

Before Dr. Ravi Ranjan, J.

RAVINDER KAUR BHATIA—*Petitioner*

versus

S. R. CHADHA—*Respondents*

CR No.166 of 2019

February 01, 2019

A. East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1977—S.13— Eviction petition—Bona fide personal necessity—Aged landlord, desiring to have one of his sons reside with him and his wife—Tenant opposed eviction on plea of non-examination of landlord's son, who would reside in the tenanted premises—Held, bona fide necessity that of the landlord and not of son—Non-examination of son would not affect the case.

Held that the second issue, which has vehemently been raised on behalf of the tenant/petitioner that the rent case would fail upon non-examination of Rakesh Chadha as it was he who would be residing at the top floor after the tenant vacates it, is also not tenable for the reason that it is not the *bona fide* necessity of Rakesh Chadha which is being raised in the rent petition rather it is the necessity of the old couple of about 85-90 years of age, who are residing in Chandigarh and the need is theirs as they want that their second son, who has retired from Air Force, should now come and stay with them and look after them in the evening of their life. In my view, this would be a least thing which any father or mother would desire from his son. There is nothing wrong in making such desire and obviously, since they are old and they cannot look after themselves in such an old age. So, since the *bona fide* need was of the old couple, they produced themselves for examination and they have been cross-examined also. Therefore, in my view, non-examination of Rakesh Chadha would not render the rent case unfit to be allowed.

(Para 18)

B. East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1977— S.13—Eviction petition—Bona fide personal necessity—Held, personal necessity of landlord has to be judged from his point of view—It is not for the tenant to dictate how the landlord should adjust himself—Further held, bona fide necessity

of landlord is to be tested on the date of filing the eviction petition/application.

Held that however, in the present case, the landlord had stated in clear terms that the top floor, which is consisting of two rooms, latrine, bathroom and kitchen etc. which is a type of suite, would be suitable for his son so that he could look after them also. In this regard both the Courts below have correctly placed reliance upon the decision of this Court rendered in “**Amrit Bansal versus M.L.Goyal**” 2014 (1) RCR (Rent) 401, holding that it is a settled principle of law that the landlord is the best judge *qua* his needs. The tenant cannot suggest that the other premises, which was available at that point of time, would be suitable for him. In “**Sarla Ahuja versus United India Insurance Company**” 1998(2) RCR(Rent) 533, it has been held that it is not for the tenant to dictate as to how else the landlord should adjust himself without getting the tenanted premises vacated. The personal necessity of the landlord is to be judged from his view point. That apart, the Courts below have placed reliance upon yet another decision of this Court rendered in “**Arun Tayal and others versus Dr. Jagmohan Chopra and another**” 2011 (3) Law Herald 2589, holding that when eviction is sought on the ground of *bona fide* necessity, the Rent Controller shall not proceed on the assumption that requirement is not *bona fide*. The *bona fide* requirement of landlord should not be seen with suspicion but it should be presumed to be correct and genuine if he has been able to prove it by leading evidence. In yet another decision rendered in “**M/s Satpal Vijay Kumar versus Sushil Kumar**”, 2011 (1) Recent Control Reporter 160, same view has been taken by this Court.

(Para 19)

Further held that apart, it has also to be seen as to whether the *bona fide* requirement of the landlord is to be tested on the date of filing of the eviction suit or subsequently when some other portion was vacated during the pendency of the case and the same was let out. The Hon'ble Apex Court in its recent Judgment rendered in “**D. Sasi Kumar versus Soundararajan**” 2019 SCC Online SC 1243, has held that if on the date of filing of the petition the requirement subsists and is proved, the same would be sufficient irrespective of the time lapse in the judicial process coming to an end. The crucial date for deciding the *bona fide* necessity of landlord is that date of application for eviction.

(Para 20)

Sumit Jain, Advocate
for the Petitioner.

R.K.Batta, Sr. Advocate with
Mandeep K. Sajjan, Advocate
for the respondent.

DR. RAVI RANJAN, J. Oral Judgment)

(1) This Civil Revision is directed against the Judgement dated 06.12.2018 passed by the Appellate Authority, Chandigarh by which it has affirmed the order dated 11.08.2016 passed by the Rent Controller, Chandigarh directing for eviction of the respondent/petitioner from the top floor of the premises in dispute.

(2) The petitioner-respondent filed a petition under Section 13 of the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1977 (hereinafter to be referred to as the 'Act') for eviction of the respondent/tenant from two rooms, bathroom etc, on the top floor of House No.1132 situated at Sector-15-B, UT Chandigarh.

