

Before Ajay Kumar Mittal, J.

GURDIAL SINGH AND ANOTHER—Petitioner

versus

LEELA MALHOTRA AND OTHERS—Respondents

CR No.252 of 2007

October 07, 2013

East Punjab Urban Rent Act, 1949 - S.13, 15(5) - "Personal necessity" - "Scope of revision" - Petitioner filed eviction petition u/s 13 of East Punjab Urban Rent Act, 1949 on grounds of non-payment of rent and personal necessity - Petition allowed by Rent Controller holding that premises were required for personal use and occupation - Appeal by respondents allowed - Revision filed by Petitioner/landlords - Allowed - Held, landlord is entitled to apply for eviction of tenant if he requires it for his own occupation and is not occupying any other building in the urban area and has not vacated such a building without sufficient cause - Pleading of ingredients is essential and mandatory - Bonafide requirement depends upon facts and circumstances - Need of landlord must exist so as to distinguish it from mere wish or desire - Revision allowed.

Held, that under Section 13(3) (a) (i) of the Act, a landlord is entitled to apply to the Controller for an order directing the tenant to put the landlord in possession of the building if he requires the same for his own occupation and he is not occupying any other building in the urban area concerned and has not vacated such a building without a sufficient cause after the commencement of the Act in the urban area.

(Para 10)

Further held, that from the above, it is concluded that the pleading of the ingredients enshrined in Section 13(3)(a)(i) seeking eviction on the ground of personal necessity are essential and mandatory. In the absence of the same, no order of ejection can be validly passed.

(Para 13)

Further held, that under the last issue, the scope of Section 13(3) (a) (i) of the Act needs to be evaluated. Under Section 13(3)(a)(i) of the Act, a landlord can apply to the Rent Controller seeking possession of the demised premises where he requires it for his own bonafide requirement on fulfilment of following conditions:-

- (a) he is not occupying another building in the urban area concerned; and
- (b) has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;

(Para 17)

Further held, that the bonafide requirement of a landlord depends upon facts and circumstances of each case and there cannot be a strait jacket formula for this purpose. The burden lies upon the landlord to establish that the accommodation is bonafide required by him for personal use. While adjudicating whether the requirement is bonafide or not, it is to be seen objectively and not subjectively by the Court though, the landlord is the best judge of his requirement. The need of the landlord must exist so as to distinguish it from mere wish or desire.

(Para 22)

M.L.Sarin, Senior Advocate with Hemani Sarin, Advocate, *for the petitioners*.

Ashwani Chopra, Senior Advocate with Harminder Singh, Advocate *for the respondents*.

AJAY KUMAR MITTAL, J.

(1) This revision petition has been filed by the petitioner-landlords against the order dated 5.9.2006 passed by the learned lower appellate authority whereby the appeal filed by the respondent-tenants was allowed and the eviction petition filed by the petitioners was dismissed.

(2) Briefly, the facts necessary for adjudication of the controversy involved, as available on the record may be noticed. Petitioner-landlords - Gurdial Singh and Amar Singh Bal filed a petition under Section 13 of

the East Punjab Urban Rent Act, 1949 (in short, "the Act") alleging that petitioner No.1 was the owner and landlord of House No.2066, Sector 21-C, Chandigarh while petitioner No.2 was collecting the rent as an agent of petitioner No.1. In the year 1973, Suresh Malhotra was inducted as a tenant at a monthly rent of ' 200/- and after his death, respondent No.1 - Mrs. Leela Malhotra, who is mother of Suresh Malhotra and respondent No.2 - Mrs. Mcena Malhotra, wife of brother of Suresh Malhotra started living in the said house and at the time of filing the petition under Section 13 of the Act, the rate of rent of the demised premises was ' 800/- per month excluding water and electricity charges. The petition under Section 13 of the Act was filed seeking eviction of the respondent-tenants on two grounds i.e. on account of non payment of rent w.e.f 1.2.1995 and that the premises in question was required by petitioner No.1 for his own use and occupation as well as for occupation of his family members inter alia alleging that petitioner No.1 shifted to England but because of adverse climatic conditions his wife could not adjust herself in England as such he and his wife decided to shift to India and to live in the demised premises as they were not in occupation of any other building in the urban area nor they vacated any such building. The petition was contested by the respondents by filing reply. The averment regarding arrears of rent was denied. The plea regarding the requirement of demised premises for personal use and occupation was also denied on the ground that petitioner No.1 was permanently settled in United Kingdom and was having a house there. The petitioners also filed replication reiterating their stand in the petition. On the pleadings of the parties, following issues were framed by the Rent Controller:-

1. Whether the respondents are liable to be evicted from the demised premises on the grounds of non payment of rent and personal necessity? OPP
2. whether the respondents are entitled to counter claim? OPR
3. Relief.

