

Punjab & Haryana High Court

Before: Justice Dr. Bharat Bhushan Parsoon.

JITENDER KUMAR – Petitioner

versus

R.S. VIRK And Others

CR 2716 of 2011.

Tenancy - Leave to defend - Petition for ejectment for bonafide personal necessity to start a coaching institute after his superannuation - At the stage of deciding the application under Section 13-A(4) of the Haryana Act, the question simpliciter is as to whether there was any triable issue on the pleas raised by the tenant and if yes, whether intervention of the tenant to have his participation for adjudication of such issues, was necessary - Even though the procedure in a way is summary but by no means, it is to be short-circuited to facilitate entry of a retiree in the premises owned by him. All the conditions stipulated in the relevant provision of Sections 13A(IA) & 13(3)(a)(i) are also required to be complied with - Haryana Urban (Control of Rent and Eviction) Act 1973, Section 13A(4). [Para 15, 16]

Tenancy - Whether co-owner can maintain a petition for eviction - A co-owner is entitled to seek eviction of a building owned by him with other co-owners who may not be enjoying status of 'specified landlord' having right of invoking summary provisions of Section 13-A of the Haryana Act - The only exception to this concept is that none of the remaining co-owners should have any objection to the initiative undertaken by the co-owner in this case in terms of Section 13A(1A) of the Haryana Act - Law presumes that such a specified landlord co-owner is seeking ejectment of tenant from the premises under [tenancy](#) with him for his and benefit of all other co-owners - Haryana Urban (Control of Rent and Eviction) Act 1973, Section 13A.

[Para 31, 32]

Tenancy - Whether co-owner can maintain a petition for eviction - A co-owner who has not even inducted a tenant in the premises, can seek his eviction as his tenancy is taken to be under all the co-owners, who are thus to be taken as landlords qua his tenancy - If one is co-owner even of a fractional share in the joint ownership, he is owner in every inch of the entire property, irrespective of quantum of share, he is entitled to get the premises on tenancy vacated by filing a petition exclusively by himself - If premises have been let out by one co-owner, if the property where there are multiple co-owners, any co-owner therein is legally competent to file a petition for eviction of such tenant because other co-owners being owners in every part of joint property including the premises under

tenancy also became landlords qua the premises on tenancy - In short, an act of a co-owner of inducing a tenant in the premises binds all other co-owners and consequently such a tenant after having been so induced in the premises, becomes a tenant under all the co-owners. [Para 36]

Judgments referred to:

Tenancy - Bonafide necessity - There is initial presumption that the premises are so required by the landlord. **P. Suryanarayana (Dead) By Lrs. v. K.S Muddugowramma**, 2004 (2) RLR 305 (SC).

A landlord who establishes the prima facie existence of his necessity, is entitled to raise a presumption in law, that his need is bonafide and onus thereafter shifts to the tenant that plea of landlord was malafide, on this aspect, personal bonafide necessity had been held in favour of the landlord. **Anil Kumar v. Harpal Singh Banwait**, 2008 (1) RCR 638 (P&H)

Need of landlord cannot be determined by tenant. Landlord is entitled to seek vacation of multiple premises. **Kewal Krishan v. Amrik Singh**, 2001 (2) C&RJR 293, **Vijay Kumar v. Sushil Kumar** (2005-1)139 PLR 855 .

Tenancy - Rights of a co-owner

".....It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners (See: Sri Ram Pasricha v. Jagannath, (1976) 4 SCC 184; Dhannalal v. Kalawatibai, (2002) 6 SCC 16 (Para 25): 2002 (1) RCR (Rent) 126 SC. This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners.

