

Before G.S. Sandhawalia, J.

PAWAN KUMAR PADAM @ PAPPU—Petitioner

versus

AMARJIT MIGLANI—Respondent

CR No. 3264 of 2010

April 4, 2012

East Punjab Urban Rent Restriction Act, 1949 - S. 13 - Respondent/landlord had filed eviction petition on grounds of non-payment of rent, personal necessity and the tenant having ceased to occupy the building - Petition allowed on grounds of personal necessity and the tenant having ceased to occupy building - Appeal

dismissed - In revision filed - Held that the personal necessity of the landlord's brother would come within the definition of the phrase, "personal necessity" as contemplated under the Act - Further held, that it is for the landlord to judge personal necessity, and it is neither for a court nor a tenant to make such a judgment - Civil Revision dismissed.

Held, that this submission is not acceptable in the present facts and circumstances of the case as admittedly, the pleadings of the parties go on to show that the property in question has been inherited by the respondent/ landlord and in the pleadings, it is submitted that the house belonged to Krishna Devi, the mother of the landlord and after the death of Krishna Devi, all the brothers had decided to settle the dispute regarding the property and the brother of the landlord Kulwant Rai was residing with the present respondent and once they had inherited the property in question from their mother, his requirement was bona fide for his personal use. That the submission is without any basis especially in view of the fact that the Courts below have specifically noticed that the bona fide necessity of the landlord has not been rebutted by even uttering a single word in the affidavits of the witnesses of the tenants. That in all the affidavits, it has not even been averred that the need of the landlord was not bona fide. The Hon'ble Supreme Court of India in 2003 SC 2024 Dwarkaprasad vs. Niranjan and another has held that the requirement of the own brother would be bona fide requirement of the landlord.

(Para 13)

Further held, the appellate authority though has wrongly taken into consideration the fact that the brother has died accepting at a face value the argument of the counsel for the tenant though counsel for the petitioner herein has conceded that there was no such material on record that Kulwant Rai has expired. It is settled proposition of law that the need of the landlord is not to be dictated by the tenant and has to be examined in a broader aspect. The landlord is the sole judge of his need that where he or she wants to live and it is not for the Courts to substitute their opinion. Once both the Courts have found that the need of the landlord was there for the premises in question and then in revisional jurisdiction this Court would not reverse the findings and merely because Kulwant Rai was having his own house at Panchkula would not be sufficient to dispel his need to settle at

Samrala once admittedly he has not vacated any house at Samrala and neither had any house at Samrala. The Hon'ble Supreme Court of India has held that the bona fide requirement of the landlord in cases of personal use and necessity has to be seen from his view point and not from the view point of the tenant.

(Para 14)

Harkesh Manuja, Advocate, *for the petitioner.*

Vikas Bahl, Advocate, *for the respondent.*

G.S. SANDHAWALIA, J.

(1) The present revision petition has been filed by the tenant, who is aggrieved against the concurrent findings of the Courts below, whereby the petition of the landlord for ejection has been allowed on the ground that the tenant had ceased to occupy the premises in question and that the premises were required for the personal use and necessity of the brother of the landlord.

(2) The landlord filed the petition for ejection of the tenant from the residential house bounded as East-Street, West-House of Lachhman Singh, North-Street, South-Rasta, situated in Ward No. 4/197, Samrala, Tehsil Samrala, District Ludhiana. In the ejection application, it was pleaded that that the house was possessed by Smt. Krishna Devi-deceased mother of the landlord and the house had been let-out by the landlord with the consent of the deceased mother and other brothers on 04.01.1994 @ '800 per month and thus there was a valid relationship of landlord and tenant. The ground of ejection was arrears of rent from April 2000 plus house tax for the year 1999-2000 and electricity consumption charges, water supply and sewerage charges w.e.f. 1999 to 2001. It was also specifically pleaded that the tenant had shifted to his own house situated near Dharamshala Kalu Ram, Near Dabi Bazar, Samrala in the month of May 2001 and the house in question was lying vacant and locked without any reason and the tenant was not residing in the house in question and electric supply had been disconnected and the respondent had ceased to occupy the house in question. On the issue of personal necessity, the pleadings were that all the brothers had decided to settle the dispute regarding the property and the brother of the landlord Kulwant Rai was

residing with the landlord and married with grown up children and required independent residence. So, the house was required for the bona fide residence of Kulwant Rai, brother of the landlord. Initially, the tenant was proceeded against ex parte on 27.07.2002 and on 09.08.2004, moved an application for setting aside the ex parte proceedings, which was allowed on 13.10.2004.