(3) After considering the evidence on record and hearing both the parties, the Rent Controller decided issue No.1 in favour of the petitioners holding that the demised premises was required by petitioner No.1 for his own personal use and occupation. It was also held that the respondents were not in arrears of rent as they had already deposited the rent. The

petition was allowed vide order dated 11.9.2001 and eviction of the respondents was ordered. Aggrieved by the order, the tenants- respondents filed appeal before the learned lower appellate authority. Alongwith the appeal, an application under Order 6 Rule 17 read with Section 151 CPC for amendment of the written statement was filed by the tenants inter alia alleging that they wanted to amend para 5 of the written statement by adding that petitioner No.1 and his wife had been living in England for the last several years and the temperature of Chandigarh and Mid down (UK) was almost the same and there was difference of 1 or 2 Celsius in temperature and, therefore, the temperature of Chandigarh was not suitable. After consideration of the matter, the lower appellate court dismissed the application for amendment of the written statement. The appeal was allowed vide order dated 5.9.2006 and the order of the Rent Controller was set aside holding that the respondent landlords were guilty of suppression of true facts and they were also guilty of concealment of material ingredients of Section 13 (3) (a) (i) of the Act. Aggrieved thereby, the petitioners are before this court through the present revision petition.

(4) Mr. M.L.Sarin, learned Senior counsel for the petitioner-landlords submitted that the Rent Controller has allowed the eviction petition under Section 13(3) (a) (i) of the Act on account of personal necessity of the landlord. However, on appeal, the lower appellate Court has reversed the same. It was argued that the tenant Suresh Malhotra was inducted as tenant in 1973 at the rate of Rs. 200/- per month and after his death, the respondents started living in this house. Referring to the evidence of witnesses namely AW1 Sawinder Kaur and AW2 Gurdial Singh where they had in unequivocal terms deposed that the premises were required for the personal need of the landlord petitioner No.1 and his wife, the findings of the appellate authority were assailed. It was further argued that CM No.934-CII of 2007 for bringing on record subsequent events had also been filed. It was urged that there has been misreading of statement of RW1 Ramesh Kumar. The Rent Controller rejected the testimony of RW1 Ramesh Kumar as in his cross examination he had admitted that he had not brought the record of Sawinder Kaur wife of Gurdial Singh but the lower appellate authority had relied upon it without noticing anything in that behalf. The learned appellate authority had erred in rejecting the eviction petition and in accepting the appeal of the tenants by holding that there was concealment

in as much as the landlord had failed to disclose with regard to the occupation of second floor. It was argued that there was no concealment. Actual position was given in the petition and second floor was vacated after the filing of the petition in 1998. Further, Amar Singh AW3 is still living on the first floor. It was pleaded that choice of the landlord is to prevail and that the landlord is the best judge of his needs. Need of the family is also the need of the landlord. Citing pronouncements reported in *Ram Dass* versus *Ishwar Chander and others (1)*, and *Deena Nath* versus *Pooran Lal (2)*, the revisional jurisdiction under Section 15(5) of the Act was invoked, as the appellate authority had gone wrong in appreciating the material on record and had applied wrong test to the facts in hand. Reliance was also placed on the following pronouncements in support of his above contentions:-

- (i) *Raman Malhotra* versus *Jagdish Raj Mehta and others (3)*.
- (ii) *Raj Kumar Khaitan and others* versus *Bibi Zubaida Khatun and another (4)*.
- (iii) *Prativa Devi (Smt.)* versus *T.V. Krishnan (5)*.
- (iv) *Sukesh Vohra* versus *Sulekh Chand Jain (6)*.
- (v) *M/s Rahabhar Productions Pvt. Limited* versus *Rajendra K. Tandon (7)*.
- (vi) *Dattatraya Laxman Kumble* versus *Abdul Rasul Moulali Khikune and another (8)*.
- (vii) *Sarla Ahuja* versus *United India Insurance Co. Limited (9)*.

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- (1) AIR 1988 SC 1422
 - (2) 2001(2) RCR 130 SC
 - (3) 1991 (1) RLR 604 P&H
 - (4) AIR 1995 SC 576
 - (5) 1996(5) SCC 353
 - (6) 1997(2) RCR 210
 - (7) 1998(1) RCR 482 SC
 - (8) AIR 1999 SC 226
 - (9) 1999(1) PLR 805 SC

(viii) *Raghunath G Panhale* versus *M/s Chaganal Sundarji and Co.* (10).

(ix) *Dhannalal* versus *Kalawatibai and others* (11).

(x) *Joginder Pal* versus *Naval Kishore Behal* (12).

(xi) *Atma S. Berar* versus *Mukhtiar Singh* (13).

(xii) *M/s British Motor Car Company Pvt. Limited* versus *Sewak Sabha Charitable Trust (Regd.)* (14).

(xiii) *Harpreet Singh* versus *Smt. Sudershan Berry* (15).

(xiv) *Mohinder Kaur* versus *Balwinder Kumar* (16).