*The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallized on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law."***India Umbrella Manufacturing Co. v. Bhagabandei Agarwalla (dead) by Lrs. Smt. Savitri Agarwalla**, (2004) 3 SCC 178

If there is no objection to any of the other co-owners, one of the co-owners is competent to file a suit for eviction of a tenant in the property generally owned by the co-owners. *"A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceeding before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event, a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings*

initiated by the respondent herein.” Mohinder Prasad Jain v. Manohar Lal Jain, (2006-2)143 PLR 667 (SC)

Judgment

Dr. Bharat Bhushan Parsoon, J. - Challenge in this revision petition is to order dated 07.03.2011 of the Rent Controller, whereby application of the petitioner-tenant under Section 13A(4) of the Haryana Urban (Control of Rent and Eviction) Act 1973 (hereinafter to be referred as the Haryana Act) seeking leave to defend the petition filed by respondent-tenant under Section 13A(1-A) of the Haryana Act, was dismissed and the petition of the landlord was accepted.

2. It is claimed that neither the Rent Controller followed the procedure ordained for deciding petition under Section 13-A of the Haryana Act nor took into account the facts pleaded by the petitioner-tenant in his application, whereby leave to defend the ejectment petition against him, had been sought. It is elaborated that neither the summons had been issued to the tenant in the prescribed form under the Act nor position of a co-owner was rightly interpreted by the Rent Controller. It is averred that mere owner of the property would not be deemed to be a landlord under the Act in absence of existence of relationship of landlord-tenant between the parties. Canvassing that the revisionist-tenant had not been inducted by respondent no. 1 (the petitioner herein) it is claimed that even otherwise he was holding only a meagre share in the property, and thus could not seek ejectment of the tenant.

3. In addition, it is claimed that building is non-residential one, whereas, provisions of Section 13-A and 13(3)(a)(i) are confined to residential premises. It is averred that ground on which the eviction is being sought being available only under Section 13(3)(a)(i) such relief would not be available under Section 13-A of the Haryana Act.

4. It is further averred by the tenant respondent No. 1 that misuser and abuse of the provisions of Section 13-A of the Haryana Act by a landlord cannot be permitted to take advantage of the same by him in the capacity of a ‘specified landlord’. It is further claimed that since respondent No. 1 has already got vacant possession of two shops on account of personal necessity, the present application for seeking ejectment of the revisionist-tenant from the shop in dispute is merely a clever device to get the premises vacated whereas in fact there is no personal necessity much less bonafide one.

5. It is further pleaded in the petition that the Rent Controller had failed to consider that statutory requirements of Section 13(3)(a)(i) requiring the landlord to plead the basic ingredients that he was not occupying any other residential building in the concerned area and had not vacated any such building was to be complied with even qua petition under Section 13A of the Haryana Act. It is further canvassed that the landlord failed to take a note that respondent No. 1 was already in possession of sufficient commercial property and thus was not having any bonafide need. It is, thus, claimed that denial of leave to defend by the Rent Controller and consequent grant of the petition under Section 13 A of the Haryana Act has caused great prejudice to the revisionist-tenant who could not get an opportunity to

cross-examine the landlord qua vital aspects pertaining to compliance of provisions of Section 13-A as also of Section 2 (hh) of the Haryana Act. Seeking reversal of the impugned order, leave to defend the ejectment petition has been sought.

6. Counsel for the contesting respondents, in repudiation of the claim of the revisionist-tenant has urged that sole purpose of the tenant was to delay and dilate the matter so as to frustrate early decision of the petition of the respondent-landlord even though it was preferred under special provisions of Section 13-A of the Haryana Act. It is claimed that neither relationship of landlord and tenant is in dispute nor there is any case of non compliance of the provisions of Section 13(3)(a)(i) and Section 13-A of the Haryana Act.

7. It is urged that all the pleas were legal and were considered by the Rent Controller. It is contended that those legal pleas by way of leave to defend were being venture to be adjudicated with the intervention of the tenant by receiving evidence of the parties, whereas there was no such legal requirement or need of the tenant to participate in the proceedings as the entire matter was to be decided by the Tribunal on the given facts and circumstances about which there was no dispute between the parties. Denying all the averments and pleas raised by the tenant, dismissal of the revision petition has been sought.

8. Counsel for the parties have been heard while going through the grounds of revision, impugned order and other material on the paper book.

