

that appellant was posted in Hissar where he lived in an official residence and his daughter was staying in another city in connection with her studies.

During pendency of eviction petition before the Rent Controller, the appellant's son got married. A part from the son his daughter-in-law also came to live with appellant. The daughter of the appellant also got married and though she lived with her husband, both of them frequently came to visit and stayed overnight with appellant.

The Rent Controller did not accept the appellant's case and rejected the eviction petition. Five days after the order of Rent Controller, the appellant retired from service on 31st August, 2004. In appeal before the appellate authority, he produced his retirement order. The appellate authority allowed the appellant's appeal and accepted the case of personal necessity taking into consideration all the developments which took place since the institution of proceedings. High Court allowed the revision filed by the tenant and restored the order of Rent Controller. Hence the present appeal.

The respondent resisted the appeal on the grounds that the event of the appellant's retirement from service, arising subsequent to the dismissal of eviction petition by Rent Controller was never brought on record in accordance with law either by making any amendment in the pleadings or by a petition for bringing on record any additional evidence; and that the order of eviction was also based on the growing needs of the appellant's son but in that connection there was no pleading as required under s.13(3)(a)(ii) of the Act.

Allowing the appeal, the Court

HELD: 1. The respondent-tenant does not deny the fact that the appellant retired from service on 31st August, 2004. As a matter of fact, when asked pointedly, the Re-

A spondent was not in a position to deny that the appellant had in fact retired from service on 31st August 2004. He, however, contended that the fact of the appellant's retirement had not come before the court in accordance with law. The appellant's retirement from service on the date as stated by him being admitted by the respondent, the Appellate Authority was fully justified in taking that development into consideration. No prejudice was caused to the respondent because the appellant did not make any formal amendments in the pleadings or because the retirement order filed before the Authority was not accompanied with a formal petition under Order 41 Rule 27 CPC. The contention raised on behalf of the respondent is not only highly technical but it is calculated to frustrate the proceeding coming to a just conclusion by making it quite incidental and completely subservient to the Court's procedures. [Paras 13, 14] [421-G, 422-A,E,F,G]

2. S.13(3) (a) (ii) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 would have application only in case the eviction is sought for the son's requirement independently and separately from the landlord. In this case, the son and his wife and children are part of the landlord's family and all of them are living together. The accommodation of the son, his wife and their children is part of the landlord's personal necessity. The case of the appellant clearly falls under s.13(3)(a)(i) that deals with the situation where the landlord requires the tenanted premises for his own occupation and it does not attract s.13(3)(a) (ii) that deals with the requirements of the son of the landlord. [Para 16] [423-F,G,H, 424-A]

G *Joginder Pal v. Nawal Kishore Behal* (2002) 5 SCC 397 – relied on.

Om Prakash Gupta v. Ranbir B. Goyal (2002) 2 SCC 256; *Ram Kumar Barnwal v. Ram Lakhan* (2007) 5 SCC 660 – referred to.

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Case Law Reference

(2002) 2 SCC 256	referred to	Para 12
(2007) 5 SCC 660	referred to	Para 12
(2002) 5 SCC 397	relied on	Para 16

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 4680
of 2008

From the final Judgment and Order dated 3.4.2007 of the
High Court of Punjab and Haryana at Chandigarh in Civil Revi-
sion No. 2344 of 2005

Manoj Swarup, Rohit Sohgaura and Tejvir S. Bhatia for
the Appellant.

D.S. Chadha and Amita Gupta for the Respondent.

The Judgment of the Court was delivered by

AFTAB ALAM, J. 1. Heard counsel for the parties.