(5) On the other hand, Mr. Ashwani Chopra, learned Senior counsel for the respondent-tenants submitted that the court is required to examine and record a finding with regard to genuine and reasonable desire and there has to be an element of need to order eviction under Section 13(3)(a) (i) of the Act. Petitioner No. 1 is in possession of first floor through petitioner No. 2 who is his close relative. The pleading that the petitioner No. 1 is not occupying the premises is missing from the eviction petition. It was urged that three ingredients which are essential for evicting a tenant on the ground of personal necessity as required under Section 13 (3) (a) (i) of the Act were missing. AW1 is Surinder Kaur and not Sawinder Kaur and the record of her service was produced by RW1 Ramesh Kumar which clearly showed that she had been taking long leaves even prior to her retirement and had been living with her husband in England. Thus, there was no need. It was a device to get the premises vacated from the respondent-tenant. It was also argued that Gurdial Singh in his cross examination accepts that he is in occupation of first floor through Amar Singh. Once that was so, pleadings do not fulfil the essential requirements as required under Section 13(3) (a) (i) of the Act. The landlord had not disclosed the facts completely and

(10) 1999(2) RCR 485

(11) (2002) 6 SCC 16

(12) AIR 2002 SC 2256

(13) 2003(1) RCR 42 SC

(14) 2003(2) RCR 640

(15) 2006(2) RCR 672 (P&H)

(16) 2009(2) RCR 650 (P&H).

therefore, the petition is liable to be rejected. It was contended that the entire evidence had been appreciated by the lower appellate court and the findings recorded were in accordance with the right conclusion drawn and revisional jurisdiction cannot be exercised for reversing the aforesaid findings.

(6) Rebutting the arguments of Mr. Chopra, Mr. Sarin submitted that para 7 of the replication read along with the eviction petition clearly provided that all the essential requirements of Section 13(3) (a) (i) of the Act stood fulfilled. Para 7 of the replication reads thus:-

“That para 7 of the written statement is wrong and denied. The petitioner is not in occupation of the first floor of the said house. Of course petitioner No.2 who is close relation of petitioner No.1 is in occupation of the first floor.”

It was argued that a Division Bench of this Court in *Salig Ram and another* versus *Shiv Shankar and others* (17), had held that replication is a part of the pleadings and therefore, the eviction petition along with replication would constitute the pleadings and thus it could not be said that the landlord petitioner had not fulfilled the requirement of specifying the ingredients as required under Section 13(3) (a) (i) of the Act.

(7) After hearing learned counsel for the parties, the following questions arise for adjudication in this revision petition:-

- (a) the scope of revision petition under Section 15(5) of the Act;
- (b) whether the ingredients of Section 13(3) (a) (i) of the Act have been pleaded and established;
- (c) whether the ground of personal necessity exists in the present case or not;

(8) Taking up first issue regarding maintainability of present revision petition, Section 15(5) of the Act provides for remedy of revision to the aggrieved party. The scope of Section 15(5) of the Act was considered by the Hon'ble Supreme Court in *Ram Dass's* case (supra) where it was held that the High Court has wide jurisdiction and in appropriate cases may examine the correctness of the findings of facts also even though the

revisional court is not a second court of first appeal. The relevant observations in para 7 read thus:-

“7. On the first contention that the revisional powers do not extend to interference with and upsetting of findings of fact, it needs to be observed that, subject to the well-known limitations inherent in all revisional jurisdictions, the matter essentially turns on the language of the statute investing the jurisdiction. The decisions relied upon by Shri Harbans Lal, deal, in the first case, with the limitations on the scope of interference with findings of fact in second-appals and in the second, with the limitation on the revisional powers where the words in the statute limit it to the examination whether or not the order under revision is “according to law.” The scope of the revisional powers of the High Court, where the High Court is required to be satisfied that the decision is “according to law” is considered by Beaumont C.J. in *Bell & Co. Ltd. v. Waman Hemraj*, AIR 1938 Bombay 223 a case referred to with approval by this Court in *Hari Shankar v. Girdhari Lal Chowdhury*, AIR 1963 SC 698.

But here, Section 15(5) of the Act enables the High Court to satisfy itself as to the “legality and propriety” of the order under revision, which is, quite obviously, a much wider jurisdiction. That jurisdiction enables the court of revision, in appropriate cases, to examine the correctness of the findings of facts also, though the revisional court is not “a second court of first appeal” (See *Dattopant Gopalvarao Devakate v. Vithalrao Marutirao*).