9. Ejectment petition by the landlord had been preferred under Sections 13A(1A) and 13(3)(a)(i) of the Haryana Act. For ready reference, Section 13-A(1-A) of the Haryana Act is reproduced as below:

“Where an application is made by a landlord who is or was an employee of Government of India or of Government of Haryana or of any State owned Board or Corporation of Haryana within one year prior to or after the date of his retirement or within one year from the date of commencement of Haryana Urban (Control of Rent and Eviction) Amendment Act, 1990, whichever is later, on the ground mentioned in sub-clause (i) of clause (a) of sub-section (3) of section 13, the same shall be dealt with in accordance with the procedure specified in this section.”

10. For appreciation of this provision in its correct context, it would be appropriate to append Section 13(3)(a)(i) of the Haryana Act as under:

“(3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession-(a) in the case of a residential building, if, -(i) he requires it for his own occupation, is not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area.”

11. This petition had been preferred by the landlord for ejectment of the premises for his bonafide personal necessity to start a coaching institute of law studies for aspiring students after his superannuation on 31.8.2001 from the Government of Haryana.

12. Rejecting application of the tenant preferred under Section 13-A(4) of the Haryana Act, the petition of the landlord was granted. As per sub-section 8 of Section 13-A of the Haryana Act, no appeal against such an order of the Rent Controller has been provided. However, proviso to this sub-section enables this Court to call for records of the case and authorizes passing of such order in respect thereto as it thinks fit. Said proviso for ready reference is appended on the next page:

“Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.”

13. Even when we examine sub-section (6) of Section 15 of the Haryana Act vide which this Court is revisional authority, scope and domain of interference by this Court is limited. For ready reference, sub-section 6 of Section 15 of the Haryana Act is appended as below:

“(6) The High Court, as revisional authority, may, at any time, on its own motion or on the application of any aggrieved party, made within a period of ninety days, call for and examine the record relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit. In computing the period of ninety days the time taken to obtain a certified copy of the order shall be excluded.”

14. Section 13-A (IA) of the Haryana Act is a special provision providing for expeditious remedy of ejectment for an employee with a view to make his expeditious settlement in life, after retirement, in his premises, a reality. The issues raised by the revisionist-tenant herein assailing the order of the Rent Controller whereby leave to defend had been declined to him and the petition of the landlord had been granted, were very well adjudicable at the hands of the Rent Controller without any intervention of the tenant and were rightly adjudicated in the right earnest.

15. At the stage of deciding the application under Section 13-A(4) of the Haryana Act, the question simpliciter was as to whether there was any triable issue on the pleas raised by the tenant and if yes, whether intervention of the tenant to have his participation for adjudication of such issues, was necessary. In the impugned order discussing each and every aspect of the pleas raised by the tenant, the Rent Controller has rightly come to the finding that no case for grant of leave to defend to the tenant was made out and thus participation of the tenant in the ejectment proceedings was not necessary.

16. In fact there is neither any factual nor legal error in the impugned order which calls for any interference by this Court in its revisional jurisdiction. In absence of the tenant, the Rent Controller was rather to be a neutral participant and a vigilant adjudicator of the pleas raised by the specified landlord. Even though the procedure in a way is summary but by no means, it is to be short-circuited to facilitate entry of a retiree in the premises owned by him. All the conditions stipulated in the relevant provision of Sections 13A(IA) & 13(3)(a)(i) are also required to be complied with.

17. Knowing it well, the Rent Controller has dealt with each & every point raised by the

tenant but has found no contestable issues requiring evidence and participation of the tenant.

18. The impugned order duly takes into account plea of the revisionist-tenant that land owner of the property is not to be taken as a landlord and that owner of the property cannot initiate eviction proceedings under Section 13-A of the Act. In fact, all the pleas raised by the tenant are legal and were to be decided by the Rent Controller while appreciating the facts and circumstances available before him in the petition under Section 13-A of the Haryana Act. There was no such question raised by the revisionist-tenant which entails bringing up some facts as also evidence before the Rent Controller requiring adjudication on facts.