2. Leave granted.

3. This appeal arises for an eviction proceeding instituted
by the appellant, the landlord, in terms of Section 13 of the
Haryana Urban (Control of Rent & Eviction) Act, 1973. The evic-
tion of the respondent, the tenant, was sought on a number of
grounds, of which only personal necessity now remains relevant,
and we, accordingly, propose to take note of facts germane to
that ground. The Rent Controller, Faridabad rejected the Evic-
tion Petition (24 of 1998) filed by the appellant by order dated
26 August, 2004. The Appellate Authority, however, allowed the
appellant's appeal (Rent Appeal No.6 of 2004) and ordered
the respondent's eviction by judgment dated 28 March, 2005.
The High Court in turn, set aside the appellate order and re-
stored the judgment and order passed by the Rent Controller
vide. the judgment and order dated 3 April, 2007 in Civil Revi-
sion No.2344 of 2005 (O & M), preferred by the respondent.
The High Court allowed the respondent's revision and dismissed

A the eviction petition filed by the appellant primarily on the ground
that the appellant had failed to make the necessary averments
in the Eviction Petition as required by Section 13(3)(a)(i) of the
Act. The finding of the High Court that led to the dismissal of the
B appellant's case is admittedly based on an error of record and
the order coming under appeal is therefore liable to be set aside
on that score alone. But before proceeding further we must re-
count the relevant facts and the respective views taken by the
courts below.

C 4. The appellant, in August 1995, inducted the respondent
as a tenant in a portion of his dwelling house at no.1007 in Sec-
tor 14, Faridabad. The let-out portion consisted of one garage-
room and one bed room with attached bath and toilet. The por-
tion of the house that remained with the landlord consisted of
two bed rooms, baths and toilets and a kitchen.

D 5. On 13 April, 1998 the appellant filed the petition for evic-
tion of the respondent from the tenanted portion of the house
inter alia on grounds of personal necessity. In the Eviction Peti-
tion, it was pleaded that the appellant needed the entire house,
E including the part tenanted by the respondent for himself and
his family. It was stated that the appellant's family consisted of
himself, his wife and a son and a daughter, both of whom were
of marriageable age and were likely to be married soon. The
respondent resisted the eviction proceeding and controverted
the plea of personal necessity by pointing out that the appellant
F was an Executive Engineer in the Haryana Electricity Board
and he was posted in Hisar where he lived in an official resi-
dence. His daughter stayed in Sholapur in connection with her
studies. It was contended that the plea of personal necessity
was false and unfounded.

G 6. The eviction proceeding remained pending before the
Rent Controller for over six years in course of which a number
of developments took place that, according to the appellant,
H further aggravated his need for a larger space and he required,
more than before, the tenanted portion of his house. The

appellant's son was married in January 1999 and his wife (the appellant's daughter-in-law) also came to live with them in that house. In 2004, he had one daughter who was about two years old at that time. (It was stated before us that the appellant's son has now two female children aged 8 years and 6 years respectively). During the pendency of the proceeding before the Rent Controller, the daughter of the appellant was also married and though she lived with her husband, both of them frequently came to visit and stayed over-night with her parents. The appellant, therefore, needed a separate room not only for her son and daughter-in-law but also for her daughter and son-in-law. Another significant development was that the appellant's retirement from service had come very close and he had no other place to live than his own house, a portion of which was the subject matter of the proceeding.

7. The rent controller did not accept the appellant's case and rejected the Eviction Petition by order dated 26 August 2004.

8. Against the order passed by the Rent Controller the appellant filed appeal before the Appellate Authority on 27 September 2004. It is significant to note here that five days after the order was passed by the Rent Controller the appellant retired from service on 31 August, 2004 and before the Appellate Authority he produced his retirement order dated 25 August 2004 which was marked as 'X'.

9. The Appellate Authority allowed the appellant's appeal, accepted the case of personal necessity and ordered the respondent's eviction. It took into consideration all the developments that took place since the institution of the proceeding and which were amply borne out from the evidences led before the Rent Controller. As regards the appellant's retirement from service the Appellate Authority made the following observations:

"Admittedly, A.K.Jain, petitioner has since retired from service with effect from 31-8-2004 vide order dated 25-8-2004 mark X and now he has shifted in his house at

A Faridabad with his wife in which the respondent is a tenant
in some portion of the house. The petitioner is not having
any otherwise in Faridabad where he alongwith his wife
start living after his retirement from service. The petitioner
has the right to live with dignity after his retirement in his
B own house which was constructed by him while he was in
service.”