Referring to the nature and scope of the revisional jurisdiction and the limitations inherent in the concept of a ‘Revision’ this Court in *M/s. Ranalakshmi Dyeing Works & Ors. v. Rangaswamy Chettier*, [1980] 2 RCJ 165 (at 167) observed:

“..... 2. “Appeal” and “revision” are expressions of common usage in Indian statutes and the distinction between “appellate jurisdiction” and “revisional jurisdiction” is well known though not well defined. Ordinarily, appellate jurisdiction involves a rehearing, as it were, on law as well as fact and is invoked by an aggrieved person. Such jurisdiction may, however, be limited in some way as, for instance has been done in the case of second

appeals under the Code of Civil Procedure and under some Rent Acts in some States. Ordinarily, again, revisional jurisdiction is analogous to a power of superintendence and may sometimes be exercised even without its being invoked by a party. The extent of revisional jurisdiction is defined by the statute conferring such jurisdiction Revisional jurisdiction as ordinarily understood with reference to our statutes is always included in appellate jurisdiction but not vice-versa. These are general observations. The question of the extent of appellate or revisional jurisdiction has to be considered in each case with reference to the language employed by the statute

The criticism of Sri Harbans Lal that it was impermissible for the High Court in its revisional jurisdiction to interfere with the findings of fact recorded by the appellate authority, however erroneous they be, is not, having regard to the language in which the revisional power is couched, tenable. In an appropriate case, the High Court can reappraise the evidence if the findings of the appellate court are found to be infirm in law."

(9) Similarly, it was held in *Deena Nath*'s case (supra) that where the court had not applied the statutory provisions correctly to the evidence on record in its proper perspective, then the finding of fact would cease to be a mere finding of fact and would vitiate the entire judgment. It was noticed as under:-

"The Legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bonafide which is intended to avoid the mere whim or desire. The 'bonafide requirement' must be in praesenti and must be manifested in actual need which would evidence the Court that it is not a mere fanciful or whimsical desire. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town

concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in sub-section (e) of Section 12(1) of the Act in respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, the Court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his occupation in the city/town is available. The judgment/order of the court/authority for eviction of a tenant which does not show that the court/authority has applied its mind to these statutory requirements cannot be sustained and the superior court will be justified in upsetting such judgment/order in appeal/second appeal/revision. Bonafide requirement, on a first look, appears to be a question of fact. But in recording a finding on the question the court has to bear in mind the statutory mandate incorporated in Section 12(1)(f). If it is found that the court has not applied the statutory provisions to the evidence on record in its proper perspective then the finding regarding bonafide requirement would cease to be a mere finding of fact, for such erroneous finding illegally arrived at would vitiate the entire judgment. In such case the High Court cannot be faulted for interfering with the finding in exercise of its second appellate jurisdiction under Section 100 of the Code of Civil Procedure."

(10) Adverting to the next submission, the legal position is required to be examined with regard to the pleadings and proof required for seeking ejection on the ground of personal necessity. Under Section 13(3) (a) (i) of the Act, a landlord is entitled to apply to the Controller for an order directing the tenant to put the landlord in possession of the building if he requires the same for his own occupation and he is not occupying any other building in the urban area concerned and has not vacated such a building without a sufficient cause after the commencement of the Act in the urban area.

(11) Analysing the legal position relating to effect of not pleading the ingredients embodied in Section 13(3)(a)(i) of the Act regarding personal necessity, it may be noticed that the Full Bench of this Court in

Banke Ram vs. Smt. Sarasti Devi, 1977 R.L.R. 417, while dealing with the requirement of pleading the ingredients of sub clauses (b) and (c) of Section 13(3)(a)(i) under the East Punjab Urban Rent Restriction Act, 1949, held as under:-

“7. Thus, it is clear from the above discussion that the predominant view of this Court has been that it is imperative for the landlord to plead the ingredients of Sub-clauses (b) and (c) of Section 13 (3) (a). Even after the decision of the Division Bench of this Court in Krishan Lal Seth’s case (1961-63 Pun LR 865) (supra) to the contrary, Mahajan, J., (as he then was) one of the Judges on this Division Bench expressed a contrary view in Darshan Singh’s case (1974 Ren CR 99) (Punj) (supra). It is well established and salutary principle of law that in any civil proceeding, it is essential for a party to plead the ingredients of any facts in the pleading on which he wants to rely and in proof of which he may produce evidence. Order VI, Rule 2, Code of Civil procedure, specifically provides for the same. It is reproduced below:—

“Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures.” Though all the provisions of the Code of Civil Procedure are not applicable to the proceedings in applications for eviction under the Act, but the principles which are the basis and foundation for the administration of justice as the one incorporated in Order VI, Rule 2 of the Code of Civil Procedure, will be undoubtedly applicable to these proceedings also. The purpose in following the procedure for framing of issues in eviction applications is also intended to pinpoint the parties to the matter in controversy between them so that none of the parties may be taken by surprise and subsequently none of them may allege that he was in any way prejudiced. If there is no specific pleading about certain matter, the respondent would have no opportunity to controvert the same and consequently, no issue would be

framed. In these circumstances, the parties will be in the dark as to whether to lead evidence in affirmation or in rebuttal and thus, some important matter in controversy may be overlooked deliberately or inadvertently. Even the Division Bench in Krishan Lal Seth's case (supra), appreciated the weight of the principle of law and observed,—

“It is generally incompetent for a tribunal to adjudicate upon any controversial matter which does not find place in the pleadings of the parties.”