(3) In the written statement filed by the tenant, the rate of rent was pleaded @ '200 per month and the ownership of Krishna Devi was admitted and the relationship of landlord-tenant with Hukam Chand, father of the landlord was pleaded. The relationship of the landlord and tenant was denied with the present respondent and it was mentioned that the tenant had paid the rent to Hukam Chand upto April 2001 @ '200 per month and also paid electricity, water supply and sewerage charges. The factum of shifting from the house and keeping the premises locked was denied and it was pleaded that the fact can be ascertained by appointment of the Local Commissioner. Similarly, the averment that the house in question was required for the residence of Kulwant Rai was also denied.

(4) On the basis of the pleadings, the following issues were framed by the Rent Controller:-

- "1. What is the rate of rent? OPA*
- 2. Whether the respondent is in the arrears of rent w.e.f. April-2000 and arrears of house tax w.e.f. 1999-2000? OPA*
- 3. Whether the respondent has ceased to occupy premises in dispute without any reason, if so, its effect? OPA*
- 4. Whether the petitioner requires the premises in dispute for his personal necessity? OPA*
- 5. Whether the petition is not maintainable? OPR*
- 6. Relief."*

(5) The landlord examined 3 witnesses, whereas the tenant/petitioner examined 6 witnesses. After taking into consideration the evidence of the parties, the Rent Controller came to the conclusion that the relationship of landlord-tenant was there between the parties since the tenant admitted in

cross examination that the father was the owner of the house and the same was given on rent and after the death of his father, Amarjit Miglani was receiving the rent. The rate of rent was settled at '200 per month and in view of the tender made, it was held that there were no arrears of rent. On issue no. 3 of cease to occupy, it was held that there were the statements of PW-1 and PW-2 that the house was lying locked for the last 3-4 years. After taking into consideration the electricity bills Ex. PX (Ex. D-5, Exs. D-1 and D-3), the Rent Controller came to the conclusion that the electricity connection had been disconnected and again restored and, therefore, he came to the conclusion that the electricity connection in the house has been disconnected and it stood proved since non-consumption of electricity would lead to an inference that the tenant was not residing in the premises in question. Similarly, on issue no. 4, it was held that Kulwant Rai, the brother required the premises for the bona fide necessity and the tenant had not mentioned in his affidavit that the need was not bona fide and, accordingly, by holding the petition as maintainable, allowed the ejection petition vide order dated 11.12.2009. The tenant preferred an appeal before the Lower Appellate Court at Ludhiana, which was dismissed on 25.01.2010 and resultantly, the present revision petition has been filed.

(6) Counsel for the petitioner has argued that disconnection is for the period 2008-09, whereas the petition was filed on 13.09.2001. It is contended that the landlord has not produced the bills pertaining to the year 2001 to prove that the electricity connection stood disconnected. Reference is made to Ex. D-5 which is the bill-cum-receipt for the period 04.07.2002 to 03.09.2001 prior to the filing of the petition. It is contended that there is reconnection fees in the said bill but nobody has been examined from the electricity department to prove the fact that the electricity was not being consumed for the relevant period. Reliance is placed upon *Faqir Singh versus Municipal Council, Dharamkot and another (1)*, to contend that the burden to prove regarding the question of the shop being closed had to be on the landlord and the initial onus had to be discharged by the landlord and the tenant could not be asked to discharge the burden of disproving the said ground. Similarly, reliance has been placed upon *Geeta Bhalla and others versus Krishan Kumar (dead) through L.Rs. (2)*,

(1) 2006 (2) HRR 54

(2) 2006 (2) HRR 603

to contend that the onus would fall on the landlord as he has to stand on his own legs and could not take the benefit of the weakness in the case of the tenant. Regarding the consumption of the electricity for the subsequent period, it is contended that receipts show that energy was being utilized and, therefore, no adverse inference could be drawn and reliance was placed upon Ex. D-1 which pertains to the period 01.11.2008 to 01.01.2009. The receipts Ex. D-2 showed that Rs.460 was paid on 06.02.2009. Similarly, Ex. D-3 pertains to the energy consumed from 01.09.2008 to 01.11.2008 and the bill was dated 24.11.2008 and payment of Rs.1,290 had been made on 03.12.2008, which was much later than the period in dispute which pertains to the period prior to the filing of the petition on 13.09.2001.

