



2018 PLRonline 1209

Punjab-Haryana High Court

JUSTICE SURINDER GUPTA

**Sanjay Bansal v. M/S Kaithal Provisional Store**

CR-8055-2015

06.04.2018

*Mr. Vikas Bahl, Senior Advocate with Mr. Divanshu Jain and Mr. Nitish Garg, for the petitioner (s). Mr. Avnish Mittal, for respondent No.1. Respondent No.2 is proforma.*

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**SURINDER GUPTA, J.**

Revision petitioner Sanjay Bansal and proforma respondent Vijay Goyal filed a petition under Section 13 of East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Rent Act'), seeking ejectment of respondent No.1 from half portion of the ground floor of SCO No.74, Sector 15-D, Chandigarh.

Case of the petitioners, in brief, is that SCO No.74, 75 Sector 15-D, Chandigarh were purchased by petitioner No.2 Vijay Goyal along with Ishwar Chand Bansal father of petitioner No.1 Sanjay Bansal vide sale deed dated 19.12.2008. In family settlement, share of Shri I.C. Bansal has 1 of 23 been acquired by petitioner No.1, as such, the entire premises of SCO No.74, 75 now vests in petitioners as owners.

Respondent is a tenant in half portion on the ground floor of SCO-74 @ `1600/- per month and has not paid rent since 01.04.2001 and is liable to be evicted on this ground. The petitioners have also sought ejectment of demised premises for personal bona fide necessity of petitioners, which

has been described in para 4 of the petition as follows:-

"That petitioner No.1 is involved in the business of a company known as Uphaar Sarees Pvt. Ltd., which is being run in a portion of SCO No.92-93- 94, Sector-17, Chandigarh. The said SCO is owned by petitioner No.1 and his wife Smt. Sushma Bansal to the extent of 50% share. The remaining 50% share of the said SCO is owned by Smt. Satwant Kaur. The petitioner is also the co-owner with his wife and son of SCO No.80-81-82, Sector-34, Chandigarh, which has been acquired by them under the above referred family settlement. The said SCO is in possession of different tenants from the very beginning and no portion thereof is in possession of petitioner No.1 or his wife and son. The son of the petitioner named Kunal, is aged 17 years and is going to attain the age of majority and is to complete his studies of 10+2. The son of petitioner No.1 wants to start his independent business even during his studies of graduation. Petitioner No.1 has decided to get started independent business by his son named Kunal. On the other hand, petitioner No.2 is involved in the joint business of Rice Mill at Tarawari in the name and style of M/s Goel International Pvt. Ltd. The said business is the joint business of petitioner No.2 and his two brothers. Similarly, petitioner No.2 is also the owner of a Shopping Mall with his two brothers to the 2 of 23 extent of 50% share in total, in Ambala City owned by the company known as Ganpati Shopping Mall Pvt. Ltd. The remaining 50% share is owned by the family of Shri Jai Chand Bansal. The son of petitioner No.2 named Vipul is minor at this stage but he will also join the business at Chandigarh. He may also join for his future studies in some institutions at Chandigarh. Both the sons of the petitioner will start their joint business in the SCO in question under the assistance of their fathers/petitioners."

The petitioners clarified that half portion of ground floor of SCO-75 and one hall on the first floor is in possession of another tenant 'M/s Band Boy Drycleaners' and remaining portion of SCO No. 74 and 75 is in possession of petitioners, which is not suitable to start any business, as

such, is lying unused. The petitioners require the entire premises for their bona fide need and to settle Kunal, son of petitioner No.1 into business to be started in SCO No.74 and 75. Petitioners are having SCO Nos. 92-93-94 Sector 17, Chandigarh but have no space there to start any other business, as such, have no option but to get SCO No.74 and 75 vacated from respondent and another tenant. It was also averred that petitioners and their sons do not own any other commercial premises within the urban area of Chandigarh or have never vacated or occupied any other premises after the commencement of the Rent Act without sufficient cause.