In *Siddik Mahomed Shah v. Mussammat Saran*, AIR 1930 PC 57 (1), which is the basic judgment on the subject, it was held,—

“Where a claim has been never made in the defence presented, no amount of evidence can be looked into upon a plea which was never put forward.”

The ratio of the decision in the above-said case was approved by their Lordships of the Supreme Court in *Bhagat Singh v. Jaswant Singh*, AIR 1966 SC 1861.

8. It was contended by the learned counsel for the respondent that the decision in *Rajinder Singh Nanda's case* (supra) is based on the Full Bench decision of this Court in *Sant Ram Das's case* (Supra) and that of the Supreme Court in *Attar Singh's case* (supra) wherein it was not in controversy whether the ingredients of Sub-clauses (b) and (c) are required to be pleaded or not. It is true that in both these cases it was not specifically in controversy whether the ingredients of Sub-clauses (b) and (c) of Section 13 (3) (a) (i) are essential to be pleaded by the landlord or not, but it was clearly and expressly held therein that it was essential to prove the ingredients of Sub-clauses (b) and (c). Once it is so held, there is no escape from the proposition of law that these ingredients have to be pleaded before any evidence is led on the same. In *Krishan Lal Seth's case* (supra), the Division Bench while agreeing with the principle that any matter in controversy must find place in the pleadings of the parties, however, came to the conclusion that ingredients of Sub-clauses (b) and (c) may not be pleaded because they are only statutory conditions and the tenant is

expected to have knowledge of the same and will not be taken by surprise. There can be no doubt that the conditions laid down in Sub-clauses (b) and (c) are statutory conditions inasmuch as they are provided by the statute, but to fulfil those conditions, the landlord must lead evidence to prove the facts constituting those conditions. Under Sub-clause (b) the landlord is required to prove that he is not occupying any other residential building in the urban area concerned. Under Sub-clause (c), it is incumbent on the landlord to bring on the record that such a building had not been vacated by him without sufficient cause. If the landlord is to satisfy those essential conditions, he must lay foundation regarding the same in his pleading so that the tenant-respondent is in a position to rebut the same and proper issues are also framed. It is difficult to visualise how a tenant will not be taken by surprise if there is no pleading in this regard. It may be a different matter if the statutory conditions are in relation to questions of law, but in case of statutory conditions pertaining to questions of fact, the landlord must make specific averments, otherwise, prejudice is very likely to ensue to the opposite party.

9. One of the main objects of the Act is to protect the tenant from the caprice and whim of the landlord to eject him without any valid and sufficient reason. It has been specifically provided under Section 13 (1) that a tenant will not be ejected except in accordance with the conditions laid down in Sub-sections (2) and (3). The landlord has been enjoined from evicting the tenant even on the ground of the need of his own occupation unless two other conditions provided in Sub-clauses (b) and (c) are also fulfilled. The fulfilment of the conditions is a pre-requisite for any order of ejectment. If this objective is to be achieved, it is essential that both landlord and tenant must state all the facts specifically and expressly in their pleadings before they enter on evidence. In its absence, the proceedings will be a fertile source of objections that the tenant was taken by surprise because the landlord had not made specific averments in his pleadings and the objection by the landlord that the tenant had not raised specific objection in his reply. In a large number of cases, it has been seen that after a long time, the Appellate Authority or the High Court, are required to deal with the question whether amendment of the pleadings

by the landlord should be allowed or not. This results in unnecessary prolonged litigation and avoidable burden of expenditure consequent thereto. Such a course is neither in the interest of the landlord nor the tenant. The interest of speedy justice makes it imperative that both the landlord and the tenant must be absolutely clear in their minds from their respective pleadings as to what case is required to be proved by the landlord and rebutted by the tenant. Viewed from any angle, there is no escape from the conclusion that the landlord must make specific averments in regard to the ingredients contained in Sub-clauses (b) and (c). In my considered opinion, the judgment of the Division Bench in Krishan Lal Seth's case (1961-63 Pun L.R. 865) (supra) so far as it lays down that it is not necessary for the landlord to plead the ingredients of Sub-clauses (b) and (c) in the pleadings does not lay down good law and the same is reversed."

(12) Following the aforesaid Full Bench judgment, this Court in *Joginder Singh Sawhney versus Harbans Lal (18)*, had recorded as under:-

9. I have thoughtfully considered the rival submissions made by learned counsel for the parties and after perusing the record I have reached the conclusion that the landlord- petitioner has miserably failed to make out a case for ejection of the tenant respondent from the demised premises. The landlord petitioner has not even pleaded the basic ingredients in the application that he was not occupying another residential building in the concerned urban area and has not vacated such residential building. In para 2(iii) of the application filed under Section 13 of the Act, the landlord- petitioner has only mentioned a part of substantive facts as envisaged by Section 13(3)(a)(i) of the Act, namely, that he had not vacated such a residential building. He in fact concealed the facts. Section 13(3)(a)(i) of the Act reads as under;-