(3) It appears that the eviction/ejectment of the tenant was sought on diverse grounds. The first and foremost ground was that the landlord needed the premises for his *bona fide* personal use and occupation. Another ground was taken that the landlord needs the premises for reconstruction/ modification/alternation of the house. Yet another ground was taken that the tenant is keeping a furious dog which is threatening the landlord and the persons visiting him all the time. Apart from the above, another ground was taken by stating in the petition that the respondent is fit to be ejected as he has sub-letted the tenanted premises in favour of his son v.i.z., Ranmeet Singh and daughter-in-law Narinder Kaur and a last ground taken seeking eviction on the ground of non-payment of rent.

(4) So far the grounds taken by the respondent/landlord save and except the eviction on the ground of personal *bona fide* necessity are concerned, findings have been recorded against the landlord. However, so far the ground of *bona fide* necessity is concerned, the rent case has been allowed and the tenant has been directed by both, the Rent Controller as well as the appellate forum, to vacate the premises. Accordingly, as has jointly been submitted, other grounds which were taken by the petitioner/landlord for eviction having been disbelieved by the Rent Controller by recording its finding against the landlord, since not under challenge, would not be required to be dealt with. The only

issue which is required to be considered in this Revision is as to whether the landlord was having a *bona fide* necessity of the suit premises or not?

(5) The petitioner/landlord has stated with respect to the *bona fide* necessity of the premises that he is having two sons Pramod Chadha and Rakesh Chadha. So far Pramod Chadha is concerned, he has settled in Delhi and is having his own house there. The second son Rakesh Chadha was working in Air Force and has retired two years back. Thereafter, he is residing in Pune but in view of the fact that the landlord (petitioner before the Rent Controller) is now aged about 89 years and his wife is also aged about 85 years, in the evening of their life they have a desire that his second son, who is living in Pune for the time being, should come to Chandigarh and stay with them so that they could be looked after properly by their son and his family.

(6) The tenant-petitioner contested the rent case by taking a plea that both the sons of the petitioner-landlord-respondent are permanently settled at Delhi and Pune respectively and therefore, there is no question of their coming to Chandigarh and to reside with the landlord. The case for eviction has been filed only with a view to dislodge the tenant so that suit premises could be let out at a much higher rent. The Rent Controller, while deciding the issue as Issue No.1, after considering the materials on record including the evidence led by the parties, came to the conclusion that the personal necessity as set up by the landlord appears to be *bona fide* one and, thus, has allowed the rent case on such ground.

(7) The decision of the Rent Controller was assailed by the tenant by preferring Rent Appeal No.289 of 2016, which was also dismissed after upholding and affirming the findings recorded by the Rent Controller with respect to the issue of *bona fide* necessity. Hence this Revision under Section 15(5) of the Act has been filed by the tenant.

(8) In the aforesaid background of the factual matrix, I have heard learned counsel for the tenant-petitioner and the landlord-respondent and have perused the materials available on record and the copies of the affidavits and cross-examinations which have been produced at the of hearing by the petitioner.

(9) It has been urged on behalf of the tenant-petitioner that he was inducted as a tenant at the first floor of the house concerned in the year 1993, however, in the year 2010 he has been allowed to shift on

the top floor of the premises. It is contended that the whole issue of *bona fide* necessity has been raised only with a view of evict the tenant so that the premises could be let out at much higher rate. To substantiate and corroborate the aforesaid submission, learned counsel has drawn attention of this Court towards the affidavit filed by the wife of the landlord, v.i.z., Kamla Chadha who, in paragraph 8(IV) of her testimony, has stated that at present the tenant is giving rent at the rate of ` 1100 per month only whereas the market rate of rent is ` 15,000/- per month. Learned counsel submits that it clearly indicates that it is in the mind of the landlord that he can fetch more than 10 times the rent which he is receiving at present. Thus, the issue of eviction of the tenant taking a false ground of *bona fide* necessity has been raised.

(10) Learned counsel for the tenant/petitioner also draws attention of this Court towards the cross-examination of the landlord as PW1 in which he has admitted that he has let out first floor of the house in question to one Subham Goyal who has been inducted as tenant w.e.f.15.01.2016. Learned counsel has also drawn attention towards the statement at the time of cross-examination that his son Rakesh Chadha is residing at Pune. He also draws attention of this Court to the cross-examination of PW2 Kamla Chadha wife of the petitioner/landlord who has also stated that they had let out one room on the first floor to one Subham Goyal at monthly rental of ` 15,000/- per month and also, one room to a student who is paying ` 3000/-per month as rent.