Respondent contested the petition inter-alia pleading that the alleged family settlement is a false document, which has been created only to make out a case of bona fide necessity of son of petitioner No.1, who is minor. Rate of rent as `1600/- per month has been denied. Respondent alleged that he is in possession of Shop No.74 of SCO No.74-75 and a store 3 of 23 on the ground floor on the back side of the shop at a monthly rent of `450/- for the shop and `55/- for the store. It was alleged that respondent had already paid rent up to 31.07.2003. The requirement of the shop for the personal bona fide necessity of petitioners was denied. Respondent also denied purchase of demised premises as no notice was given by the petitioners to the respondent in this regard. It was alleged that remaining portion is lying vacant for number of years but nobody has started any business or used it.

Pleadings of the parties led to the framing of issues as follows:-

- (1) What is rate of rent? OPP
- (2) Whether the respondent is in arrears of rent?OPP
- (3) Whether the tender is short and invalid? OPP
- (4) Whether the petitioner requires the demised premises for his personal use and occupation? OPP
- (5) Whether the present petition is not maintainable? OPR

Learned Rent Controller vide order dated 26.03.2015, upheld the plea of the respondent regarding rate of rent as `550/- per month. However, the bona fide need of petitioners for the demised premises was upheld and respondent-tenant was ordered to be ejected from the demised premises. It was also observed that respondent has failed to show that he had paid rent from 01.04.2001 to 31.01.2013 and after 21.02.2013, as such, he was directed to pay the arrears of rent within 60 days from the date of order.

In appeal, Appellate Authority reversed the finding of the Rent Controller with the observations as follows:-

(i) "The first and foremost contention of learned counsel for the appellant-tenant that the mere memorandum of family 4 of 23 settlement does not create or extinguish any right in immovable property, is meritorious and also supported by the observations made by the Hon'ble Apex Court in Kale's case (supra). Meaning thereby, the property as claimed by the respondents, has not been transferred in their name as per the memorandum of family settlement Ex.P-2 and it appears that the same has been prepared merely to create a ground of personal necessity and this was a manipulated document to get vacated the premises from the appellant."

(ii) "The fact of landlord-ship has to be proved by the respondent-petitioner like any other fact, which has to be proved as per the terms of the Indian Evidence Act. There is no such evidence led by the respondent-landlord to prove the transfer of property by way of family settlement on the day of filing of the application for ejectment. The alleged family settlement has not been an instrument of transfer of property in the name of respondent-landlord i.e. has never been acted upon for getting the property transferred, as revealed from the sole testimony of the respondent-landlord."

(iii) Family settlement dated 21.05.2010 has not been proved on record by leading cogent and convincing evidence. Though it has been exhibited but objection was raised at the time of exhib-

iting this document. This document is not bona fide but is created document in connivance with family members of landlord. It is settled principle of law that registration is necessary if family arrangement has been reduced into writing. The Estate Office, Chandigarh has not recorded change of ownership of the property on the basis of family settlement, rather the transfer has been effected on the basis of notification of 2007 which allows the transfer of property in blood relations.

(iv) Half portion of SCO No.75 is in possession of revision 5 of 23 petitioner Sanjay Bansal. Except the demised premises, remaining entire portion of SCO No.74 and 75 is vacant and is in possession of petitioners, who have not started any business in Shop No.75.

(v) Vijay Goyal, petitioner No.2 has sold his share in the disputed property to son of petitioner No.1 during the pendency of petition, which reflect that they had no bona fide necessity to occupy the ground floor of the premises. Father of Sanjay Bansal, revision-petitioner No.1 was owner of half share of entire premises and now he has got 2/3rd portion of the premises in his possession as first and ground floor of SCO No.75 is in his possession after ejectment of another tenant of the first floor as well as from SCO No.75 but this fact was not incorporated in the petition by way of amendment to prove that his need still subsist. After the shop bearing No.75 was completely vacated and is still vacant, his need stood satisfied.

(vi) The petitioners have sought ejectment of respondent on the ground that the shop in possession of respondent M/s Kaithal Provision Store is required to start the business of his son, has also purchased one half share of SCO No.74- 75 during the pendency of the petition. Petitioner No.2 sold half share to son of Sanjay Bansal, petitioner No.1 as such petition filed by him has become infructuous and the need of the son of petitioner No.1 Sanjay Bansal stood satisfied.

