

Before Tribhuvan Dahiya, J.

BABU LAL—Petitioner

versus

RAHUL—Respondent

CR No. 3550 of 2022

December 16, 2022

Haryana Urban (Control of Rent and Eviction) Act, 1973—S. 13(3) (a) (i)—Ejection on the ground of bonafide requirement; In law the terms ‘Possession’ and ‘occupation’ are not interchangeable—Mere possession without occupation will not attract section 13(1)(a)(i) as disqualification—Hence mere possession not adequate to non-suit landlord—Bonafide need established—ejection allowed.

Held, that the Supreme Court also with reference to provisions of Section 13 (2) (v) of the Act of 1973 explained the terms ‘possession’ and ‘occupy’ in RamDas versus Davinder (2004) 3 SCC 684. The case pertained to a landlord seeking possession of the tenanted premises on the ground that the tenant had ceased to occupy it for a continuous period of four months without reasonable cause.

(Para 11.5)

Aman Bahri, Advocate, *for the petitioner.*

Munish Gupta, Advocate, *for the caveator.*

TRIBHUVAN DAHIYA, J. (Oral)

(1) This is tenant’s revision petition against the order of ejection, dated 20.8.2018, passed by the Rent Controller, and the order, dated 16.5.2022, passed by the Appellate Authority, affirming the ejection order.

(2) The respondent/landlord filed an application/petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short ‘the Act’) for ejection of the petitioner/tenant from his shop situated at Pull Bazar, Narnaul, on three grounds, namely; (i) non-payment of arrears of rent, (ii) the *bona fide* need and necessity of the premises for running his own office, workshop and training room by the landlord, and (iii) the premises being unfit for human habitation on account of its dilapidated condition. The Rent Controller ordered

eviction of the petitioner/landlord from the demised premises under all the aforesaid three grounds. The Appellate Authority, however, held that the ground of non-payment of arrears of rent was not available to the landlord, and ordered eviction on the remaining two grounds of *bona fide* necessity and dilapidated condition of the premises.

(3) Challenging the eviction, learned counsel for the petitioner has submitted that dilapidated condition of the demised premises has been established on the basis of Building Expert report Ex.PW2/B, as well as the photographs attached thereto, though this Building Expert did not subject himself to cross-examination. Therefore, his evidence, the report in question along with the photographs, could not have been taken into account to establish dilapidated condition of the demised premises or order eviction on that basis. Learned counsel for the respondent/caveator/landlord could not dispute that the witness did not face cross-examination. Therefore, testimony of PW-2 as well as his report, cannot be read in evidence, and findings of both the Authorities below ordering eviction of the tenant on the ground of dilapidated condition of the demised premises, cannot be sustained.

(4) Learned counsel for the petitioner/tenant has further submitted that the respondent/landlord has made false averments in the ejection petition stating that he was not occupying any other premises in the urban area concerned. In this regard he has referred to a registered transfer deed dated 26.3.2015, Annexure A-1, whereby landlord's father Surender Kumar transferred one shop/property situated within *laldora* of old *abadi* of Bridge Market, Narnaul, in landlord's favour before filing of the ejection petition on 9.10.2015. And gave him ownership and possession of the property situated in the same market where the demised premises existed. An application, CM 10931-CII of 2022, has been filed to bring on record this transfer deed, dated 26.3.2015, as additional evidence. Learned counsel has also referred to cross-examination of the respondent/landlord-PW1, Annexure-P/5, where he deliberately concealed this fact by feigning ignorance about having any other commercial property. The eviction application/petition was filed on 09.10.2015 and the transfer deed is dated 26.3.2015. The landlord is, therefore, guilty of concealment of the material fact of his occupying another shop, and his eviction petition deserves to be dismissed on that account itself. In support of his contention, he has relied upon the full Bench judgment of this Court

rendered in *Banke Ram versus Shrimati Sarasvati Devi and another*¹, and another judgment passed by this Court in *Shankar Lal versus Madan Lal and others*².