"13. Eviction of tenants.-

(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; (emphasis added)

XX XX XX XX

Provided further that where the landlord has obtained possession of a residential building or rented land under the provisions of Sub-clause (i) or Sub-clause (v) of Clause (a) or Clause (b), he shall not be entitled to apply again under the said provisions for the possession of any other building or rented land of the same class;"

10. A perusal of the aforementioned section shows that in case of residential buildings ejection could be sought by a landlord by claiming that he is not occupying any other residential building in the concerned area. There is not even an averment to this effect in the ejection application. Therefore, the judgment of the Full Bench in the case of Sh. Banke Ram (*supra*) as well as Raman Mal (*supra*) and Joginder Pal's case (*supra*) would squarely cover the controversy in favour of the tenant-respondent. Moreover, the findings of the Rent Controller as affirmed by the Appellate Authority are that the ground of personal necessity has not been proved by the landlord-petitioner. It has further been found that two tenants, namely, Bishan Dass and Gurbachan Singh have left the possession of the premises under his tenancy. Even Paramjit Singh son of the landlord petitioner had appeared and deposed that he was not yet married. Therefore, the concurrent findings of fact recorded by the courts below cannot be considered to be without evidence and the landlord-petitioner has miserably failed to prove his bona fide necessity of the demised premises."

(13) From the above, it is concluded that the pleading of the ingredients enshrined in Section 13(3)(a)(i) seeking eviction on the ground of personal necessity are essential and mandatory. In the absence of the same, no order of ejection can be validly passed.

(14) Now the pleadings need to be scanned. The landlord- petitioner in paras 5 to 7 of the petition has pleaded as under:-

“5. That the respondents did not prove to be a good tenant in as much as the respondents have neither paid nor tendered the rent from 1.2.95 onwards and are in arrears of rent. Besides it the respondents have failed to vacate the premises on the request of petitioner No.1 as the petitioner requires the said premises for the use and occupation of his family members. It deserves to be mentioned that the petitioner is settled in England since 1960 and is having his own House i.e. 5-EDALEWAY Court House Green, Cobentery, Midland U.K. His son and daughter are also in England. The daughter of the petitioner who is around 22 years of age has completed her education and is likely to join the job in England whereas the son of the petitioner namely Navtej Singh is the student of History in Leicester University in England. The wife of the petitioner who was in Govt. Service and was working as Teachress under Block Primary Education Officer, Rayya, District Amritsar has sought retirement in the year 1989 and joined her husband in England. It deserves to be mentioned that the wife of the petitioner namely Mrs. Shavinder Kaur continued in service throughout her life and has spent better part of her life in India. After seeking retirement, she went to England and there she is unable to adjust herself because of the climatic conditions and different kind of culture in England. Moreover, she is also receiving her pension in England and has now finally decided to come back to India and to settle down in her own house in order to spend rest of her life in her motherland. Even petitioner No.1 is now getting his pension in England but is unable to come to India because his son is still a student. However, the petitioner too has decided to come down to India to spend remaining part of his life in his own country after the settlement of his two children in England. In these circumstances, the petitioner made requests to the respondents to vacate the premises as the same is required for his own use and occupation as well as for the use and occupation of his family members but to no avail.

6. That the respondent is now liable to be evicted from the premises on the following grounds:-

(a) That the respondent has neither paid nor tendered the arrears of rent w.e.f 1.2.95 onwards and is in arrears of rent.

(b) That the premises in dispute is required by the petitioner for his own use and occupation as well as for the use and occupation of his family members.

7. That the petitioner is not in occupation of any other premises in the urban area of Chandigarh nor he has vacated the same after the enforcement of the Rent Restriction Act.”

(15) Further, in paras 5 to 7 of the replication to the written statement submitted by the tenant-respondent, it had been averred as under:-

“5. That para 5 of the written statement is wrong and denied and that of the petition is reasserted. So far as the filing of the petition against the tenant on the top floor is concerned, the same is admitted to be correct. However, the said tenant has since vacated the premises. The petitioner No.1 has every intention to settle in India. It is absolutely wrong and denied that the wife of the petitioner lived with him for almost 35 years in UK. The major part of her service period was spent in India and now after retirement when she went to UK she could not adjust herself climatically and thus decided to shift to Chandigarh.

6. That para 6 of the written statement is wrong and denied and that of the petition is reasserted. The sub paras are replied as under:-

(a) That sub para (a) is wrong and denied. The rate of rent is not Rs.600/- per month but it is Rs.800/- per month. Rest of the averments are wrong and denied.

(b) That sub para (b) is wrong and denied and that of the petition is reasserted.

7. That para 7 of the written statement is wrong and denied. The petitioner is not in occupation of the first floor of the said house. Of course petitioner No.2 who is close relation of petitioner No.1 is in occupation of the first floor.”

The replication forms part of pleadings as held by Division Bench of this Court in *Salig Ram's* case (supra). It was held that replication is part of the pleadings and anything which is specifically stated therein and for the first time, has to be controverted.