(vii) As noticed above, Kunal Bansal, for whom the requirement of personal necessity was pleaded never stepped into witness box to face

the test of cross examination. In such circumstances, the respondent No.1 is found guilty of concealment of the fact of purchasing the portion during the pendency of the petition and even otherwise, it was the duty of the respondent No.1 to examine his son, for which he pleaded the personal 6 of 23 requirement qua the premises in question and non- examination of his son in that regard is fatal to his case.

(viii) The portion of SCO No.74 and 75 which are lying vacant are sufficient to start business by son of petitioner No.1.

I have heard learned counsel for the parties and have perused the paper book and records of the Court below with their assistance.

Learned counsel for the revision petitioner has argued that the Appellate Authority while dismissing the revision petition, has made sweeping observations without any basis. There is no averment of the respondent about concealment of any fact or that ingredients of Section 13 of the Rent Act have not been pleaded. In order to have equitable distribution of the properties owned by the family, I.C. Bansal, father of petitioner No.1 along with his wife, sons and daughters-in-law entered into a family settlement (Ex.P2). It is proved on record that as per the family settlement, the demised premises has fallen to the share of revision petitioner Sanjay Bansal. Properties, which have fallen to the shares of members of the family as per settlement were also transferred in their names. As per the State Policy, the property in the name of family members can be transferred without payment of stamp fee, as such, in the record of Estate Office, Chandigarh, the properties were got transferred taking benefit of that State notification of year 2007. The facility provided by the State dispensed with production of family settlement before the Estate Office, as such, the same was not produced there. This fact, however, in no manner, belies the family settlement between the family members and the respondent being tenant, has no concern with this family settlement, which is a genuine document and has been acted upon by the parties. Even in the written 7 of 23 statement, the tenant has not raised any plea denying

the relationship of landlord and tenant between the parties and in the absence of any such plea, no issue to this effect was framed by the Rent Controller. Revision petitioners have projected need for the entire demised premises and to set up their business and the Rent Controller has rightly allowed the petition filed by the revision petitioner. Learned Appellate Authority has committed grave error of law and fact while observing that family settlement is fake and has been created only to get the premises vacated. This finding of learned Rent Controller has no basis.

He has further argued that son of petitioner No.1 has become major during the pendency of the petition for whose bona fide need the present petition was filed. The mere fact that son of petitioner No.1 has not been examined as witness in this case is not a serious flaw or reason to discard plea of revision petitioners that demised premises is require for bona fide need of revision petitioner No.1 to start business of his son. Reliance in this regard has been placed on the observation of this Court in case of *Hukam Chand Vs. Saroj Rani* (Civil Revision No.7382 of 2016 decided on 27.10.2017), wherein it was observed that non-examination of son for whose necessity, the shop was sought to be got vacated, is not fatal to the case of landlord.

Learned counsel for the respondent has argued that the revision petitioner has sought ejectment of the respondent from portion of SCO No.74 and the need projected is for the son of petitioner No.1. In order to prove that petitioner has become owner of the demised premises, they have relied on the family settlement, which was challenged as non-genuine by the 8 of 23 tenant and plea to this effect has been taken in para 2 of the reply. This family settlement is only on paper as this document was never produced before the Estate Office when the family properties were transferred in favour of I.C. Bansal, Sanjay Bansal, Ajay Bansal or their wives. SCO No.75 is now lying vacant and its possession is with the revision petitioner and they have not bothered to start their business there. At the time of filing of the petition, son of petitioner was minor, as such, the

petition was not maintainable as the need projected should be present need and not the future one. Kunal, for whose personal bona fide need, the premises was sought to be vacated, has now attained the age of majority but the petitioners have not put forth any reason as to why he has not been examined. Need of the petitioner is for half portion of the premises, which comprises of SCO No.74 and 75 and admittedly, SCO No.75 is lying vacant. The petitioners have also not explained the possession of Booth No.22 and 23, Sector 11-D, Chandigarh which are in their possession and this amounts to concealment of facts.