(11) On the strength of aforesaid, learned counsel for the tenant/petitioner submits that there is no *bona fide* need because the landlord's son Rakesh Chadha is already settled at Pune and he has having his own residence there and secondly, that the ground of *bona fide* necessity has only been taken so that the tenant could be removed from the seen and the premises could be let out at a much higher rate of rent.

(12) Yet another ground has been taken that the person who is to be inducted on the top floor after the eviction of the tenant, i.e., son of the landlord, v.i.z., Rakesh Chadha, has not been examined by the landlord and, thus, on such ground alone the rent eviction case would fall flat. In support of his submission learned counsel has placed reliance upon certain decisions rendered by two co-ordinate Benches of this Court in *Shri Ranjha Ram and others* versus *Shri Jagjit Singh*¹

¹ 1983(1) RCR(Rent) 1

and in *Brij Bhushan and another* versus *Sanjay Harjai and another*.² It is contended that in *Brij Bhushan* (supra) a co-ordinate Bench of this Court has held that one Ashu Singla for whom the the requirement of personal necessity was pleaded by the landlord being his son, never stepped into the witness box to face the test of cross-examination. Thus, the *bona fide* requirement was disbelieved.

(13) In *Shri Ranjha Ram* (supra) it has been held that the contention of the respondent/landlord that the ground floor of the demised premises situated in Sector-18-B, Chandigarh was not suitable as it was likely to fetch higher rent than the demised premises was not tenable on the ground that the same was without merit especially in view of the fact the respondent did not taken such stand either in his petition or in his statement during trial.

(14) Lastly, reliance has been placed upon a decision of Delhi High Court rendered in *Smt. Sona Devi* versus *Smt. Nathia and others*³ holding that when more than three rooms were available then instead of utilising them for necessity, re-letting the rooms vacated by the existing tenants shows that the landlady was expecting higher rent and not additional accommodation.

(15) *Per contra*, learned counsel appearing for the landlord/ respondent has supported the impugned judgment and has submitted that both the landlord/respondent and his wife have examined themselves as PW1 and PW2 and have withstood the test of cross-examination on the issue of *bona fide* necessity. It is contended that they are now more than of 86-87 years of age and they need proper health assistance, look after and care by the family members and for that they desire that their second son, who is residing at Pune in a rented premises, should come here and look after them for which the rented premises is required.

(16) I have given anxious consideration to the submissions raised on behalf of the parties.

(17) So far the point raised by the tenant/petitioner that PW2 in her affidavit has stated that she is receiving rent at the rate of ` 1100/- per month whereas the market rate is ` 15,000/- per month, is concerned, in my considered view it itself does not prove the fact that the landlord was eyeing the higher rent only and is raising the issue of

² 2015(2) RCR(Civil) 68

³ 2013 AIR CC1083

bona fide necessity only with such view for the reason that the petitioner should not forget that though the rent case had been decided in favour of the landlord on the basis of *bona fide* necessity but it was filed on several grounds and one of the grounds was non-payment of rent also. So, the statement does not necessarily means that *bona fide* necessity was being projected only with a view of dislodge the tenant so that it can be again let out at much higher rent. Of course, PW1 in his cross-examination has stated that his son Rakesh Chadha is residing at Pune after his retirement but there is nothing wrong in saying that because it is his case from the beginning itself that his first son is permanently residing at Delhi and his another son Rakesh Chadha after his retirement from the Air Force two years back, is residing at Pune. That does not necessarily means that he has built a house there and he is permanently residing in Pune. There is no material on record for coming to such conclusion that his second son has a permanent residence at Pune and he does not have any intention to come to Chandigarh. Secondly, He has clearly answered the suggestion given to him during cross-examination that it is wrong to suggest that after retirement his son Rakesh Chadha has permanently settled at Gurgaon. Obviously, he was answering to the suggestion made by the counsel for the other side that he is now permanently settled at Gurgaon. Such suggestion, in place of establishing the case of the tenant that the son of the landlord is permanently residing at Pune, raises question mark upon the mind set of the tenant itself as at one place it is being said that he is permanently residing at Pune but the suggestion is being made at the time of cross-examination that he is permanently residing at Gurgaon.