(7) On the contrary, the landlord argued that in revisional jurisdiction once there were concurrent findings of the Courts below that the tenant had ceased to occupy, then the High Court would not exercise its jurisdiction and act as third appellate court and reverse the findings of the Courts below. Reliance was placed on *Shiv Lal* versus *Sat Parkash and another* (3). It was pleaded that it was the categorical case of the landlord that the house was lying vacant and the respondent had shifted to his own house which is situated near Dharamshala Kalu Ram, Near Dabi Bazar, Samrala in the month of May 2001 and the electric supply had been disconnected and it was contended that this fact had not been categorically denied. Accordingly, it was contended that Ex. D-5 showed that there was a reconnection charge by the electricity department for a sum of Rs.353 and there was an entry of sundry charges on account of reconnection fees pertaining to the bill issued on 01.10.2002 which showed that there was no electricity connection and thus substantiated the allegations of the landlord. Accordingly, it is contended that it has been held by this Court in *Shiromani Gurdwara Parbandhak Committee* versus *Balbir Singh* (4), that the landlord had to discharge the initial burden of proof and the onus then shifted upon the tenant. Reliance is also placed upon *Harinder Singh* versus *M/s. Bali Ram Sansari Lal* (5), to contend that the non-consumption of electricity assumes importance and lead to the presumption of non-user of the said shop and it was for the respondent tenants to prove that there was the use

(3) 1993 AIR (SC) 275

(4) 2010 (3) Law Herald (P&H) 2598

(5) 2000 (2) RCR (Rent) 81

of the shop. Reliance is also placed upon *Kishan Chand* versus *Parmeshwari Dass* (6), to contend that the tenant was in a position to have the best evidence to show that they were using the premises and if their best evidence was not produced, then it would lead to a circumstance which would go to support the allegation of the landlord regarding the non-occupation of the shop as contemplated by the Rent Act.

(8) The submission made by the counsel for the petitioner is not acceptable in view of the fact that in the present case, there was a categorical pleading regarding cease to occupy the house in question. The relevant pleading in paragraph (iii) reads as under and the corresponding reply is also reproduced:-

"iii) That now the respondent has shifted to his own house which is situated near Dharamshala Kalu Ram, near Dahi Bazar, Samrala in the month of May 2001. It is further submitted that now the house in question is lying vacant and locked without any reason or cause on the spot and the respondent is not residing in the house in question. Moreover the electric supply has been dis-connected by the electric board for not paying the electric bills. Thus the respondent ceased to occupy the house in question."

Sub para no. iii of para no. 3 of the petition is wrong and denied. It is wrong that the respondent has shifted to his own house in the month of May 2001. It is also wrong that the house in question is lying vacant and locked without any reasons of cause on the spot and the respondent is not residing on the house in question. This fact can be ascertained by appointment of Local Commissioner."

(9) It would be thus clear from the above pleadings inter se the parties that there was no categorical denial to the fact that the electric supply had been disconnected by the electricity board for not paying the electric bills. Section 13 sub clause 2(v) provides that where the tenant has ceased to occupy the building for a continuous period of 4 months without reasonable cause, he is liable to be ejected. The said provision reads as under:-

"(v) that where the building is situated in a place other than a hill station, the tenant has ceased to occupy the building for a

continuous period of four months without reasonable cause, the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application."

(10) In the present case, it is pertinent to mention that initially the rent petition was filed on 13.09.2001 and the respondent was proceeded against ex parte on 27.07.2002. The landlord examined his witnesses on 30.08.2003 and 17.05.2004 and on 09.08.2004 an application for setting aside the ex parte order came to be filed. Eventually, the landlord counsel, gave a statement that he had no objection in setting aside the ex parte order on 13.10.2004. It was thereafter that the written statement was filed on 08.11.2004. It is obvious that the tenant took advantage of this period and got a reconnection done which is reflected in Ex. D-5, which shows that sundry charges on account of reconnection have been levied in the bill-cumreceipt dated 01.10.2002. It is thus apparent that the landlord had discharged the onus by specifically alleging the fact that the electricity connection had been disconnected and the said fact has not been specifically denied in the pleadings. The tenant has placed on record Exs. D-1 to D-4 to show that the electricity was consumed but as noticed above, it is for a period which is much subsequent in time and does not pertain to the period prior to the filing of the petition. Ex. D-5 would show that the tenant had ceased to occupy the building as there was disconnection of electricity from the premises in question and it was for the tenant to justify for what reason the reconnection was got done. In such facts and circumstances, it can be safely held that the judgments relied upon by the tenant namely *Faqir Singh vs. Municipal Council, Dharamkot* and *Geeta Bhalla and others versus Krishan Kumar (supra)* would not be applicable to the facts and circumstances of the case. In fact the initial onus had been discharged by the landlord and it was for the tenant to justify that he had been paying electricity charges for the period 4 months prior to the filing of the eviction petition on 13.09.2001. This Court in *Harinder Singh's case (supra)* has held as under:-