(5) *Per contra*, learned counsel for the respondent/landlord submits that there was no concealment of any relevant fact by the landlord, and that he was not in occupation of any other premises or shop in the urban area concerned. He further submits that the premises in question was required by the landlord for expanding his business and office, and the fact stands duly pleaded in the ejectment petition. So far as the transfer deed dated 26.3.2015 is concerned, the same was not produced on record before the Rent Controller or the Appellate Authority. Therefore, it cannot be taken into consideration by this Court. Besides, even the shop referred to in the transfer deed, is not in occupation of the landlord.

(6) Learned counsel for the parties have been heard.

(7) To consider the arguments advanced, it is apposite to refer to Section 13 of the Act, which reads as under:

13. Eviction of tenants:

(1) xxx xxx xxx

(2) xxx xxx xxx

(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.

(8) It is not in dispute that as per settled law eviction of a tenant on the ground of *bona fide* personal necessity of the premises can be sought by a landlord from non-residential building also under provisions of Section 13(3)(a)(i) of the Act.

(9) In the instant case, to refer to the ground on personal necessity, the landlord has sought eviction from the premises on the pleadings that he is facing scarcity of space for office, workshop and

¹ 1977 (1) RCR (Rent) 595

² 2011 (1) RCR (Rent) 139

training room, and also in dealing with his clients and staff. He does not have any other suitable space for the purpose. He wants to make an office separate from his workshop and training room by re-constructing the site of the present tenanted premises and adjoining shop, which is jointly owned by him with Nitin. Therefore, the tenant is required to vacate the premises in question. There is no other suitable premises available with the landlord in urban area Naranul for establishing his office, workshop and training room.

(10) Both the authorities have concurrently held the landlord's need to be *bona fide*, and that he has not concealed any material fact regarding any alternative accommodation. There is no material on record, nor any could be pointed out by learned counsel for the petitioner/tenant, that landlord's need of the premises for expansion of business is not *bona fide*.

(11) It is on account of the alleged concealment of the transfer deed, dated 26.3.2015, giving ownership and possession of another shop in the urban area concerned to the landlord, that dismissal of the rent petition has been sought before this Court. The submission is that the facts were mandatorily required to be pleaded as per Section 13 (1)(a)(i) of the Act which the landlord undisputedly failed to do.

(11.1) It is appropriate to make a reference to the recitals in the transfer deed dated 26.3.2015 pertaining to ownership and possession of a shop/ property, based upon which the plea of concealment and non-compliance of Section 13 (1)(a)(i) has been raised against the landlord. Last paragraph of the deed reads as under:

Therefore, this transfer deed/transfer of ownership and possession regarding property measuring 97.96 sq. yards and total covered area measuring 3526.56 sq. ft. has been scribed into writing so that it may serve as authority.

(11.2) These are formal recitals in the transfer deed, recording the transfer of ownership and possession of the property/shop in question to the landlord. The same, on its own, are not the final words on delivery of possession, and, in case of a dispute, the delivery of possession is required to be proved as a matter of fact by credible evidence. Besides, even if the recitals are taken to be establishing the fact of transfer of ownership and possession, it cannot be presumed that the property/shop pursuant to the said transfer remained in 'occupation' of the respondent/landlord till filing of the ejectment petition. The requirement of law is, 'occupation' and not 'ownership and possession'.

(11.3) Section 13(1)(a)(i) of the Act necessitates three conditions; (i) the landlord requires the premises for his/her own occupation, (ii) he/she is not occupying another residential building in the urban area concerned, (iii) he/she has not vacated such building without sufficient cause after the commencement of the Act of 1949 in the said urban area. We are concerned with the second condition only, wherein the expression used is ‘occupying’, i.e., ‘in occupation’. The words ‘possession’ and ‘occupation’ are two different words with distinct meanings; the legislature has consciously used the latter only. Section 13(3) of the Act uses the word ‘possession’ but Section 13(3)(a)(i) uses the word ‘occupation/occupying’. Therefore, the two cannot be used inter-changeably. One may possess a property, but may not occupy the same. The expression ‘occupation’ means, ‘use of the premises in occupation’. It refers to the state of being in control and using the premises. The meaning assigned to the words ‘occupation’ and ‘possession’ in the Black’s Law Dictionary, Tenth Edition— Pages no. 1248 and 1351 respectively, also points to their being distinct, having different implications. It is as under:

Occupation. 2. The possession, control, or use of real property; OCCUPANCY.

