

AJIT SINGH & ANR.

v.

JIT RAM & ANR.

(Civil Appeal No.5680 of 2008)

SEPTEMBER 16, 2008

[TARUN CHATTERJEE AND AFTAB ALAM, JJ.]

East Punjab Urban Rent Restriction Act, 1949:

s.13(3)(ii) – Shop – Eviction for personal use of landlord's son – Held: In eviction petition, son must aver and prove his case of personal requirement.

s.13(3)(ii) – Eviction from shop – Plea of tenant that portion of shop was used for residential purposes – Held: Not tenable.

Revisional jurisdiction – Interference with findings of fact – Held: Called for, only when findings are found to be perverse or arbitrary.

The appellants were father and son. The appellant no.1-son was the owner of the suit shop on the basis of a family partition and appellant no.2 was the landlord of the said shop. Prior to the family partition, the appellant no.2 was the owner and landlord of the said shop.

Respondent nos.1 and 2 were also father and son. Respondent no.1, father was inducted as tenant in respect of the said shop on monthly rent of Rs.500/-.

The appellants filed eviction petition against respondents on the ground of sub-letting, non-payment of rent and also for *bonafide* requirement for personal use and occupation of the appellant no.1. Rent Controller held that the respondents were not defaulters in payment of rent and the ground for personal necessity was not made out; however there was relationship of landlord tenant between

- A the parties as the respondents in their examination-in-chief admitted that the appellant no.2 was the owner of the said shop who had given the same to the appellant no.1 by way of family partition. Accordingly Rent Controller held that the appellants were entitled to evict the respondents
- B only on the ground of sub-letting as the said shop was sub-let by respondent no.1 to respondent no.2 without the consent of the appellants.

C The Appellate Authority allowed the appeal filed by respondents and also the cross objections of the appellants and directed the eviction of the respondents from the said shop on the ground of personal necessity by the appellants.

D The High Court in exercise of its revisional power set aside the order of eviction on the ground that the appellant no.2 failed to prove the ingredients as required under s.13(3)(ii) of East Punjab Urban Rent Restriction Act, 1949; and that the averments made in the eviction petition were only to the extent of personal need of appellant no.1-son and did not relate to the personal requirement of the appellant no.2, who was also the landlord of the said shop. Hence the present appeal.

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Allowing the appeal, the Court

F HELD: 1.1. The High Court in the exercise of its revisional power under the East Punjab Urban Rent Restriction Act, 1949 was not entitled to interfere with the findings of fact arrived at by the Appellate Authority on the question of *bonafide* requirement of the said shop at the instance of the appellants. Since the findings arrived

G at by the Appellate Authority on the question of *bonafide* requirement was set aside by the High Court in the exercise of its revisional power under the Rent Act, the eviction of the respondents from the said shop therefore rests only on the ground whether the pleadings made by the

H appellants in their eviction petition would satisfy the re-

quirement of s.13(3)(a)(ii) of the East Bengal Rent Restriction Act, 1949. The pleadings made by the appellants in the eviction petition must therefore be looked into in depth and in detail. A plain reading of s.13(3)(a)(ii) of the Act show that in order to get an order of eviction under said section, the landlord had to aver and prove that he required the said shop for his own use as the said shop was a non-residential building. [Paras 8, 9] [563-G,H, 564 A-B]

Joginder Pal v. Naval Kishore Behal (2002) 5 SCC 397 – relied on.

1.2. A non-residential premises, if required by a son for user by him would cover the requirement of words used in the Section, i.e. “for his own use” in reference to a landlord. The requirements as laid down in s.13(3)(a)(ii)(b) and (c) of the Act has to be interpreted in the same manner to hold that (a) the son of the landlord has to plead in the eviction petition that, (b) he is not occupying in the urban area concerned for the purpose of his business any other such building or rented land as the case may be; and (c) he has not vacated such a building or rented land without sufficient cause after the commencement of the Rent Act, in the urban area concerned. [Para 11] [566 E-G]

1.3. The requirement is made for the son who is admittedly the owner of the shop room and also the landlord, after the said shop was, by a family partition, given to the son. It was pleaded and proved that the said shop was required for the use of the son and, therefore, the pleadings of the son in regard to the aforesaid requirement, being mandatory, were satisfied, otherwise it would make the requirement laid down under the said provisions nugatory. [Paras 10, 12] [566 C,D, 566 H, 567 AB]

