

(2013) 02 P&H CK 0120
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 1862 of 2001

Tirath Ram Sharma

APPELLANT

Vs

M/s. Chandigarh Sales Corporation and Another

RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

Citation : (2013) 02 P&H CK 0120

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : M.L. Sarin, with Ms. Hemani Sarin, for the Appellant; Rajiv Atma Ram with Mr. Sunil Bindlish, for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.—This order must be taken as in continuation of order passed on 06.10.2012. On that day, after hearing the arguments, I directed evidence to be collected for testing the averments made in the affidavit relating to certain subsequent events. The petition for eviction on the ground of personal necessity, which was stated to be for augmenting the income of the landlord for establishing a new business and for setting up his grand children came to be moved in course of time to bring out the subsequent events of the grand children for whose benefit the property was said to be necessary had grown up in their lives, one having migrated to USA and another, who had taken up employment in a multi-national company. Although the affidavits have been brought to the effect that the person in USA was planning to return to India and the person in India, who had taken up employment in a private company, was ready at all times to come back to the property to establish his own business, they did not offer themselves in oral evidence to vouch for what was stated in the affidavit. The evidence brought before the Rent Controller on a direction given by this Court through the order dated 06.10.2012, brings out the oral testimony of one of the sons of the landlord and the grand son of the landlord through yet another son. Learned Senior Counsel appearing on behalf of the landlord literally gave up his

plea at the time of his arguments that the property was necessary for the grand children referred to in the petition. The landlord's petition filed along with C.M. No. 15744 of 2002 bringing an event of his grandson acquiring BE qualification during the proceedings is, therefore, of no value. The case would, therefore, be required to examine only for the personal necessity as brought through the evidence given when the report was called for. Learned Senior Counsel appearing on behalf of the respondent contended that the evidence which was collected on the direction of this Court from the Rent Controller during the pendency of the revision before this Court brings out materials, which are totally alien to the contentions raised in the petition. The petition declares the need of the landlord to be for augmenting income by setting up his own business. That he could not do the business in the manner set forth in the petition is too well evident and the landlord himself had died. The evidence had been given by two witnesses, one Vinod Kumar Sharma, who was son of the landlord and yet another person was Sidharth Sharma, who was the grandson of the landlord through yet another son Ashok Kumar. Learned Senior Counsel appearing on behalf of the respondents would contend that the evidence of Vinod Kumar Sharma was totally outside the purview of the order of this Court allowing for evidence to be given to support the affidavits already given in Court. There was no scope for tendering any further evidence other than allowing for witnesses to be examined on the basis of affidavits filed in Court. I have in my order dated 06.10.2012 observed that the case cannot be properly adjudicated without putting the affidavits filed before the Court to be supported by oral evidence in chief and subject to cross-examination. I have not contemplated allowing for parties to adduce fresh evidence that what was already brought through affidavits before me. I, therefore, totally eschew the evidence given by the grandson Sidharth Sharma.

2. Learned Senior Counsel appearing for the landlord would contend that even though the petition as filed originally did not contemplate the setting up of business for the son Dr. Vinod Kumar Sharma, the reference to his business came to be given in Court through the affidavit of the landlord himself during the course of proceedings when Dr. Vinod Kumar Sharma had retired from Government service and he was waiting to secure eviction of the premises through his father for establishing his own business through an independent application in C.M. No. 26514 of 2009. Admittedly, the requirement of the premises, for the use of his son Vinod Kumar Sharma was not contemplated at the time when the petition was filed. It was set up subsequently through affidavits. The question is whether such a change of personal need could be brought through evidence without amendment of pleadings.

3. Learned Senior Counsel appearing for the landlord refers me to the judgment of the Supreme Court in Raghunath G. Panhale (Dead) By Lrs. Vs. M/s. Chaganlal Sundarji and Co., as making possible such a course. The Supreme Court was considering the case of personal requirement in a rent control proceeding under Bombay Rents, Hotel and Lodging House Rents Control Act, 1947. The Supreme Court was considering the fact of bona fide requirement of landlord in respect of