The petitioners in para 1 of the petition have alleged that showroom bearing SCO No.74 and 75 Sector 15-D were purchased by petitioner No.2 along with father of petitioner No.1 namely I.C. Bansal vide registered sale deed dated 19.12.2008. Respondent, in reply to this para, has denied his knowledge regarding the sale deed. However, he has nowhere raised the issue that he is not a tenant under subsequent purchaser as per the sale deed dated 19.12.2008. This settles the question of relationship of landlord and tenant between the parties. In view of the fact that respondent is not challenging his tenancy under the vandeas vide sale deed dated 9 of 23 19.12.2008, I find no reason to discuss this matter any further while observing that there exists relationship of tenant and landlord between respondent No.1, respondent No.2 and I.C. Bansal.

The second aspect of this petition is plea of the petitioners that in family settlement, share of I.C. Bansal has fallen to Sanjay Bansal, petitioner No.1. He has projected need of the demised premises for setting up business of his son Kunal. Family settlement has been produced on file as Ex.P2, which shows that the parties to the family settlement i.e. I.C. Bansal his wife Ram Murti, son Sanjay Bansal, his wife Sushma, second son Ajay Bansal and his wife Anita Bansal were owners of several properties situated in Chandigarh and Ambala, which find mentioned in para 1 of the family settlement. They were also having family business in the name of M/s Kala Emporium, M/s Uphaar Sarees and Prints Private Limited. Family properties and business were divided in four

parts with mutual agreement as per which I.C. Bansal and his wife got some properties situated in Chandigarh and land situated at village Nagla, Tehsil Saha, District Ambala. Second party i.e. Sanjay Bansal (petitioner No.1) and his wife Su-shma got following properties in family settlement:-

(a) House No.1504, Sector 11-D, Chandigarh;

(b) 50% share in SCO No.92-93-94, Sector 17-D, Chandigarh;

(c) SCO No.80-81-82, Sector 34, Chandigarh;

(d) 19.5% share of the total share of the company M/s Sona Arcades Pvt. Ltd., who is the owner of Plot No.25, Industrial Area Phase-1, Chandigarh.

(e) 50% share in SCO No.74-75, Sector 15, Chandigarh."

Certain other properties situated in Chandigarh and village 10 of 23 Pabhat were given to the share of Ajay Bansal and his wife. The business of I.C. Bansal under the name and style of 'Kala Emporium' was given to Ajay Bansal and his wife, whereas 'M/s Uphaar Sarees and Prints Private Limited' fell to the share of Sanjay Bansal and his wife. The loans, bank accounts and other liabilities were also settled between the parties. It was also agreed that all the parties shall execute suitable and necessary documents as may be required for the purpose of transferring ownership arising as a result of this settlement dated 21.05.2010, in the record of all Government Authorities. It is evident from the evidence on record that this family settlement was acted upon and the share of I.C. Bansal in SCO No.81-82, Sector 34-C, Chandigarh were transferred in the name of Sanjay Bansal as per letter of Estate Office, Chandigarh dated 07.06.2012 (Ex.P3). 50% share of Smt. Ram Murti wife of I.C. Bansal in the aforesaid SCO was also transferred in the name of Sanjay Bansal vide letter of Estate Office, Chandigarh dated 23.11.2012 (Ex.P4). I.C. Bansal executed transferred deed dated 07.04.2014 in favour of his second son Ajay Bansal with regard to SCO No.23, Sector-11D, Chandigarh which has fallen to his share, copy of which is Ex.RW4/A.

Learned counsel for respondent has drawn my attention to the statements of RW4 Sunil Kumar, RW5 Kiran Thakur, RW6 Virender Singh, RW7 Jitender Kumar, Clerks of Estate Office, U.T., Chandigarh, who have stated that no family settlement between the parties has been placed on record of the Estate Office. Relying on the statements of these witnesses, learned counsel for respondent has argued that family settlement was not produced before any authority, as such, is only a paper transaction. In case, 11 of 23 transfer of the property had been sought on the basis of this family settlement (Ex.P2), the same might have been produced before the concerned authorities seeking transfer of the the properties, as per this settlement. He has further argued that the tenant can object to the partition of family settlement between the two brothers and the family members if the same is with oblique motive to overcome rigors of law which protected eviction of tenant. In support of his contention, he has relied on the observation of Hon'ble Apex Court in case of M/s Karta Ram Rameshwar Dass Vs. Ram Bilas and others 2006(1) PLR 776; Delta International Ltd Vs. Shyam Sunder Ganeriwala 1999(1) RCR (Rent) 447; and Raj Rani Vs. Kaushalya Devi 2000(1) PLR 323. He has argued that the Court can go behind the document to family settlement to find if the same has been created only with intention to get the premises in possession of tenant vacated.