1.4. A plain reading of s.13(3)(a)(ii)(a) to (c) in conjunction with s.13(3)(a)(iv)(a) and (b) of the Act, would make it ample clear that when the said shop is being got vacated

A on the ground of user for the son of the landlord, then in
the eviction petition, the son (appellant No.1) must plead
that he was not occupying any other building and that he
had not vacated such a building without sufficient cause.
B It is well settled that while interpreting a provision of a
statute, the same has to be interpreted taking into con-
sideration the other provisions of the same statute. [Para
13] [567 C-E]

2.1. While making an interpretation of s.13 of the Act,
the High Court did not deal with said Section completely
C but it dealt with only that part of it which deals with resi-
dential building only and not dealt with portion, which
deals with non-residential building. [Para 14] [567 G-H]

2.2. The Appellate Authority while directing eviction
D to the respondents considered the oral and documentary
evidence on record and also the pleadings of the parties
and then came to a finding that the appellants had suc-
cessfully averred and proved their case of personal re-
quirement as made out by them under s.13(3)(a)(ii) of the
Rent Act. It is true that the High Court in its revisional ju-
E risdiction could have interfered with such findings of fact
arrived at by the Appellate Authority, if the High Court had
found that the findings of the Appellate Authority on the
question of *bonafide* requirement were either perverse or
arbitrary. On a close examination of the impugned order
F of the High Court, there is no ground to hold that the find-
ings of fact, regarding the *bonafide* requirement of the ap-
pellants, were perverse or arbitrary or the pleadings made
by the appellants in their eviction petition could be said
to be not in conformity with the requirement of s.13(3)(a)(ii)
G of the Rent Act. Therefore, the High Court was in error in
interfering with the order of eviction passed by the Ap-
pellate Authority on the ground of *bonafide* requirement.
[Para 14] [568 B-F]

H 3. The contention of respondent that a portion of the

demised premises may also be used as a residential premises, which cannot be considered to be a commercial premises for the purpose of evicting the tenant under s.13(3)(a)(ii) of the Rent Act, cannot be accepted. In order to obtain an order of eviction under s.13(3)(a)(ii) of the Rent Act, the landlord has to prove that he required the said shop for his own use and the said shop was a non-residential building. Admittedly the said shop is used for commercial purposes and therefore there was no question of the said shop being used as residential purposes or being used for a portion of residential purposes for residential use. [Para 15] [568 H, 569 B-C]

Hasmat Rai & Anr. v. Raghunath Prasad (1981) 3 SCC 103 – distinguished.

Case Law Reference

(2002) 5 SCC 397 relied on Para 9

(1981) 3 SCC 103 distinguished Para 15

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 5680 of 2008

From the final Judgment and Order dated 8.2.2006 of the High Court of Punjab and Haryana at Chandigarh in Civil Revision No. 4231 of 2004

Satinder S. Gulati, Kamaldeep Narag and Dr. Kailash Chand for the Appellant.

Raj Shekhar Rao, Senthil Jagadeesan and Nikhil Nayyar for the Respondents.

The Judgment of the Court was delivered by

TARUN CHATTERJEE, J. 1. Leave granted.

2. This is an appeal by special leave against the judgment and final order dated 8th of February, 2006 of the High Court of Punjab & Haryana at Chandigarh in Civil Revision No. 4231 of

A 2004, whereby the High Court in the exercise of its revisional
power had interfered with the findings of fact arrived at by the
Appellate Authority which was the final authority on fact and set
aside the order of the Appellate Authority, Chandigarh dated 5th
of August, 2004 directing the eviction of the respondent only on
B the ground of subletting, which affirmed the order of eviction
passed by the Rent Controller on a different ground namely, on
the ground of sub-letting.

3. The appellants are father and son and the appellant No.1
(son) is the owner of a shop being Shop No. 142, Village Badheri,
C U.T. Chandigarh (hereinafter referred to as "the said shop") on
the basis of a family partition dated 26th of August, 1998 and
the appellant No.2 is the landlord of the said shop. Prior to the
family partition dated 26th of August, 1998 the father, namely,
appellant No.2 was the owner and landlord of the said shop.
D Respondent Nos.1 and 2 are also father and son. The father,
namely, respondent No.1 was inducted as a tenant in respect
of the said shop at a monthly rental of Rs.500/- per month ex-
cluding the electricity charges. The appellants filed an eviction
petition against the respondents for evicting them from the said
E shop inter alia on the ground of sub-letting, for non payment of
rent and also for bonafide requirement for the personal use and
occupation of the appellant No.1. According to the appellants,
the respondent No.1 had sub-let the said shop to respondent
No.2, his own son, who is in possession of the same and has
F been running the said shop under the name of M/s. New Paris
Furniture without the consent of the appellants. It was further
alleged that the respondent No.1 neither paid the rent of the
said shop nor tendered the same as such was in arrears of
payment of rent since 1st of October, 1995 till the filing of the
application for eviction. The appellants further alleged in the
G eviction petition that the said shop was required for the per-
sonal use and occupation of the appellant No.1. Accordingly,
the appellants were constrained to file the eviction petition
against the respondents in respect of the said shop when it
was found that in respect of the notice, the respondents had
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failed to vacate and deliver peaceful possession of the said shop to the appellants. A

