

M/S. GANESH IRON STORE v. AMRISH KUMAR JINDAL,(2022-1)205 PLR 499

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Anil Kshetarpal.

M/S. GANESH IRON STORE and another – Petitioners,

Versus

AMRISH KUMAR JINDAL and others – Respondents.

Civil Revision No. 2284 of 2019 (O&M)

East Punjab Urban Rent Restriction Act, 1949 (III of 1949) Section 13 – Petitioner contends that as a joint petition was filed by respondent No.1 to 3, for that reason, all of them were required to fulfill the requirements of Section 13(3)(a)(i) of the 1949 Act – Eviction petition has been filed by the three co-owners, but the requirement only with respect to respondent No.1 has been pleaded – Nowhere held that if co-owners file a joint petition with regard to requirement of one of them, the other co-owners are required to plead and prove their bonafide requirement. [Para 11]

East Punjab Urban Rent Restriction Act, 1949 (III of 1949) Section 13 – Bonafide requirement is of the space, to set up and run the manufacturing unit – A shop cannot be used for establishing a manufacturing unit – No doubt, the respondent No.1, while appearing in the evidence, has stated that he does not file income tax returns which was found incorrect, however, in the considered view of this Court, the aforesaid incorrect statement does not result in dismissal of the petition – The learned counsel representing the respondents has correctly stated that respondent No.1, in his over anxiety, committed a mistake which does not have bearing on the result of the case. [Para 13]

Cases referred to:-

1. (2013-3)171 PLR 344, *Prem Rani v. Rakesh Handa*.
2. 2014(2) RCR (Rent) 222, *Manmohan Lal v. Shanti Parkash Jain*.
3. (1976) 4 SCC 184, *Sriram Pasricha v. Jagannath*.
4. (2014) 9 SCC 78, *Hindustan Petroleum Corporation Limited v. Dilbahar Singh*.

Mr. Puneet Jindal, Senior Advocate with Mr. Amandeep Singh, for the petitioner(s). Mr. Akshay Jindal and Mr. Divanshu Jain, for the respondents.

Anil Kshetarpal, J. - (1st September, 2021) -

1. The petitioners (tenants) assail the correctness of their eviction orders passed by the Rent Controller as well as the Appellate Authority in a petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the 1949 Act"). The contesting respondents (landlords) have successfully proved the bonafide requirement of one of the co-owner.

2. Late Sh. Shambhu Dyal, the petitioners' grandfather leased out the premises in dispute to petitioner No.1-a partnership firm at the monthly rent of Rs.350/- per month. The father of respondent No. 1 & 2 was killed by the terrorists. Thereafter, the joint property was divided amongst the family members and the tenanted property fell to the share of the respondent No.1 and 2 jointly to the extent of half share, whereas the remaining half portion came to the share of respondent No.3 vide civil Court decree dated 13.09.2010. A joint petition was filed before the Court of Rent Controller with a prayer to evict the petitioners on the bonafide requirement of the respondent No.1 (one of the co-owner). It has been asserted that the respondent No.1 wants to set up his Hosiery Manufacturing Unit in the premises in question. It would be noted here that the premises in question is built on an industrial plot, located in Industrial Area-B, Ludhiana. The petitioners contested the petition while asserting that the requirement of respondent No.1 is not bonafide. Both the authorities below have concurrently ordered the eviction of the petitioners, after finding the merit in the plea of the landlords.

3. Heard the learned counsel representing the parties and with their able assistance, perused the paper-book as well as the record of the Authorities below which has been requisitioned.

4. The learned senior counsel representing the petitioners contends that as a joint petition was filed by respondent No.1 to 3, for that reason, all of them were required to fulfill the requirements of Section 13(3)(a)(i) of the 1949 Act. He, in support of his argument, relies upon the judgments in *Prem Rani and Others v. Rakesh Handa* ¹ (2013-3)171 PLR 344 and *Manmohan Lal v. Shanti Parkash Jain* ² 2014 (2) RCR (Rent) 222. He further contends that in a joint petition filed by more than one co-owners, is not maintainable unless the ingredients with respect to all the petitioners, as required in the Act, have been pleaded. He further contends that the Courts below have erred in ordering eviction even after finding that petitioner No.1 has made material concealment with respect to his occupation. He contends that petitioner No.1 is in occupation of a shop but this fact was concealed from the Court. Moreover, he contends that the petitioner No.1 has made a false statement with regard to his income-tax returns. He further contends that the eviction petition is bad because there is misdescription of the tenanted premises as the tenants are in possession of only a part of the premises, whereas their ejectment has been sought with regard to entire premises. He submits that the ejectment of the other tenants has never been sought.

5. On the other hand, the learned counsel representing the contesting respondents, has

submitted that one co-owner can file a petition for his necessity without impleading other co-owner as party. He relies upon the judgment passed by the Supreme Court in *Sriram Pasricha v. Jagannath and Others* ³ (1976) 4 SCC 184, to contend that each co-owner is the owner and landlord of the tenanted premises and therefore, with the consent of the other co-owners, he can file a petition seeking ejectment for his necessity. He further submits that there is no material concealment as petitioner No.1 has disclosed that he was previously employed in the Hosiery Manufacturing Unit, owned by his uncle and after having gained sufficient experience, he now wishes to start his own manufacturing unit. He further submits that the alleged wrong statement with respect to his income-tax returns have no bearing on the result of the present case as it is on account of over anxiety. He further submits that there is no misdescription of the demised premises as the remaining persons, who are in occupation, are related to Ashok Kumar, partner in the tenant firm and have no independent right. He, while drawing the attention of the Court to the decision in Civil Revision No. 2280 of 2015, has submitted that *Smt. Kavita Rani & Smt. Deepika Gupta* are *Ashok Kumar's* (one of the partner of the tenant firm) wife and daughter-in-law respectively. Whereas, Baljit Singh is also related to Ashok Kumar. Hence, he prays for dismissal of the revision petition.