It is not disputed that as per the notification issued by U.T., Chandigarh dated 14.06.2007, stamp duty was not chargeable on transfer of property within family members. Taking benefit of the above notification, the parties have applied for 'No Objection Certificate' for transfer of property inter se as is evident from the applications Ex.RW4/C, Ex.RW/4D and Ex.RW4/E, which were moved by Anita Bansal wife of Ajay Bansal, Ram Murti wife of I.C. Bansal and Sanjay Bansal son of I.C. Bansal. If the parties have opted to take the benefit of the Government notification to transfer the properties, as per family settlement, their intention again cannot be doubted. Moreover, family settlement is a document between the stake holder in the family properties or business etc. and the tenant has absolutely 12 of



23 no concern with the same. Ejectment from the demised premises has been sought on the ground of personal bona fide necessity of Kunal son of petitioner Sanjay Bansal. In case the family settlement had not taken place, there was no bar against the owner I.C. Bansal (father of petitioner Sanjay Bansal) to file this petition to seek ejectment of the respondent-tenant for the personal bona fide need of his grandson Kunal. The fact that Sanjay Bansal has filed this petition relying on the family settlement between the family members shows his bona fide instead of any mala fide. Moreover, this family settlement is not between I.C. Bansal or Sanjay Bansal rather it is between the entire family i.e. I.C. Bansal, his wife, Sanjay Bansal, his wife and Ajay Bansal, his wife. This family settlement cannot be doubted or could be termed as a fake document, as the suit property is not the sole property regarding which this settlement has been executed. The family is having about 25 family properties, which they had partitioned and to prepare a document of that partition/settlement a memorandum dated 21.05.2010 was reduced in writing. The Appellate Authority has discarded this document of family settlement on the ground that this was never acted upon. This observation of the Appellate Authority is against the record. The family settlement had become operative before it was scribed. It is specifically mentioned in the family settlement that it has already been acted upon and it is only the required formalities, which were to be performed to transfer the properties as per family settlement in Government record. It is evident from the letters of the Estate Office Ex.P3 and P4 that I.C. Bansal and his wife have surrendered their right with regard to their properties situated in Sector 34-C in favour of Sanjay Bansal, as such this property has 13 of 23 fallen to his share. This shows that the parties have taken steps to do the required formalities and have also applied for NOC for transfer of the properties.

The mere fact that this family settlement was not produced before the Estate Office, is no reason to discard this document for the reason that there was no requirement to produce this family settlement before the Estate Office to seek transfer of property, as per this settlement when the

stamp duty on the transfer within the family members has been waived by the State. Every prudent man will take the benefit of the State Policy, which do not require the production of any settlement before claiming such benefit.

The question, which arise for consideration is as to whether a tenant can question the family settlement. A co-ordinate Bench of this Court has answered this question in case of R.P. Paliwal Vs. M/s Champol Engineers Pvt. Ltd. 2007(1) PLR 709, in para 9 and 11 of the judgment which are reproduced as follows:-

"9. In the proceedings under the Act the veracity of the family settlement and a consequent decree suffered on its basis could not be questioned at the instance of the tenant. The Rent Controller and the Appellate Authority exercising its powers under the Act can confine itself to the issues raised under the Act and cannot enter the controversy which involves the title, the validity or invalidity thereof. It certainly had the power to look into the aspect of the relationship of landlord or tenant and whether it existed or not. But in the garb of deciding this issue it could not travel beyond the domain specified by such an issue to question the title of the landlord.

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10. ....