19. So far as factual position is concerned, the entire series of facts remain undisputed. Counsel for the revisionist-tenant neither before the Rent Controller nor before this Court could bring out any issues of facts requiring adjudication so as to allow application of the tenant for leave to defend in the ejectment petition. Clearly enough instead of being satisfied with the verdict on legal questions, based on the admitted facts, rendered by the Rent Controller while deciding the petition under Section 13-A of the Haryana Act, the revisionist-tenant has brought the matter before this Court even though he has not disputed the facts or the issues, which clearly did not require his participation for adjudication.

20. Concedingly, this Court is not the Appellate Court. Revisional jurisdiction is limited in scope. It is not of plenary nature. Even then the contention of counsel for the petitioner that by mis-appreciating facts and mis-application of law, the petitioner has been prejudiced adversely, is being examined.

21. Counsel for the petitioner-tenant has claimed that proper procedure for summoning of a tenant as envisaged in Section 13-A thereof has not been followed. It is claimed that summons to the tenant were to be issued in the specified form appended to the Act so as to disclose and specify clearly therein that it was a petition for eviction filed under Section 13-A of the Act and further that the tenant was required to appear and obtain the leave of the Court to contest the application for eviction if he so wanted. It is urged that since summons were not sent in specified form, there was violation of procedure ordained in the Act for service of the tenant.

22. Undoubtedly, ordinary summons were issued to the tenant but before expiry of the time statutorily stipulated, the tenant had appeared before the Rent Controller and had made an application to contest the petition for eviction within the stipulated time; it was duly entertained and was adjudicated. Since there was neither any default nor delay in appearance nor even in making application to obtain leave of the Rent Controller to contest the eviction petition, this argument is of no consequence in the interface of facts of this case. Had it been a case of delayed appearance of the tenant because of non-service of summons to him on the prescribed proforma, then plea of the tenant was entertainable and was to be considered in view of **Gursharan Singh v. Satpal** 1991 (2) RCR (R) 546 and **Babu Ram v. Naresh Kumar** (2006-3)144 PLR 529 . This argument in the facts and

circumstances of the case in hand is rendered inconsequential.

23. Referring to **Satish Kumar v. Shanti Devi** 2008 (4) CCC 185 (P&H), counsel for the tenant has urged that the land owner of the property is not deemed to be a landlord and in absence of relationship of landlord and tenant, owner cannot initiate eviction proceedings under Section 13-A of the Haryana Act. Referring to **Rajinder Lal v. Bhushan Monga**, 2003 (1) PLR 472, it is urged that authorities under the Haryana Act will have jurisdiction only if relationship between the landlord and tenant is proved and if such relationship is not proved, owner is entitled to seek possession from the competent court of law and not from the authorities under the Act.

24. In both the authorities cited by the petitioner-tenant, facts were different from those which are available in the case in hand. The authority **Satish Kumar v. Shanti Devi** (supra) cited by counsel for the tenant has been considered by the Rent Controller below as well and giving reasons as also different circumstances of the case in hand, it was rightly observed that the same does not come to the help of the tenant. Even in authority **Rajinder Lal v. Bhushan Monga** (supra), the Rent Controller had held that there was no relationship between the landlord and tenant and that the only option available to the petitioner was to seek possession of the property as owner if the respondent was in unauthorised possession of the same. Facts and circumstances of the case in hand are entirely different. Here the question is not of single owner and of a tenant being in unauthorised possession qua such owner.

25. In the present case, premises had been given on tenancy by one of the co-owners is not in dispute. Merely because tenancy was not incepted by the respondent-owner himself, is not a ground to question maintainability of the petition filed at his instance. The question whether a co-owner-landlord with the other landlords who do not have the same status as that of a specified landlord, can maintain a petition for eviction of a tenant from the property jointly owned by all of them, had been engaging serious attention of the courts.

