there was no occasion for the tenants to take this plea in the written statement, but as soon as they came to know through their application moved under the RTI Act that the landlords were found to be in possession of other premises in the same urban area which could satisfy their need, the application for amendment was filed. To my mind, the learned Appellate Authority has not appreciated the controversy while allowing the application for additional evidence on the ground that the RTI Act came into existence in 2005 and the application was given in August, 2009 after the appeal was filed and for this delay, the tenants were burdened with costs of Rs. 1,000/- and granted only one opportunity to produce their evidence and at the same time dismissed the application for amendment in the written statement on the ground that he has not fulfilled the provisions of Order 6 Rule 17 as amended in 2002. The learned Appellate Authority has rightly, allowed additional evidence as it was not within the knowledge of the tenants at the time when they were litigating before the learned Rent Controller as it surfaced only when an application was filed by the tenants under the RTI Act. In this view of the matter, the learned Appellate Authority should have allowed the application for amendment in the written statement as well so that the evidence led by way of additional evidence could correlate with the pleadings of the tenants.

10. In view of the above discussion, I find force in the CR Nos. 1425 & 1569 of 2010 filed by the tenants and hence the impugned orders declining the application for amendment in the written statement are hereby set aside. Opportunity is granted to the tenants to amend their written statement accordingly. At the same time, I do not find force in the CR Nos. 5255 & 3041 of 2010 filed by the landlords whereby they have challenged the orders of allowing

the application for additional evidence and as such the CR Nos. 5255 & 3041 of 2010 are hereby dismissed.

11. Before parting with this order, the landlords are granted opportunity to lead evidence in rebuttal to the additional evidence which is sought to be led by the tenants by way of additional evidence.