11. This Court in Ram Lal v. Harbhagwan Dass, 1995(1) RCR(Rent) 90 (P&H) has also recognised the oral partition of Hindu Undivided Family property. Once the law recognizes the transfer on the basis of a family settlement even on the basis of oral settlement then it could have been questioned only by the interested/affected party on the ground of fraud or collusion. But the tenant in the proceedings under the Act certainly had no locus to challenge the family settlement and the consequent transfer on its basis. In Ashwani Kumar Rana v. Balsharan Gautham, 2004(2) RCR (Rent) 559 it has been held that the family settlement cannot be questioned by a tenant."

To similar effect were the observations in case of Roshan Lal Vs. Ved Parkash 2003(2) PLR 97. In that case, an argument was put forth that the family settlement was devised with a view to se-

cure ejectment of tenant. A Co-ordinate Bench answered this plea while observing in para 8 and 9 as follows:-

"8. It was submitted by the learned counsel for the petitioner that the family settlement set up by Ved Parkash was not a genuine family settlement. It was devised with a view to secure his ejectment after Ved Parkash's father Gobind Ram had failed to secure his ejectment on the ground of bonafide requirement earlier. It was submitted that tenant is entitled to agitate that the family settlement between the member of family was not a genuine but was devised to secure his ejectment. In support of this submission, he drew my attention to *Vasudev Natha v. Jagdish Prashad Gupta and Ors.*, 1993 H.R.R. 20.

9. In *S.C. Leekha Vs. Air Commodore Mohinderjit Singh*, 1998(2) R.C.R. 304, it was held that tenant can not challenge the relationship of landlord and tenant and family partition between the co-owners of the premises in summary proceedings under the Act for ejectment initiated for ejectment by the landlord. Family partition pleaded by the landlord has to be taken to be correct."

Even otherwise, a family settlement is a document inter se the family members and the right to challenge the same is with the parties to the settlement or their legal heirs not with a tenant.

Learned counsel for the respondent has relied on the observation of Hon'ble Apex Court in case of *M/s Karta Ram Rameshwar Dass Vs. Ram Bilas and others* AIR 2006 (SC) 362; *Dr. Avtar Singh Vs. Ascharaj Lal* 2002 (2) R.C.R. (Rent) 201 and has argued that tenant always has the right to show that the family partition or settlement has been executed only to create a ground for eviction. The Appellate Authority has also alleged that family settlement has not been proved as per law and no evidence has come on record that it has acted upon.

As already discussed, the tenant has nowhere disputed his relationship of landlord and tenant between the parties and once no dispute has

been raised on this point, he is estopped from challenging the documents on the basis of which this relationship has been created. So far as petitioner No.1 Sanjay Bansal is concerned, he is owner/landlord on the basis of family settlement. Another fact, which weighed in the mind of the Appellate Authority is that family settlement appears to be a fake document and tenant has right to prove this fact, also has no merits in the facts and 16 of 23 circumstances of the case. Firstly, the family settlement is among the father, mother, sons and daughters-in-law. No property has been transferred by this family settlement in favour of Kunal for whose necessity, demise premises has been sought to be got vacated. Secondly, 25 properties and entire business, bank accounts, loans, other liabilities etc. were settled by this family settlement and it was also acted upon, as such, there was no reason for the Appellate Authority to term it as a fake document or tenant to prove this document as a fake document. Thirdly, tenant has no right or title to challenge the family settlement and statement of Sanjay Bansal, petitioner No.1 was sufficient to prove this document as family settlement.

In view of the facts as discussed above, the submission of learned counsel for the respondent that family settlement Ex.P2 has been created only to get the premises vacated has no merits. A bare look on this family settlement Ex.P2 and the facts and circumstances as discussed above show that it was a genuine family arrangement and was not created only for the purpose of seeking ejectment of the respondent from the demised premises. The citation referred by learned counsel for the respondent, as such, are of no help to advance the submission of learned counsel for respondent on this issue.

As a sequel of my above discussion, I am of the considered opinion that the findings of the Appellate Authority doubting the family settlement observing that it is required to be proved by leading cogent and convincing evidence, are not in accordance with law. Learned Appellate Authority travelled beyond the scope of authority conferred under the Rent Act while discarding the family settlement Ex.P2.

17 of 23 The next question, which was looked into by the Appellate Authority while accepting the appeal, is non-examination of Kunal for whose personal bona fide need, ejectment of the respondent from the demised premises was sought.