26. Rights of a co-owner have been debated and discussed in many judicial verdicts and this aspect has also been dealt with by Hon'ble Supreme Court of India. A co-owner has a right, title and interest in the entire property co-owned by him with others and he has such interest in every parcel of it. In fact, possession of one co-owner is taken to be possession of all. Matter of rights of co-owners was adjudicated in **Bhartu v. Ram Swarup** 1981 PLJ 204 and **Ram Chander v. Bhim Singh** 2008 (3) PLR 747 by this Court. Hon'ble Apex Court in **Pokhar (Dead) By Lrs. v. Ram Singh** (2009) 16 SCC 625 has, in fact, affirmed the Full Bench judgment of this Court in **Bhartu's case** (supra). A co-owner has an interest in the whole property as also in every parcel of it, is a proposition of law reiterated and re-affirmed in **Jai Singh v. Gurmej Singh** (2009) 15 SCC 747. Support may also be had from **Vir Bhan v. Avtar Krishan** 1962 PLR 1185 (Punjab).

27. So far as right of a co-owner to seek eviction is concerned, by now, it is also well-settled. Reference may be made to **Ram Piari v. Dr. Kesho Ram** 1980 (2) RCR (Rent) 137 and **Mathra Dass v. Ram Piari** AIR 1982 Punjab 286. Even Hon'ble Apex Court in **Sri Ram Pasricha v. Jagannath** AIR 1976 SC 2335 has accepted this proposition. Para 29 of

the said judgment for ready reference is reproduced as below:

“29. Jurisprudentially it is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property alongwith others and it cannot be said that he is only a part-owner or a fractional owner of the property. The position will change only when partition takes place. It is, therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord and co-owner of the premises is not the owner of the premises within the meaning of Section 13(1)(f). It is not necessary to establish that the plaintiff is the only owner of the property for the purpose of Section 13(1)(f) as long as he is a co-owner of the property being at the same time the acknowledged landlord of the defendants.”

28. Taking a little more elaborately, Hon’ble Apex Court went ahead in holding that in case of an eviction petition preferred by a classified landlord as a co-owner where other owners did not enjoy that status of classified landlords whether such summary eviction could be obtained in such circumstances, has been dealt with in **Dhannalal v. Kalawatibai** AIR 2002 SC 2572. In this case, provisions of Section 23-A(b) and 23-J of the M.P Accommodation Control Act, 1961, were under consideration. Hon’ble Supreme Court in paras 16 and 17 of the said judgment has held as under:

“16. It is well settled by at least three decisions of this Court, namely, Sri Ram Pasricha v. Jagannath, (1976) 4 SCC 184: 1976 RCR (Rent) 832 (SC), Kanta Goel v. B.P Pathan, (1977) 2 SCC 814: 1979 (1) RCR (Rent) 484, and Pal Singh v. Sunder Singh (dead) by LRs, (1989) 1 SCC 444: 1989 (2) RCR (Rent) 331(SC), that one of the co-owners can alone and in his own right file a suit for ejectment of tenant and it is no defence open to tenant to question the maintainability of the suit on the ground that other co-owners were not joined as parties to the suit. When the property forming subject matter of eviction proceedings is owned by several owners, every co-owner owns every part and every bit of the joint property along with others and it cannot be said that he is only a part owner or a fractional owner of the property so long as the property has not been partitioned. He can alone maintain a suit for eviction of tenant without joining the other co-owners if such other co-owners do not object.

.....