(18) The second issue, which has vehemently been raised on behalf of the tenant/petitioner that the rent case would fail upon non-examination of Rakesh Chadha as it was he who would be residing at the top floor after the tenant vacates it, is also not tenable for the reason that it is not the *bona fide* necessity of Rakesh Chadha which is being raised in the rent petition rather it is the necessity of the old couple of about 85-90 years of age, who are residing in Chandigarh and the need is theirs as they want that their second son, who has retired from Air Force, should now come and stay with them and look after them in the evening of their life. In my view, this would be a least thing which any father or mother would desire from his son. There is nothing wrong is making such desire and obviously, since they are old and they cannot look after themselves in such an old age. So, since the *bona fide* need was of the old couple, they produced themselves for examination and they have been cross-examined also. Therefore, in my view, non-

examination of Rakesh Chadha would not render the rent case unfit to be allowed. So far the decision cited by the learned counsel on this point rendered by a co-ordinate Bench of this Court in **Brij Bhushan** (supra) is concerned, that was on entirely different set of facts. In that case, the *bona fide* necessity of the son was being projected as the son wanted to be inducted in the shop concerned for his purpose. Therefore, the necessity was of the son and not of the father or the landlord, thus, he was definitely required to personally step into the witness box and face the test of cross-examination. However, in the present case, the matter is different as here the old couple are desirous in the evening of their life that their son should come and stay with them and look after them. It is the *bona fide* necessity of the landlord and not his son Rakesh Chadha. Therefore, in my view the examination of the landlord and his wife would suffice.

(19) Another issue has been raised by the tenant/petitioner that in the year 2016, admittedly, the landlord had let out the first floor of the house to one Subham Goyal and one student namely Manna. It is contended that the vacated portion could have served the personal necessity as his son could have come and stayed in the first floor and in that manner *bona fide* necessity would have also been satisfied and the tenant also would not have been required to be disturbed. However, in my considered view, this limb of argument is also not tenable. Though learned counsel has placed reliance upon a decision of the Delhi High Court on that point in which landlady had purchased a house having 8 tenants and the landlady herself had claimed that all those tenants have vacated the portion under her tenancy and she had inducted 3 new tenants in addition to the respondents. The question raised was that when more than 3 rooms occupied by other tenants became available to her, she could have occupied those rooms instead of re-letting the same and though she has stated that her actual requirement was of 12 rooms she had re-letted other rooms vacated by the tenants, which goes to show that she was actually not in the *bona fide* requirement of rooms. However, in the present case, the landlord had stated in clear terms that the top floor, which is consisting of two rooms, latrine, bathroom and kitchen etc. which is a type of suite, would be suitable for his son so that he could look after them also. In this regard both the Courts below have correctly placed reliance upon the decision of this Court rendered in **Amrit Bansal** versus **M.L.Goyal**⁴ holding that it is a settled principle of law that the landlord is the best judge *qua* his needs. The tenant

⁴ 2014 (1) RCR (Rent) 401,

cannot suggest that the other premises, which was available at that point of time, would be suitable for him. In *Sarla Ahuja versus United India Insurance Company*⁵ it has been held that it is not for the tenant to dictate as to how else the landlord should adjust himself without getting the tenanted premises vacated. The personal necessity of the landlord is to be judged from his view point. That apart, the Courts below have placed reliance upon yet another decision of this Court rendered in *Arun Tayal and others versus Dr. Jagmohan Chopra and another*⁶ holding that when eviction is sought on the ground of *bona fide* necessity, the Rent Controller shall not proceed on the assumption that requirement is not *bona fide*. The *bona fide* requirement of landlord should not be seen with suspicion but it should be presumed to be correct and genuine if he has been able to prove it by leading evidence. In yet another decision rendered in *M/s Satpal Vijay Kumar versus Sushil Kumar*⁷ same view has been taken by this Court.

(20) That apart, it has also to be seen as to whether the *bona fide* requirement of the landlord is to be tested on the date of filing of the eviction suit or subsequently when some other portion was vacated during the pendency of the case and the same was let out. The Hon'ble Apex Court in its recent Judgment rendered in *D.Sasi Kumar versus Soundararajan*⁸ has held that if on the date of filing of the petition the requirement subsists and is proved, the same would be sufficient irrespective of the time lapse in the judicial process coming to an end. The crucial date for deciding the *bona fide* necessity of landlord is that date of application for eviction.

(21) Accordingly, in my view, since no cogent ground could be raised by the tenant/petitioner warranting interference in the impugned decisions, this Civil Revision fails, and is, accordingly, dismissed. However, there would no order as to costs.

Tribhuvan Dhaiya

⁵ 1998(2) RCR(Rent) 533

⁶ 2011 Law Herald 2589

⁷ 2011 (1) Recent Control Reporter 160

⁸ 2019 SCC Online SC 1243