Learned counsel for respondent has relied on observations of a Coordinate Bench in case of Brij Bhushan and another Vs. Sanjay Harjai and another 2015(2) R.C.R. (Civil) 68, wherein dismissal of the ejectment petition due to non-examination of son of landlord for whose personal bona fide necessity, premises was required to be vacated, was held justified.

In the aforesaid case, there were several issues against the landlord and the cumulative effect of those issues resulted in dismissal of the petition and one of the observation was non-examination of son for whose need, the premises was sought to be vacated. This question was specifically examined by a Coordinate Bench of this Court in case of Hukam Chand Vs. Saroj Rani (supra) and it was observed as follows:-

"4. The questions, which fell for consideration before the Appellate Authority, were (i): whether the son of the landlady for whose benefit the non-residential premises is sought to be got vacated, if not the landlord or the owner himself, is also required to plead the ingredients of Section 13(3)(a)(i) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, and; (ii) where son does not appear in the witness-box, while the mother does, what would be the fate of the ejectment petition, by omission to plead that the son does not own any other building in that urban area or landlady or her son for whose need ejectment was sought does not own any building in the same urban area, and thus learned counsel for the petitioner argues that this is a mandatory 18 of 23 requirement if a petition is filed on the ground of bona fide requirement of the landlady for her son. The question is; what is inevitable result."

Relying on the observation of Hon'ble Apex Court in case of S.P. Sethi Vs. R.R. Gulati and oth-

ers 2006(3) PLR 93, it was observed in para 7 as follows:-

"7. In all these three cases, the sons for whose personal requirement the ejectment was sought were not produced as witnesses and yet the plea succeeded. Therefore, the contention of the petitioner/tenant that nonappearance of the son of the landlady in the witness- box is fatal to the action is misjudged and the argument is only noticed to be rejected in view of the settled legal position."

Madras High Court in case of Munuswamy Vs. S.S. Nathan 1996 (1) CTC 40 ( Law Finder Doc Id# 660720) has observed that it is a settled proposition of law that non-examination of son by the landlord for his bona fide necessity with regard to demised premises is not a requirement. The Rent Controller on the basis of available evidence has to decide whether the bona fide need as projected by the landlord is proved. Similar view was taken by Co-ordinate Bench of this Court in Mahesh Chand Vs. Firm Hindu Khandan Mustarka Kripa Ram and sons 2006(2) PLR 43, S.P. Sethi Vs. R.R. Gulati and others (supra). Hon'ble Apex Court in case of C. Karunakaran (D) By LRs Vs. T. Meenakshi 2005 (13) SCC 99, Gulraj Singh Grewal Vs. Dr. Harbans Singh 1992 (1) SCC 68; Mehmooda Gulshan Vs. Javaid Hussain Mungloo 2017 (5) SCC 683 has also taken the view that non-appearance of son for whose requirement, the ejectment of the tenant from the demised premises has been sought, is 19 of 23 immaterial.

Sanjay Bansal, petitioner while appearing as PW1 has deposed about need of the demised premises for the business of his son. He has stated that he has decided to start independent business of his son Kunal. The premises on the ground floor of SCO No.74 are under the tenancy of respondent while half portion of the ground floor and one hall on the first floor of SCO No.74 was under the tenancy of 'Band Boy Drycleaners', from whom the premises has been got vacated on the ground of bona fide necessity of son of petitioner No.1 to start his business. He has also stated that the share of petitioner No.2 in the demised premises has been purchased in the name of Kunal son of petitioner No.1 so as to fa-



cilitate him to start his business. The testimony of this witness could not be shaken in cross-examination and duly proves that the premises in question is required for the personal bona fide necessity of petitioner No.1. In view of the law, as discussed above, non-examination of son of petitioner No.1 is irrelevant and is not fatal to the plea of revision-petitioner.

Much emphasis has been put on the fact that entire SCO No.74 and 75 are lying vacant except the portion in possession of the respondent and petitioner No.1, if so desire, can start his business in the remaining portion of the premises. The requirement of the petitioner is for premises comprising of SCO No. 74 and 75 to start business for his son Kunal. It is for the landlord to see as to how much premises is required for the said business. He cannot be asked to start the business in front portion of the adjoining SCO, back portion of the SCO in which respondent is tenant and so on. The mere fact that remaining portion of the SCO is lying vacant or 20 of 23 has been got vacated during the pendency of the petition show the bona fide of revision-petitioner of requirement for his son, otherwise, he would not have opted to loose the rental of vacant portion of the premises in his possession.