"13. Therefore, in addition to the oral evidence (which has been led by both the sides), the circumstance which arises regarding non-consumption shown by the electricity reading, assumes

importance and the burden of proving user of the shop in question had then to be discharged by the respondent and, therefore, the presumption of non-user of the said shop can be said to have arisen in favour of the petitioner and it was for the respondent to prove the user by explaining the presumption that has arisen. This having been not done, I find that the Courts below have not decided the case in correct interpretation of the principle of burden of proof. This being so, the petitioner can be said to have proved the non-user of the shop in question for more than four months, as alleged."

(11) Having failed to do so, the reasoning adopted by the Courts below cannot be faulted and thus the tenant is liable to be ejected on this ground alone.

(12) The second submission made by the tenant was that the claim for ejection was on the ground that the property was required for the use and occupation of Kulwant Rai, the brother and the requirement of Kulwant Rai, who was residing separately would not fall within the requirement for the occupation of the landlord. Counsel for the petitioner relied upon *Radhey Shyam versus Raj Kumar (7)*. It was also contended that the brother was not examined and the provisions of Rent Act only provided the benefit to be given to the son under Section 13(3)(a)(i) sub clause (iv) and, therefore, the brothers would not fall within the extended family of the landlord.

(13) This submission is not acceptable in the present facts and circumstances of the case as admittedly, the pleadings of the parties go on to show that the property in question has been inherited by the respondent landlord and in the pleadings, it is submitted that the house belonged to Krishna Devi, the mother of the landlord and after the death of Krishna Devi, all the brothers had decided to settle the dispute regarding the property and the brother of the landlord Kulwant Rai was residing with the present respondent and once they had inherited the property in question from their mother, his requirement was bona fide for his personal use. That the submission is without any basis especially in view of the fact that the Courts below have specifically noticed that the bona fide necessity of the

landlord has not been rebutted by even uttering a single word in the affidavits of the witnesses of the tenants. That in all the affidavits, it has not even been averred that the need of the landlord was not bona fide. The Hon'ble Supreme Court of India in *Dwarkaprasad versus Niranjan and another* (8) has held that the requirement of the own brother would be bona fide requirement of the landlord. The relevant para of the said judgment reads as under:-

"17. In the case in hand the landlord is the head of the family being the eldest amongst the brothers. All the brothers and sisters including mother of the landlord live with him as members of the joint Hindu family. It is his obligation to settle his younger brothers in business as it is his obligation to settle his children in business. Therefore, he can legitimately seek eviction of a tenant by pleading that he needs demised premises to settle his son and his younger brothers in business. This being the legal position, the conclusion is inevitable i.e. the plaintiff landlord must succeed and a decree for eviction is liable to be passed in his favour for the entire demised premises. Accordingly this appeal is allowed. The impugned judgment of the High Court which has granted only a decree for half portion of the suit premises is hereby modified. The landlord is held entitled to decree for possession of the entire demised premises. The decree for possession passed by the lower appellate court with respect to the entire suit premises is hereby restored. The respondents are granted three months time to vacate the suit premises and hand over its peaceful vacant possession to the plaintiff-landlord. Parties are left to bear their respective costs."

(14) The appellate authority though has wrongly taken into consideration the fact that the brother has died accepting at a face value the argument of the counsel for the tenant though counsel for the petitioner herein has conceded that there was no such material on record that Kulwant Rai has expired. It is settled proposition of law that the need of the landlord is not to be dictated by the tenant and has to be examined in a broader aspect. The landlord is the sole judge of his need that where he or she wants to live and it is not for the Courts to substitute their opinion. Once both

the Courts have found that the need of the landlord was there for the premises in question and then in revisional jurisdiction this Court would not reverse the findings and merely because Kulwant Rai was having his own house at Panchkula would not be sufficient to dispel his need to settle at Samrala once admittedly he has not vacated any house at Samrala and neither had any house at Samrala. The Hon'ble Supreme Court of India has held that the bona fide requirement of the landlord in cases of personal use and necessity has to be seen from his view point and not from the view point of the tenant.

(15) Keeping in view the above facts and circumstances, no case for exercising the revisional jurisdiction is made out and the present revision petition is thus dismissed.

P.S. Bajwa