(16) The combined reading of the aforesaid pleadings leaves no manner of doubt that the landlord petitioner had pleaded all the essential ingredients of Section 13(3) (a) (i) of the Act and there was no concealment of any fact in as much as second floor was vacated after the filing of the petition. Moreover, second floor is only a *barsati*.

(17) Under the last issue, the scope of Section 13(3) (a) (i) of the Act needs to be evaluated. Under Section 13(3)(a)(i) of the Act, a landlord can apply to the Rent Controller seeking possession of the demised premises where he requires it for his own bonafide requirement on fulfilment of following conditions:-

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

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

(18) Though the terminology of 'bonafide requirement' has not been defined in the Act but in **Raghunath G. Panhale's** case (supra), the Hon'ble Supreme Court has enumerated the following guidelines:-

“(i) Requirement of landlord must be both reasonable and bonafide.

(ii) The word “reasonable” connotes that requirement is not fanciful or unreasonable. It cannot be mere desire.

(iii) The word requirement coupled with the word reasonable means that it must be something more than mere desire but need not certainly be a compelling or absolute or dire necessity.

(iv) A reasonable and bonafide requirement is something in between a mere desire or wish on one hand that a compelling or dire or absolute necessity at the other end.

(v) It may not be need in praesenti or within reasonable proximity in the future. The word bona fide means that need must be honest and not be trained with any oblique motive.

(vi) Language of provision cannot be unduly stretched or strained as to make it impossible for landlord get possession. Construction of relevant statutory provision must strike a balance between right of landlord and right of tenant.

(vii) Court should not proceed on assumption that requirement of landlord was not bona fide and that tenant could not dictate to the landlord as to how he should adjust himself without getting possession of tenant premises.”

(19) The Hon'ble Apex Court in various pronouncements had laid down guiding principles to be followed by a court while adjudicating the bonafide requirement of a landlord which should be genuine, honest and conceived in good faith. In **M/s Rahabhar Productions Pvt. Ltd.**'s case (*supra*), it has been observed as under:-

“The phrase “*bona fide need*” or “*bona fide requirement*” occurs not only in the Delhi Rent Control Act but in the Rent Control legislation of other States also. What is the meaning of this phrase has been considered innumerable times by various High Courts as also by this Court and requires no citations to explain its legal implications. Even then reference may be made to the decision of this Court in **Ram Das v. Ishwar Chander and others, 1988(1) RCR 625**, in which it was indicated that “*bona fide need*” should be genuine, honest and conceived in good faith. It was also indicated that landlord's desire for possession, however honest it might otherwise be, has, inevitably, a subjective element in it. The “*desire*” to become “*requirement*” must have the objective element of a “*need*” which can be decided only by taking all relevant circumstances into consideration so that the protection afforded to a tenant is not rendered illusory or whittled down. These observations were made in respect of the provisions contained in E.P. Urban Rent Restriction Act, 1949.”

(20) In assessing the bonafide requirement of a landlord, it has to be kept in mind that the landlord is the best judge of his needs as laid down by the Apex Court in *Prativa Devi's* case (supra) in the following terms:-

“2....The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The High Court is rather solicitous about the age of the appellant and thinks that because of her age she needs to be looked after. Now, that is a lookout of the appellant and not of the High Court. We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property. We accordingly reverse the finding reached by the High Court and restore that of the Rent Controller that the appellant had established her bona fide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances.”

It was further recorded :-

“4. In the premises, the judgment of the High Court disallowing the appellant's claim cannot be supported. In considering the availability of alternative accommodation, the Court has to consider not merely whether such accommodation is available but also whether the landlord has a legal right to such accommodation. The appellant had established her bona fide personal requirement of the demised premises under Section 14(1)(e) of the Act and her claim could not be disallowed merely on the ground that she was staying as a guest with a family friend by force of circumstances.”

(21) The principles for determining whether the requirement of a landlord is bonafide or not, the following guiding principles were enunciated in *Atma S. Berar's* case (supra):-

“11. Recently, in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*, (1999) 6 SCC 222, this Court in a detailed judgment, dealing with this aspect, analysed the concept of bona fide requirement and said

that the requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to himself _____ Whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest? If the answer be in positive, the need is bona fide. We do not think that we can usefully add anything to the exposition of law of requirement for self occupation than what has been already stated in the three precedents."

(22) The bonafide requirement of a landlord depends upon facts and circumstances of each case and there cannot be a strait jacket formula for this purpose. The burden lies upon the landlord to establish that the accommodation is bonafide required by him for personal use. While adjudicating whether the requirement is bonafide or not, it is to be seen objectively and not subjectively by the Court though, the landlord is the best judge of his requirement. The need of the landlord must exist so as to distinguish it from mere wish or desire.

(23) In order to effectively adjudicate the revision petition and also to see whether there exists personal bonafide necessity of the landlord or not in the present case, the evidence produced by the parties need to be examined.