non-residential premises. In that case the Supreme Court was referring to amendment, which had been allowed providing for the needs of the family. The Supreme Court observed that when an amendment had already been allowed and the tenant had adequate opportunity to meet the case of the landlord, no prejudice could be said to have been suffered. This judgment does not actually answer the situation that we are looking for. There is no difficulty in appreciating the proposition, which is advanced that the needs of the family could be a matter of evidence at the trial although the Supreme Court observed that strict rules of pleading may not be necessary. We are now dealing with the situation where the necessity as pleaded for the landlord does not find mention in the petition but subsequently brought as a subsequent event that is not given place through any amendment in the pleadings. What the landlord has made available is the fact of death of the original landlord and the subsequent event of one of the sons, who was in Government service expressing his imminent need for setting up his own veterinary clinic and business with previous experience as Director of Chhat Bir Zoo. This issue, according to the learned counsel, comes through yet another judgment of the Supreme Court dealing with Kerala Buildings (Lease and Rent) Control Act, 1965 in *Sait Nagjee Purushotham and Co. Ltd. Vs. Vimalabai Prabhulal and Others*, The Supreme Court was considering the relevance of subsequent event where it held that the normal rule is that the rights and obligations of parties are to be determined on the date of petition and subsequent events could be taken for consideration for moulding relief, provided such events are of such a nature and dimension as to completely eclipse the need and make it lose significance altogether. The Court took note of a stark reality that longer is the life of litigation more would be number of developments sprouting up during the long interregnum. Therefore, the Supreme Court reminded that the Courts would have to take a very pragmatic approach of the matter. Neither the person, who has started litigation could sit idle nor could development of events be stopped by him. Consequently while waiting for result of eviction proceedings, the fact that the landlords or their progeny are engaged in another activity or business could not establish that the need for the premises in question was not bona fide. In the same case, the relevance of the pleadings was also examined by the Supreme Court when it said that the facts pleaded in yet another case pertaining to the case could not be considered. It was another way of stating that there has to be pleading and evidence in the very same case of what was essential to be established.

4. There is no proposition in law that there could be permission granted to the landlord to plead for his personal necessity even without any pleadings. The strict rules of evidence may not be essential in rent control matters. If the landlord spelt out his personal need for himself and for members of the family and he had died, the son who pleads for his own need may rely on the statement given by the father relating to the need of the family as sufficient for his need as well. In such a situation, there is no requirement of an additional plea. The judgment relied on by the learned counsel in *Vishal Garg Vs. Kanwaljit Kaur* and

others, must be understood only in the particular situation pertaining to the case that the landlord, who had sought for ejection has spelt out need for the members of his family. The landlord had died. The tenant brought no amendment to the pleadings setting out his own need. The Court held that proceedings could continue and there was no requirement to amend the pleadings at the needs of his son. It is not the same need as of a father but goes to Court giving an explanation about the personal necessity as a necessity for setting up his grand sons in some business and for himself to be associated with. The grand sons had indeed filed affidavits setting out their needs and it was in that context that I had allowed for evidence to be recorded to test the assertions made in the affidavits in cross-examination, I had also incidentally referred to the fact that yet another son had also filed an affidavit referring to his own need. I had not taken a view either way at that time whether there were adequate pleadings had been made or not.

5. Learned Senior Counsel appearing on behalf of the landlord would argue that he will have no problem in making an amendment if such time is granted. It is not like that he has moved application and this Court has refused an amendment. The parties shall steer their own conduct of what they think could advance their best interest. The Court takes notice of what is brought before it and cannot be seen as piloting the case for benefit of one party and to the detriment of another. It will compromise an important virtue of impartiality in judicial proceedings. If the landlord had chosen not to file such an application for amendment setting out his own need, the respondent cannot be expected to join issues on the landlord's needs without any pleadings whether such need is established or not. I have already excluded the evidence of the grandson Sidharth Sharma as beyond the order directing evidence to be given before the Rent Controller. The evidence of Dr. Vinod Kumar Sharma cannot be sustained as establishing the bona fides of the requirement of the landlord when the landlord's petition did not spell out such a need. This was precisely a subsequent event. While I will allow the parties to bring on record the subsequent event of death, I cannot assume that the subsequent need that is said to have developed viz; the retirement from Government service and his intention to start a business itself could be a ground for ejection. A subsequent need may extinguish a need, such as when the landlord has come by possession of another building or by the landlord choosing to shift out. Even such situations if brought by tenant could be explained by the landlord as not militating against the need. A subsequent event cannot create or found a cause of action for a new need. The landlord may itself do so in the independent rent control proceeding and the disposal of this petition will not bar him to establish such a need if brought through appropriate pleadings. I confirm the decisions rendered by the Rent Controller and the Appellate Authority and dismiss the revision petition.