Possession. 1. The fact of having or holding property in one’s power; the exercise of dominion over property.

(11.4) ‘Occupation’, therefore, has a wider meaning as it includes possession, apart from being in control or using the property, but not *vice versa*. ‘Possession’ does not include occupation; it refers to the state of being in control over a property to the exclusion of others, which may not be in actual use by the one having possession over it.

(11.5) The Supreme Court also with reference to provisions of Section 13 (2) (v) of the Act of 1973 explained the terms ‘possession’ and ‘occupy’ in *Ram Das versus Davinder*³. The case pertained to a landlord seeking possession of the tenanted premises on the ground that the tenant had ceased to occupy it for a continuous period of four months without reasonable cause. In that context it was held as under:

7. The terms “possession” and “occupy” are in common parlance used interchangeably. However, in law, possession over a property may amount to holding it as an owner but to occupy is to keep possession of by being present in it.

³ 2004 (3) SCC 684

The Rent Control Legislations are outcome of paucity of accommodations. Most of the Rent Control Legislations, in force in different states, expect the tenant to occupy the tenancy premises. If he himself ceases to occupy and parts with possession in favour of someone else, it provides a ground for eviction. Similarly, some legislations, provide it as a ground of eviction if the tenant has just ceased to occupy the tenancy premises though he may have continued to retain possession thereof. The scheme of the Haryana Act is also to insist on the tenant remaining in occupation of the premises. Consistently with what has been mutually agreed upon the tenant is expected to make useful use of the property and subject the tenancy premises to any permissible and useful activity by actually being there. To the landlord's plea of the tenant having ceased to occupy the premises it is no answer that the tenant has a right to possess the tenancy premises and he has continued in juridical possession thereof..

This meaning assigned to the terms 'possession' and 'occupy' has direct relevance to the issue arising in the instant petition, as in *Ram Das (supra)* case also possession or occupation of the premises was the issue.

(11.6) The requirement of Section 13(1)(a)(i) of the Act, therefore, is that the landlord is not occupying another residential/non-residential building in the urban area concerned, i.e., he/she is not keeping possession of the premises and using it too by being present in it. Mere ownership and possession of a premises by the landlord, without it being in occupation, will not be of any consequence and cannot bar a landlord from seeking its possession for *bona fide* personal use.

(12) The fact of landlord not being in occupation of any other suitable premises in the urban area concerned, was pleaded in the ejection petition and proved in evidence also. Initial burden having been discharged by the landlord; onus was on the tenant to establish that the former was in occupation of another residential/non-residential building. He, however, failed to do that. Now, before this Court, by relying on the transfer deed, dated 26.3.2015, and referring to the recitals therein about ownership and possession of a shop, no plea can be raised that the landlord was in occupation of another non-residential property/shop in the urban area concerned; and that the fact was

concealed by him while filing the ejectment petition. The transfer deed does not even *prima facie* establish that the landlord was in occupation of the property/shop mentioned therein. Therefore, the application to bring the transfer deed on record as additional evidence, as also the plea of concealment of facts based thereupon, are devoid of merit.

(13) Further, reliance placed by learned counsel for the tenant on the judgments of this Court in ***Banke Ram*** case (*supra*) and ***Shankar Lal*** case (*supra*) is also misplaced. The judgments are to the effect that the landlord is required to plead and prove he is not occupying another building in the urban area. This, in fact, has been done by the landlord herein and, as discussed above, there is no concealment on his part on that account.

(14) In view of the aforesaid analysis, the petition is partly allowed. Findings of the Authorities below ordering eviction on the ground of dilapidated condition of the premises are set-aside, and the findings ordering eviction on the ground of *bona fide* requirement of the premises are upheld. Accordingly, the ejectment application/petition stands allowed.

Divay Sarup