4. The respondents entered appearance and filed a written statement inter alia contending that the eviction petition against them was not maintainable and the personal necessity of the said shop for the use and occupation of the appellant No.1 was also not available and that the Rent Controller had no jurisdiction to try and entertain the eviction petition. Accordingly, the respondents prayed for rejection of the eviction petition. B

5. On the basis of the pleadings of the parties, as noted herein above, the Rent Controller framed the following issues :- C

- (I) Whether the respondents were in arrears of rent w.e.f. 01-10-95 and as such were liable to be evicted from demised premises on the ground of non-payment of rent? D
- (II) Whether the rent tendered by the respondent was short and insufficient?
- (III) Whether the said shop was sublet by the respondent no. 1 to respondent no.2 without the consent of the appellants? E
- (IV) Whether the appellant No1 for his personal use and occupation required the said shop?
- (V) Whether this court has no jurisdiction to try and entertain the eviction petition? F
- (VI) Whether the ground of personal necessity was not available to the appellants as the shop in dispute was not a commercial property? G
- (VII) Whether the respondents are entitled for counter claim as prayed for?
- (VIII) Relief."

The Rent Controller decided issue Nos. 1, 2 and 7 together H

A and held that the respondents were not defaulters in payment of rent nor they were entitled to get refund of any amount from the appellant as the case made out by them that they have paid the appellant in excess. This finding arrived at by the Rent Controller by holding that the appellant had failed to produce any
B credible and reliable evidence, accordingly, Issue Nos. 1, 2 and 7 were held against the appellant and, therefore, no order for ejection could be passed on the ground of non-payment of rent. Issue No.4 and 6 were also taken up together. Issue No.4 was decided against the appellants and Issue No.6 was
C decided in favour of the respondents. Accordingly, the Rent Controller held that the ground for personal necessity was not made out and therefore, on that issue, the appellants were not entitled to evict the respondents from the said shop. So far as Issue No.5 was concerned, before the Rent Controller the said issue was not pressed. It may be mentioned here that the Rent
D Controller, however, held that there was relationship of landlord tenant between the parties as the respondents in their examination-in-chief admitted that the appellant No.2 was the owner of the said shop who had given the same to the appellant No.1 by way of family settlement dated 26th of August, 1998. Accordingly, the Rent Controller held that the appellants were entitled
E to evict the respondents only on the ground of sub-letting as the said shop was sub-let by respondent No.1 to respondent No.2 without the consent of the appellants. Upon the issues being decided in the manner indicated above, the Rent Controller finally passed the order of eviction against the respondents in
F respect of the said shop only on the ground of sub-letting.

6. Feeling aggrieved by the order of eviction passed by the Rent Controller, the respondents filed an appeal before the Appellate Authority under the East Punjab Urban Rent Restriction Act, 1949 (in short the 'Rent Act'). The Appellate Authority by its judgment and final order dated 5th of August, 2004 allowed the appeal and also the cross objections of the appellants and directed the eviction of the respondents from the said
G shop on the ground of personal necessity by the appellants.

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7. Feeling aggrieved and dissatisfied with the order of the Appellate Authority directing eviction on a finding that the appellants required the said shop for their own use and occupation, the respondents filed a civil revision petition in the High Court which, by the impugned order, was allowed and the High Court, as noted herein earlier, in the exercise of its revisional power had set aside the order of eviction passed by the Appellate Authority on the ground that appellant No.2 was the landlord of the said shop but they had failed to prove the ingredients as required under Section 13(3)(a)(ii) of the Rent Act. It was held by the High Court that the averments made in the eviction petition would evidently show that such averments were made only to the extent of the personal requirement of the appellant No.1, Ajit Singh, but such pleadings did not relate to the personal requirement of the appellant No.2, who was also the landlord of the said shop and, accordingly, in the absence of any pleading or averment made in the eviction petition to the extent of the personal requirement of the said shop of the appellant No.2, the High Court held that the order of eviction passed by the Appellate Authority could not be sustained in law. Feeling aggrieved and dissatisfied with the order of the High Court allowing the revision petition, the appellants filed a special leave petition which on grant of leave was heard in presence of the learned counsel for the parties.