[Emphasis added]

The Appellate Authority further observed as follows:-

C “The petitioner has constructed his house during his service
career. *He has retired from his service.* He wants to reside
in his house constructed by him during his service careers
but the respondent is bent upon not to allow the petitioner
to reside in the same house which was constructed by
D him on expenditure of huge amount while in service.”

[Emphasis added]

The Appellate Authority accordingly found and held:-

E “.....that the petitioner was entitled to get possession of
the rented portion of the house on account of personal
necessity and the respondent was liable to be evicted on
account of the personal necessity of the landlord.”

F 10. The respondent-tenant filed revision before the High
Court against the order of eviction passed by the Appellate
Authority. As noted above, the High Court allowed the revision,
set aside the order passed by the Appellate Authority and re-
stored the order of Rent Controller.

G 11. The High Court order coming under appeal before us
is based on the premise that in the eviction petition filed by him
the appellant-landlord had failed to make the necessary decla-
rations as required under Section 13(3)(a)(i)(b) and (c) of the
Act. In order to show the omissions in the pleadings the High
Court extracted certain paragraphs from what it supposed to
H be the eviction petition filed by the appellant. Unfortunately, the

High Court committed an error of record and the extracts re- A
produced in the High Court judgment are not from Rent Petition
No.24/1998, from which the revision arose but those are from a
different petition filed later by the appellant. Learned counsel
appearing for the respondent-tenant fairly accepted that the B
statements quoted in the High Court judgment are not from the
eviction petition filed by the appellant and in that regard the High
Court has committed an error of record. For our satisfaction we
also referred to Rent Petition No.24 of 1998 which is a part of
Annexure P-1 to the S.L.P. On a perusal of paragraphs 5 (i) to C
(iv) we are satisfied that the pleadings fully comply with the
requirements of Section 13(3)(a)(i) (b) and (c) of the Act. The High
Court order is thus liable to be set aside on this score alone.

12. Though conceding that the High Court order suffered D
from a fatal error of record, learned counsel appearing for the
respondent-tenant sought to resist the appellant's appeal on
two other grounds. The counsel first submitted that in the year
1998 when the eviction proceeding was instituted the appellant
was very much in service. He retired from service a few days
after the eviction petition was dismissed by the Rent Controller.
However, the event of the appellant's retirement from service, E
arising subsequent to the dismissal of the proceeding by the
first court was never brought on record in accordance with law
either by making any amendment in the pleadings or by a peti-
tion for bringing on record any additional evidence. All that was
done was to simply file the retirement order before the Appel- F
late Authority where it was marked as 'X'. The Appellate Au-
thority had, therefore, committed an error in taking it into con-
sideration in support of the appellant's plea of personal neces-
sity. In support of the submission he relied upon the decisions
of this Court in (i) *Om Prakash Gupta V. Ranbir B. Goyal*, (2002) G
2 SCC 256 and (ii) *Ram Kumar Barnwal V. Ram Lakhan*, (2007)
5 SCC 660.

13. We are unable to accept the submission. It needs to
be clarified that the respondent-tenant does not deny the fact
that the appellant retired from service on 31 August, 2004. As a H

A matter of fact, when asked pointedly, learned counsel for the
Respondent was not in a position to deny that the appellant had
in fact retired from service on 31 August 2004. He, however,
contended that the fact of the appellant's retirement had not
come before the court in accordance with law. It is noted above
B that the Appellate Authority observed that the retirement of the
appellant was an admitted fact. It may further be noted that be-
fore the High Court a petition under Order 41 Rule 27 was filed
on behalf of the appellant-landlord to produce the retirement
order as an additional piece of evidence. The High Court, how-
C ever, rejected the prayer observing as follows:

"It is not in dispute that the respondent-landlord had retired
during the pendency of the petition before the Rent
Controller and the learned Appellate Authority has already
taken note of the subsequent event i.e. retirement of the
D landlord and, therefore, the present application under Order
41 Rule 27 of the CPC cannot be said to be competent.
Accordingly, the same is dismissed being unnecessary."