(24) The landlord had filed ejection petition on 16.12.1997 claiming ejection of the tenant from the ground floor consisting of four rooms, one kitchen, one bathroom, one latrine, one store, back and front courtyard of House No.2066, Sector 21-C, Chandigarh. The landlord had examined AW1 Sawinder Kaur, AW2 Gurdial Singh and AW3 Amar Singh. The learned Rent Controller in the order dated 11.9.2001 had recorded that wife of landlord-Gurdial Singh is Sawinder Kaur whereas her name had been recorded as Surinder Kaur while recording evidence due to some inadvertence and the same was corrected at that stage. AW1 Sawinder Kaur, while appearing as a witness, had deposed that after her retirement in January 1990, she went to England to settle there as her husband had

already settled there since 1960. She wanted to join him there, but due to climatic conditions and culture, she was unable to adjust herself there as she suffered from backache and became rheumatic Ex. A2, medical prescription was also produced in support thereof. It was further stated that she wanted to occupy ground floor of her house at Chandigarh as it was difficult to climb stairs. Ex.A1 was also proved whereby she intended to transfer her Old Age Society Security Pension to India permanently. The landlord appearing as AW2 has supported his case and corroborated the evidence of his wife--AW1. On the other hand, the tenants examined RW1 Ramesh Kumar and RW2 - Shiv Kumar. The testimony of RW1 - Ramesh Kumar who was examined with the summoned record of the wife of Gurdial Singh in his cross examination had admitted that he had not brought the record of Sawinder Kaur wife of Gurdial Singh. Thus, no evidentiary value can be attached to his testimony. Shiv Kumar -- RW2 was a tenant on 2nd floor of the house and had vacated the same in view of compromise between him and the landlord. Moreover, the respondents chose not to appear in the witness box to support their case. It is not disputed that the second floor was vacated in 1998 during the pendency of the eviction petition and, therefore, there was no concealment of any fact as alleged. It has been authoritatively held in *Raman Malhotra's* case (supra) that it is the landlord who is the best judge of his needs and his sworn testimony to the effect was held to be sufficient to establish his bonafide personal necessity. The relevant observations read thus:-

“There is no denying the proposition that eviction on the ground of personal necessity can be ordered in case the need of the landlord is found to be genuine by the Court. Mere wish of the landlord cannot be made the basis to evict a tenant whose rights are otherwise fairly safeguarded by the statutory provisions. Landlord's desire for possession must pass the test of 'requirement' or 'need' before the same can be gratified. For this, the Court is to take into consideration the various relevant circumstances before evaluating as to whether the need is a genuine one or solely set up with a view to evict a tenant. In the instant case, there is the sworn testimony of the landlord that he intends to permanently settle at Nabha which is his native place and where his other near relations are permanently residing. The landlord is the best judge in the circumstances. He, in fact, is to

decide as to whether he would prefer to settle at Nabha or remain at Delhi or any other place. Various judicial pronouncements of this Court have held that it is the landlord alone to choose where to settle (see **Smt. Tripta Soni and another v. Shri S.P.Jain**, 1987(1) Punjab Law Reporter 417 : [1987 (1) Rent Law Reporter 183] and **Hazara Singh Kandolha v. Mandan Lal** 1987(1) Punjab Law Reporter 472 : [1987(1) Rent Law Reporter 273]....”

Further, the choice of the landlord is to prevail. It is only in circumstances where ulterior motive is established, that eviction may not be ordered. In the present case, the landlord – Gurdial Singh and his wife after retirement wish to stay at the ground floor due to their old age and therefore, their personal requirement cannot be doubted. Moreover, second floor is only a *barsati*. The possession of Amar Singh AW3 of the first floor (not as a tenant), would not dis-entitle the landlord to seek eviction on the basis of bonafide personal necessity as the landlord due to their old age wish to live at the ground floor as noticed hereinbefore. The tenant cannot dictate terms or decide where the landlord should live in his own house. The petitioner landlord had thus established the essential ingredients of Section 13(3) (a) (i) of the Act. The Rent Controller was, therefore, right in concluding that the petitioner landlord bonafide required the demised premises for their personal use and occupation. The appellate authority had wrongly discarded Ex. A.2 - the medical prescription of Smt. Sawinder Kaur produced by the landlord and also erroneously relied upon testimony of RW1 Ramesh Kumar whereas he had specifically stated that he had not brought the record of Sawinder Kaur wife of Gurdial Singh but had brought the record of another lady Smt. Surinder Kaur, daughter of Thakur Singh. The appellate authority had failed to appreciate the evidence on record correctly in its proper perspective and, therefore, the finding of fact would cease to be a mere finding of fact and the conclusion would not be legally sustainable as the judgment stands vitiated. Thus, the lower appellate authority was not right in dismissing the eviction petition.

(25) Accordingly, the revision petition is accepted and the order of the appellate authority dated 5.9.2006 is set aside and eviction petition filed by the petitioners is allowed.