17. It follows that a widow, who is a co-owner and landlady of the premises can in her own right initiate proceedings for eviction under Section 23-A(b), as analysed hereinbefore, without joining other co-owners/co-landlords as party to the proceedings if they do not object to the initiation of proceedings by such landlady, because she is the owner of the property and requires the tenanted accommodation for the purpose of continuing or starting the business of any of her major sons. The major sons though co-owners/co-landlords may not have been joined as party to the proceedings, but it would not adversely affect the maintainability of the proceedings. It would also not make any difference if they are also joined as party to the proceedings. Their presence in the proceedings is suggestive of their concurrence with the widow landlady maintaining the proceedings in her own right. The presence of such co-landlord, as co-plaintiffs or co-applicants, as are not classified landlords as defined in Section 23-J of the Act does not alter the nature of claim preferred by the widow landlady and, therefore, does not take the proceedings out of the scope

of Section 23-A(b). Convesely, the major sons or any of them suing alone without joining a widow co-landlord as party to the proceedings may institute a suit before a Civil Court under Section 12 of the Act, pleading that the nonresidential premises were required bonafide by them or any of them for the purpose of continuing or starting their own or his own business as they would be co-owners thereof and the requirement will be theirs. It would not make any material difference if the widow co-landlord was joined as party to the proceedings either as plaintiff or as co-applicant because the case pleaded in the plaint would squarely fall within the ambit of clause (f) sub-section (1) of Section 12 of the Act.”

29. This position has been reiterated in **India Umbrella Manufacturing Co. v. Bhagabandei Agarwalla (dead) by Lrs. Smt. Savitri Agarwalla**, (2004) 3 SCC 178, wherein it was held by the Hon’ble supreme Court as under:

“.....It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners (See: *Sri Ram Pasricha v. Jagannath*, (1976) 4 SCC 184; *Dhannalal v. Kalawatibai*, (2002) 6 SCC 16 (Para 25); 2002 (1) RCR (Rent) 126 SC. This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners.

The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed inspite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallized on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law.”

30. In **Mohinder Prasad Jain v. Manohar Lal Jain**, (2006-2)143 PLR 667 (SC) , this matter had again engaged the attention of Hon’ble Supreme Court of India and decision was again to the same effect.

31. In view of the law laid down by Hon’ble Supreme Court of India, there does not remain any dispute that a co-owner is entitled to seek eviction of a building owned by him with other co-owners who may not be enjoying status of ‘specified landlord’ having right of invoking summary provisions of Section 13-A of the Haryana Act.

32. The only exception to this concept is that none of the remaining co-owners should have any objection to the initiative undertaken by the co-owner in this case in terms of Section 13A(1A) of the Haryana Act. Law presumes that such a specified landlord co-owner is seeking ejectment of tenant from the premises under tenancy with him for his and benefit of all other co-owners. In **Mohinder Prasad Jain’s case** (supra), Hon’ble Apex Court has further reiterated that if there is no objection to any of the other co-owners, one of the co-owners is competent to file a suit for eviction of a tenant in the property generally owned

by the co-owners. Relevant portion of para 10 thereof is reproduced as below:

“A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceeding before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event, a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings initiated by the respondent herein.”

33. Even in the present case, there is nothing to show that any of the other co-owners had raised any objection to the eviction application preferred by the landlord. More recently, this court in CR No. 4025 of 2006 titled **Smt. Bachan Kaur v. Kabal Singh** decided on 26.4.2011 has specifically held that a co-owner who is a specified landlord being a Non-Resident Indian whereas the other co-owners are not Non-Resident Indians, can maintain a petition for ejection for the benefit of all the other co-owners. This was a case under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short, the Punjab Act). Section 13-B of the said enactment provides for a summary procedure providing right to recover immediate possession of residential building or scheduled building and/or non-residential building for Non-Resident Indians.

34. Even the twin question raised in this petition by the counsel for the petitioner that since premises had not been let out by the owner filing the petition for eviction, he was not landlord and could not maintain the petition, has been answered in context of petition under Section 13-B of the Punjab Act.