[Emphasis added]

E 14. Even before us it was admitted that the appellant had
retired from service on the date stated by him. The appellant's
retirement from service on the date as stated by him being ad-
mitted by the respondent the Appellate Authority was fully justi-
fied in taking that development into consideration. No preju-
F dice was caused to the respondent because the appellant did
not make any formal amendments in the pleadings or because
the retirement order filed before the Authority was not accom-
panied with a formal petition under Order 41 Rule 27. The con-
tention raised on behalf of the respondent is not highly techni-
G cal and it is calculated only to frustrate the proceeding coming
to a just-conclusion by making it quite incidental and completely
subservient to the Court's procedures. We also fail to see how
the two decisions relied upon by the counsel can support the
case of the respondent. We thus find no merit in the submis-
H sion.

15. Learned counsel next submitted that the order of eviction was also based on the growing needs of the appellant's son but in that connection there was no pleading as required under Section 13(3)(a)(ii) of the Act. The provision referred by the counsel reads as follows:

"(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) xxx xxx xxx xxx

(ii) he requires if for use as an office or consulting room by his son who intends to start practice as a lawyer, qualified architect or chartered accountant or as a "registered practitioner" within the meaning of that expression used in the Punjab Medical Registration Act, 1916, the Punjab Ayurvedic and Unani Practitioners Act, 1963, or the Punjab Homoeopathic Practitioners Act, 1965, or for the residence of his son who is married :

Provided that such son is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be, and has not vacated it without sufficient cause after the commencement of the 1949 Act."

16. We are unable to accept this submission because we see no application of the quoted provision to the facts of this case. Section 13(3) (a) (ii) will have application only in case the eviction is sought for the son's requirement independently and separately from the landlord. In this case, the son and his wife and children are part of the landlord's family and all of them are living together. The accommodation of the son, his wife and their children is part of the landlord's personal necessity. The case of the appellant clearly falls under section 13(3)(a)(i) that deals with the situation where the landlord requires the tenanted premises for his *own occupation* and it does not attract section

A 13(3)(a)(ii) that deals with the requirements of the son of the landlord. In taking the view we are supported by the decision of this Court in *Joginder Pal V. Nawal Kishore Behal*, (2002) 5 SCC 397. In paragraph 33 of the decision it was held and observed as follows:

B "Our conclusions are crystallized as under:

(i) The words "for his own use" as occurring in Section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 must received a wide, liberal and useful meaning rather than a strict or narrow construction.

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(ii) The expression – landlord requires for "his own use", is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord himself but also of the normal "emanations" of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on a variety of factors such as interrelationship and interdependence – economic or otherwise, between the landlord and such person in the background of social, socio-religious and local customs and obligations of the society or region to which they belong.

(iii) The tests to be applied are: (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement; and, (ii) whether on the facts and in the circumstances of a given case, actual occupation and user by a person other than the landlord would be deemed by the landlord as "his own" occupation or user. The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as "his own" and

the person who would actually use the premises; (ii) A
the circumstances in which the claim arises and is
put forward; and (iii) the intrinsic tenability of the claim.
The court on being satisfied of the reasonability and
genuineness of claim, as distinguished from a mere
ruse to get rid of the tenant, will uphold the landlord's B
claim.

(iv) While casting its judicial verdict, the court shall adopt
a practical and meaningful approach guided by the
realities of life.

(v) In the present case, the requirement of the landlord C
of the suit premises for user as office of his chartered
accountant son is the requirement of landlord "for his
own use" within the meaning of Section 13(3)(a)(ii)."

17. For the reasons discussed above we find no merit in D
this respondent's pleas. Accordingly, the appeal succeeds and
it is allowed. The order of the High Court is set aside and the
order of the Appellate Authority is restored.

18. In the facts and circumstances of the case, however, E
the respondent-tenant is allowed six months time to vacate the
tenanted premises on condition of filing the usual affidavit be-
fore this Court within four weeks from today.

D.G.

Appeal allowed.