8. Having heard the learned counsel for the parties and after examining the impugned order of the High Court as well as the order of the appellate authority and the Rent Controller and the materials on record including the averments made by the appellants in their petition for eviction, we are of the view that the High Court in the exercise of its revisional power under the Rent Act was not entitled to interfere with the findings of fact arrived at by the Appellate Authority on the question of bonafide requirement of the said shop at the instance of the appellants. Since the findings arrived at by the Appellate Authority on the question of bonafide requirement was set aside by the High Court in the exercise of its revisional power under the Rent Act

A and the eviction of the respondents from the said shop there-
 fore rests only on the ground whether the pleadings made by
 the appellants in their eviction petition would satisfy the require-
 ment of Section 13(3)(a)(ii) of the Rent Act. The pleadings made
 by the appellants in the eviction petition must therefore be
 B looked into in depth and in detail.

9. It is an admitted position that the said shop is at Village
 Badheri, Chandigarh. Since the eviction granted by the appel-
 late authority and reversed by the High Court in revision was on
 bonafide requirement of the appellants, it will be fit and proper
 C that Section 13(3)(a)(ii) of the Rent Act should now be referred
 to, which runs as under :

“13. Eviction of tenant –

(3)(a) A landlord may apply to the controller for an order
 D directing the tenant to put the landlord in possession;

(i).....

(ii) in the case of non-residential building or rented land, if

E (a) he requires it for his own use;

(b) he is not occupying in the urban area concerned for
 the purpose of his business any other such building
 or rented land as the case may be; and

F (c) he has not vacated such a building or rented land
 without sufficient cause after the commencement of
 this Act, in the urban area concerned;”

A plain reading of the aforesaid provision, namely, Sec-
 tion 13(3)(a)(ii) of the Rent Act would show that in order to get
 G an order of eviction on the aforesaid ground, the landlord had
 to aver and prove that the landlord required the said shop for
 his own use as the said shop was a non-residential building. In
Joginder Pal vs. Naval Kishore Behal [(2002) 5 SCC 397],
 this Court considered the aforesaid provision in detail and in-
 H terpreted the words “his own use” in regard to a non-residential

building. In that view of the matter, it would be appropriate for us to refer to the aforesaid consideration by this Court in the aforesaid decision which crystallised the question as under :

- (1) The words "for his own use" as occurring in Section 13(3)(a)(ii) of the Act must receive a wide, liberal and useful meaning rather than a strict or narrow construction. B
- (2) 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. C D E
- (3) 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) the circumstances in which the claim arises and is put forward; and (iii) the intrinsic tenability of the claim. F G H

- A 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 claim.
- B (4) While casting its judicial verdict, the court shall adopt a practical and meaningful approach guided by the realities of life.
- (5) In the present case, the requirement of the landlord 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)."
- C

D 10. This judgment is the answer to the question posed before us. Here also, the requirement is made for the son who is admittedly the owner of the shop room and also the landlord, after the said shop was, by a family partition dated 26th of August, 1998, given to the son who also became the landlord after family partition and also he became the owner of the said shop by such family partition.

E 11. From the aforesaid decision of this Court, it is therefore, clear that this Court has laid down authoritatively that a non-residential premises, if required by a son for user by him would cover the requirement of words used in the Section, i.e. "for his own use" in reference to a landlord. Therefore, if "his own use" has been interpreted by this Court in the above-said manner, then the requirements as laid down in Section 13(3)(a)(ii)(b) and (c) of the Act has to be interpreted in the same manner to hold that (a) the son of the landlord has to plead in the eviction petition that, (b) he is not occupying in the urban area concerned for the purpose of his business any other such building or rented land as the case may be; and (c) he has not vacated such a building or rented land without sufficient cause after the commencement of the Rent Act, in the urban area concerned.

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H 12. In the present case, it was pleaded and proved that

the said shop was required for the use of the son and, therefore, the pleadings of the son in regard to the aforesaid requirement, being mandatory, were satisfied, otherwise it would make the requirement laid down under the said provisions nugatory in view of the interpretation given by this Court in the aforesaid decision, with which we are in full agreement.