35. Observations of Division Bench of this Court in **Smt. Bachan Kaur** case (supra) are reproduced as below:

“Once a person has become owner of the property, the tenancy rights being attached to the building stand transferred to him in the same manner as all other rights to a building, which has been purchased by him or her. The object of granting summary right of eviction to a Non Resident Indian is to provide mechanism for possession of their own residential building, as an exception to rigid legal provisions of the existing provisions of the law. Such right is manifested when right of eviction is conferred on an owner. If the argument of the learned counsel for the tenants is to be accepted that the intention was to restrict the right of eviction to only those NRI’s who have let out the premises, such interpretation would negative the very purpose of the insertion of the mechanism of summary eviction contemplated under Section 13-B of the Act.

x x x

Examining the proposition from another angle, it may be noticed that the tenancy rights are indivisible and a co-owner is competent to induct tenant in part of whole of the building. The tenant cannot be evicted from part of the tenant premises. An act of the co-owner of inducting a tenant binds all other co-owners. After a tenant has been inducted, he is a tenant under all the co-owners. Therefore, a co-owner who has not inducted a tenant can seek eviction of such tenant. The right and liabilities of the co-owner creates a legal fiction

of tenancy against all co-owner."

36. Reasoning in the judgment of this Court fully applies even to the case in hand under Section 13-A(1A) of the Haryana Act. Support in this regard may also be had from **Smt. Ram Piari v. Delhi Fruit Company**, 1980 P.L.R 363 (P&H). Sequel, it follows that if one is co-owner even of a fractional share in the joint ownership, he is owner in every inch of the entire property, irrespective of quantum of share, he is entitled to get the premises on tenancy vacated by filing a petition exclusively by himself. It is also clear by now that if premises have been let out by one co-owner, if the property where there are multiple co-owners, any co-owner therein is legally competent to file a petition for eviction of such tenant because other co-owners being owners in every part of joint property including the premises under tenancy also became landlords qua the premises on tenancy. In short, an act of a co-owner of inducing a tenant in the premises binds all other co-owners and consequently such a tenant after having been so induced in the premises, becomes a tenant under all the co-owners. It may thus be concluded that a co-owner who has not even induced a tenant in the premises, can seek his eviction as his tenancy is taken to be under all the co-owners, who are thus to be taken as landlords qua his tenancy.

37. Counsel for the petitioner has further contended that the learned Rent Controller overflowed far and beyond the text of Section 13-A(1A) of the Haryana Act where such facility of ejectment is available only in case of residential premises. This contention of the counsel again has no support from law. The distinction of residential and non-residential buildings brought for classification of buildings has been held to be violative of Article 14 of the Constitution of India and now the provision equally applies to residential as also non-residential buildings. Reference in this regard may be made to **State of Haryana v. Ved Parkash Gupta** 1999 (1) Rent Law Reporter 689 (P&H); **Dr. Madan Lal v. Rattan Singh**, 2010 (4) RCR (Civil) 203 (P&H); **Satyawati Sharma (Dead) by LRs v. Union of India** 2008 (2) RCR Civil 805 (SC) and **Harbilas Rai Bansal v. The State of Punjab** 1996 (1) RLR 1 (SC).

38. Contention of the counsel for the petitioner citing **Amarjit Singh Chadha v. Col. Jasbir Singh Likhari** (2011-3)163 PLR 127, further is that where specified landlord is already in possession of the demised premises and tenant is in possession of some part thereof, then it would be a case of additional accommodation and summary provisions under Section 13-A of the Act would not be attracted. Support has also been sought from **Mrs. Kushal Thakur v. Gurinder Singh** 2009 (1) RCR (C) 629 (P&H). This authority has already been discussed in the relevant context in the impugned order. Even **Amarjit Singh Chadha's case** (supra) has no application in the facts of the case in hand because in the cited authority, specified landlord was already in possession of part of the premises whereas rest of the premises were with the tenant. In the case in hand, retiring landlord was not in possession of any part of the premises and thus, resort to summary proceedings was rightly made.