The suggestion was given to petitioner No.1 when he has appeared as PW1 that he is also in possession of SCO No.22 and 23, Sector 11-D, Chandigarh. As per the settlement SCO No.22 and 23, Sector 11-D has fallen to the share of Ajay Bansal and his wife Anita Bansal and not to the share of petitioner No.1 or his wife.

In view of settled proposition of law, the argument of learned counsel for appellant and the reason for discarding the need of petitioner on this ground by the Appellate Authority has no basis and is required to be set aside.

The revision-petitioner has sought ejectment of respondent from half portion of SCO No.74 and 75. The need for getting the same vacated has also been duly explained. During the pendency of the petition, Vijay Goyal petitioner No.2 has sold his half share in the demise premises in favour of Kunal, son of petitioner No.1. The need

of petitioner No.1 to start business for his son is for premises of SCO No.74 and 75, as such the mere fact that SCO No.75 has been got vacated and is in possession of petitioner, cannot be made basis to observe that his needs stood satisfied. Appellate Authority has committed grave error while making such observation. This petition has not become infructuous because of the fact that half portion of SCO No.74 and 75 was sold by petitioner No.2 in favour of son of petitioner No.1 as the need to start the business of son of petitioner 21 of 23 No.1 still exists and it is well settled law that landlord is best person to decide about his need and tenant is nobody to dictate terms on this score. Even if some portion of SCO No.74 and 75 are lying vacant, there was nothing on record before the Appellate Authority that this is sufficient to start business of son of petitioner No.1. As per the need projected by petitioner No.1, son of petitioner No.1 has to start independent business in the demised premises comprising of SCO No.74 and 75. The ground floor of SCO No.75 is in possession of respondent and it cannot be expected that one may start business in the portion of the building on ground floor i.e. SCO No.75 and use first floor of SCO No.74 etc. Any such, the direction if given to the landlord will be against the basic principles of law and the order passed by the Appellate Authority badly suffers on this score.

It has been argued that bona fide need projected by the petitioner was not in existence at the time of filing of the petition, as such, this petition was not maintainable. I need not divulge on this issue in detail as this petition was filed in the year 2011 and by now Kunal son of petitioner No.1, who was 17 years of age at that time, is more than 23 years of age. Even otherwise, petitioner No.1 has alleged that Kunal wants to start his business during his studies of graduation and he has decided to get started independent business for his son. There is no bar that a person cannot start his business before he attains the age of 18 years. A father may think of settling his son in the business during the period he is completing his studies, this argument of learned counsel for respondent, as such, has no merits and is declined.

Hon'ble Apex Court in case of Adil Jamshed Frenchman (D) 22 of 23 by LR's Vs. Sardar Dastur Schools Trust & Others 2005(1) RCR (Rent) 284, relied by learned counsel for respondent has observed that bona fide requirement has to be distinguished from a mere whim or fanciful desire. The Authorities under the Rent Act must be manifested in actual need so as to convince the Court that it is not a mere fanciful or whimsical desire.

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From the facts on record and statement of PW1, it is clear that the need projected by the petitioner is neither whimsical nor fanciful. It is evident from the fact that during the pendency of the petition, remaining half share of the property which was with petitioner No.2 was purchased in the name of Kunal for whom business is to be started in the premises. This elucidates and corroborates the need of demised premises by Kunal to start his business.

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As a sequel of my above discussion, I find that the order passed by the Appellate Authority while reversing the order of the Rent Controller is perverse and not sustainable in the eyes of law. Consequently, this revision petition is accepted. Impugned order passed by the Appellate Authority is set aside and the respondent is ordered to be ejected from the demised premises. In order to facilitate the respondent to find alternate accommodation, he is awarded two months time from the date of this order to vacate and hand over the vacant possession of the demised premises.

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( SURINDER GUPTA )

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April 06, 2018.

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