6, Let us now proceed to consider the arguments of the learned counsel representing the parties.

7. Before analysing the arguments of the learned counsel representing the parties, it is important to take note of the statutory requirements of Section 13 (3)(a)(i) of the 1949 Act, which is extracted as under:-

"13(3)(a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession -

(i) in the case of a *building if -

(a) he requires it for his own occupation;

(b) he is not occupying another building, in the urban area concerned; and

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area".

Note:-* The word "residential" in Section 13(3)(a) has been omitted while reproducing the provision because it was struck down by the Supreme Court of India in *Harbilas Rai Bansal v. State of Punjab* AIR 1996 SC 857".

8. It is apparent that while applying for eviction, the landlord is required to assert the details of his requirement and make declaration that he is not occupying any other building in the urban area concerned and he has not vacated such a building without a sufficient cause after the commencement of the 1949 Act in the said urban area. It is not in dispute that respondent No.1 has already pleaded the aforesaid facts as required in the 1949 Act. The eviction petition has been filed by the three co-owners, but the requirement only with

respect to respondent No.1 has been pleaded.

The respondent No.2 and 3 do not assert that they need the premises. It has been asserted that respondent No.2 and 3 do not have any objection if the premises are ordered to be evicted on the ground of personal necessity of respondent No.1.

9. It is well settled that a co-owner is entitled to maintain a petition for his own necessity. Reliance in this regard can be placed on the judgment passed by the Supreme Court in *Sriram Pasricha* (supra). While interpreting the provisions of West Bengal Premises [Tenancy](#) Act, 1956, the Court held that the suit for eviction filed by such a co-owner landlord on the ground of his personal requirement is maintainable. The Court held that the co-owner is as much owner of the entire property in a way similar to the owner of the property is and a co-owner owns every part of the composite property along with others and he is not owner of the part or fractional owner of the property. Keeping in view the aforesaid exposition of law, it is clear that the petition could be exclusively maintained by respondent No.1.

10. This Court has carefully read the judgment in *Prem Rani* (supra). In the aforesaid case, the High Court, while remanding the case to the Rent Controller, made a passing observation that if all the co-owners as landlords file a joint petition for requirement of one of them and the tenant was able to show the ownership of one of the petitioners/landlords in respect of two other buildings, the landlords were bound to explain as to how the other two shops could not be used. In the aforesaid case, it was nowhere held that if co-owners file a joint petition with regard to requirement of one of them, the other co-owners are required to plead and prove their bonafide requirement. Similarly, the judgment passed in *Manmohan Lal* (Supra) is also not applicable because in the aforesaid case, the landlord had sought eviction of the tenant on the personal necessity of his son who was not the co-owner of the tenanted premises. Thus, the Court had held that the requirements of Section 13(3)(a) are required to be pleaded with respect to his son. The aforesaid judgment has no applicability to the facts of the present case. Keeping in view the aforesaid facts, there is no substance in the contention of the learned counsel representing the petitioner.

12. As regards the next argument, it may be noted that respondent No.1/landlord had himself asserted in the eviction petition that he was previously working with his uncle, who was running a Hosiery Manufacturing Unit and after having earned the sufficient experience, now he wishes to start his own manufacturing unit. The learned counsel, while referring to the income-tax returns, contends that the respondent No.1 is guilty of material concealment of fact with regard to his occupation. It would be noted here that in the aforesaid income-tax returns, the address of the petitioner No.1 has been given as "City Classic", which is the address of a shop. At one point of time, this shop was being run by the petitioner's brother. It is nowhere mentioned in the income-tax returns that respondent No.1 is a partner or proprietor of the firm which is running the shop.

Additionally, in the present case the bonafide requirement is of the space, to set up and run the manufacturing unit. A shop cannot be used for establishing a manufacturing unit. No doubt, the respondent No.1, while appearing in the evidence, has stated that he does not file income tax returns which was found incorrect, however, in the considered view of this

Court, the aforesaid incorrect statement does not result in dismissal of the petition.

The learned counsel representing the respondents has correctly stated that respondent No.1, in his over anxiety, committed a mistake which does not have bearing on the result of the case.

14. As regards the last submission, it would be noted that in Civil Revision No. 2280 of 2015, the Court has noticed that the other persons in occupation of the tenanted property, are very closely related to Ashok Kumar (one of the partners of the tenant firm). Hence, in view of the aforesaid observations, no further elaboration on this aspect is required.

15. It is well settled that while exercising the revisional jurisdiction under Section 15 (5) of the 1949 Act, the jurisdiction of the Court is limited and it cannot reappreciate the evidence. Reliance in this regard can be placed on the judgment of Five Judge Bench in *Hindustan Petroleum Corporation Limited v. Dilbahar Singh* ⁴ (2014) 9 SCC 78.

16. In view thereof, no ground is made out to interfere. Hence, the revision petition is dismissed.

17. The miscellaneous application(s) pending, if any, shall stand disposed of.*R.M.S.* - *Petition dismissed.*