39. The Rent Controller has discussed this entire issue in a great detail. The landlord has been truthful to the brim. Merely because the landlord has obtained ejectment orders in respect of other two shops, right of the landlord for summary eviction of the tenant from

the premises in dispute is not lost. The matter has been discussed threadbare by the Rent Controller, relevant portion whereof is appended as below:

"It is true that ejectment orders have been passed in favour of petitioner in respect of two shops, but said fact by itself would not come in the way of petitioner in seeking to eject the applicant-respondent No. 1 from the demised premises on the ground of bonafide necessity, because personal requirement is to be seen from the point of view of the landlord. Tenant cannot dictate terms. However, personal necessity must be bonafide and not a device to seek ouster of the tenant. Law is well settled that if landlord has other premises in his possession, but same do not suit his requirement to set up a particular venture, then landlord can certainly ask for eviction of the tenant from a premises, which suits his requirements. In the present case, petitioner has pleaded that after retirement, he wants to open a Law Academy for aspiring law students of District Yamuna Nagar and surrounding areas. Shop in question is situated on main Jagadhri-Yamuna Nagar road and thus, is located at a place, which is accessible to all with ease. Shops regarding which ejectment orders have been passed are not so situated to answer the requirements of the petitioner regarding setting up a Law Academy. Moreover, he has not obtained actual physical possession of those shops as yet and hence, there is no question of petitioner in a position to use those shops for opening a Law Academy. In this view of the matter, it is held that requirement of petitioner qua the shop in dispute is bonafide.

X x x

Another argument raised by learned counsel for the applicant-respondent No. 1 that petitioner had got vacated one shop from Anand Lal, Tailor Master and, therefore, his requirement as to the shop in question is not bonafide, also sans merit, because said shop was got vacated by respondent No. 2 on the ground that he had ceased to occupy. Moreover, said shop is having size of 10' x 13' and is situated behind the shop in dispute and thus, does not answer the requirement of petitioner, who has planned to set up a Law Academy for which bigger premises is required."

40. There is no reason to differ with the findings of the Rent Controller as above.

41. So far as plea of the tenant that the landlord has no personal bonafide necessity is concerned, this is not a question open for debate in revisional jurisdiction particularly when this aspect has already been dealt with at length by the Rent Controller and no infirmity or illegality or impropriety has been pointed out by the counsel for the petitioner. At this stage, it may, however, be mentioned that even otherwise, when eviction is sought on the ground of bonafide necessity, there is initial presumption that the premises are so required by the landlord. Support may be had from **P. Suryanarayana (Dead) By Lrs. v. K.S Muddugowramma**, 2004 (2) RLR 305 (SC).

42. In similar tone, this Court in **Anil Kumar v. Harpal Singh Banwait**, 2008 (1) RCR 638 (P&H) also held that a landlord who establishes the prima facie existence of his necessity, is entitled to raise a presumption in law, that his need is bonafide and onus thereafter shifts to the tenant that plea of landlord was malafide, on this aspect, personal bonafide necessity

had been held in favour of the landlord. There is no material or circumstances with the tenant to challenge this finding.

43. When the matter is viewed from another angle, need of landlord cannot be determined by tenant. Landlord is entitled to seek vacation of multiple premises. This view is supported by **Kewal Krishan v. Amrik Singh**, 2001 (2) C&RJR 293, **Vijay Kumar v. Sushil Kumar** (2005-1)139 PLR 855 .

44. In **Zenobia Bhanot v. P.K Vasudeva** 1996 AIR 601 (SC) with reference to provisions of Section 13-A of the Punjab Act, it was held that 'specific landlord' has right to recover immediate possession of residential or scheduled building and such right of landlord is not restricted to one tenant only. It is further held that he can recover the whole building or a part, if he so chooses.

45. In view of the discussion made above, there is no infirmity, or illegality in the impugned order and no ground is made out to interfere with the same. Thus, affirming the impugned order, this petition, being without any merit, is dismissed.

46. Parting with this judgment, it needs to be pointedly mentioned that despite special provision of Section 13-A(1A) read with Section 13(3)(a)(i) of the Haryana Act enabling a retiring or retired Government officials to get summary eviction of the premises from his tenants, the landlord who was to retire on 31.8.2001, continues in the corridors of the courts and the tenant has been enjoying the premises under his tenancy.