13. Applying the principles as laid down by the aforesaid decision namely, *Joginder Pal (Supra)* which also deals with commercial premises, as in the present case, we are of the view that a plain reading of Section 13(3)(a)(ii) (a) to (c) in conjunction with Section 13(3)(a)(iv)(a) & (b) of the Rent Act, would make it ample clear when the said shop is being got vacated on the ground of user for the son of the landlord, then in the eviction petition, the son (appellant No. 1) must plead that he was not occupying any other building and that he had not vacated such a building without sufficient cause. It is well settled that while interpreting a provision of a statute, the same has to be interpreted taking into consideration the other provisions of the same statute. In the aforesaid decision, namely, *Joginder Pal (Supra)*, this Court has clearly laid down that a balanced interpretation has to be given in regard to the rent legislation and the provisions itself contemplate a case in regard to user of non-residential building by a professional and the statute itself lays down requirement in that regard within the same requirements will have to be read in regard to shop required to be used by the son of the landlord for business purpose. Accordingly, we are of the view that the impugned decision of the High Court is in direct conflict with the Judgment of this Court in *Joginder Singh's case (supra)* and therefore, the said Judgment cannot be sustained.

14. There is another aspect of this matter. While making an interpretation of Section 13 of the Act, the High Court did not deal with Section 13 of the Rent Act completely but it dealt with only that part of Section 13 which deals with residential building only and has not dealt with portion of Section 13, which deals with non-residential building. It is true that while reversing the

A order of eviction passed by the Appellate Authority, the High Court in the impugned order had also taken note of the decision in *Joginder Pal's case* (supra), but in view of our discussions made herein above, the ratio of the aforesaid decision was not applied in the present case. There is yet another angle

B in which the High Court was not justified in interfering with the order of eviction passed by the Appellate Authority which was the final court of fact. The Appellate Authority while directing eviction to the respondents considered the oral and documentary evidence on record and also the pleadings of the parties

C and then came to a finding that the appellants had successfully averred and proved their case of personal requirement as made out by them under Section 13(3)(a)(ii) of the Rent Act. It is true that the High Court in its revisional jurisdiction could have interfered with such findings of fact arrived at by the Appellate Authority, if the High Court had found that the findings of the Appellate Authority on the question of bonafide requirement were either perverse or arbitrary. On a close examination of the impugned order of the High Court, we do not find any ground to hold that the findings of fact, regarding the bonafide requirement of the appellants, were perverse or arbitrary or the pleadings made by the appellants in their eviction petition could be said to be not in conformity with the requirement of Section 13(3)(a)(ii) of the Rent Act. Therefore, we are also of the view that the High Court was in error in interfering with the order of eviction passed by the Appellate Authority on the ground of bonafide requirement.

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15. At this stage, an argument advanced by the learned counsel for the respondents may be considered. The learned counsel for the respondents relied on a decision of this Court in *Hasmat Rai & Anr. Vs. Raghunath Prasad* [(1981) 3 SCC 103] and contended that a portion of the demised premises may also be used as a residential premises, which cannot be considered to be a commercial premises for the purpose of evicting the tenant under Section 13(3)(a)(ii) of the Rent Act. We are unable to accept this submission of the learned counsel for the

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respondents, for the simple reasons, first, the decision in *Hasmat Rai's case* (supra) was based on M.P. Accommodation Control Act, 1961 which confers on the authority to pass order of eviction on the ground of bonafide requirement on a different wording from the words used in East Punjab Urban Rent Registration Act, 1949. Furthermore, it may be reiterated that in order to obtain an order of eviction under Section 13(3)(a)(ii) of the Rent Act, the landlord has to prove, as noted herein earlier, that he required the said shop for his own use and the said shop was a non-residential building. In this case, admittedly the said shop is used for commercial purposes and therefore there was no question of the said shop being used as residential purposes or being used for a portion of residential purposes for residential use. That being the position, the aforesaid decision, in our view, is clearly distinguishable. Accordingly, the above decision of this court is of no help to the respondents.

16. For the reasons aforesaid, the impugned order of the High Court is hereby set aside and the order of the Appellate Authority is restored and the eviction petition filed by the appellants stands allowed.

17. Considering the facts and circumstances of the case and considering the facts that the respondents are using the said shop for commercial purposes and have been carrying on business in the same, we grant the respondents 9 months' time to vacate the same, subject to filing the usual undertaking in this Court within two weeks from this date. Accordingly, the appeal is allowed. There will be no order as to costs.

D.G.

Appeal allowed.