

joint property transferred in main, whereas the words from "YANI" onwards signify only the descriptive nature of ancillary rights accruing from such land. The rights conveyed in that recital cannot be said to have conveyed any distinct property, other than the property transferred in main. The learned lower appellate Court obviously fell into an error in treating those words to indicate that they pertain to *shamlat deh* contradistinct from the land transferred by way of mortgage. Its view that the words have been used as substitute for "BAMAI HISSA SHAMLAT" are bereft of legal foundation.

6. No other point was urged.

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7. For the aforesaid reasons, this appeal is allowed, the judgment and decree of the learned lower appellate Court is set aside, whereas that of the trial Court is restored. In the circumstances of the case, however, there would be no order as to costs.

H.S.B.

Before J. V. Gupta, J.

NASIB CHAND,—Petitioner.

versus

MOHAN SINGH and others,—Respondents.

Civil Revision No. 873 of 1978.

March 21, 1980.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 13(3) (a) (ii) and 15—Personal necessity pleaded by the landlord—Burden of proof—Mere assertion by the landlord that he requires the premises for his own use—Whether sufficient to discharge the burden.

Held, that it is not sufficient for the landlord to show that he needs the premises for his own use and occupation as he is out of job or he has retired from service. He has to take the courts into confidence and prove to the satisfaction of the Rent Controller that his need is a *bona fide* one. Unless from the evidence on the record it is proved that the requirement or the need of the landlord is a

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genuine one, no order of ejection can be passed simply on the ground that the defence taken by the tenant that the landlord wanted to enhance the rent was not found to be a correct one. The burden is always on the landlord to prove his *bona fide* requirement.

Petition under section 15 of the Urban Rent Restriction Act for revision of the order of Shri J. S. Chatha, Appellate Authority, Jullundur dated 2nd May, 1978 dismissing the appeal and affirming order passed by Shri M. L. Malhotra, Rent Controller Nawanshahr, dated 14th April, 1977 accepting the application and ordering eviction of premises in dispute.

S. C. Goyal, Senior Advocate (O. P. Goyal, Advocate with him).
for the Petitioner.

J. D. Jain, Advocate (of Jullundur), for the Respondents.

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(1) The tenant-petitioner has filed this revision against the order of the Appellate Authority, Jullundur, dated May 2, 1978, whereby the order of the Rent Controller directing his ejection has been maintained.

2. Mohan Singh and others, landlord-respondents, filed a petition for the ejection of tenant Nasib Chand in respect of rented land situated at Banga, which was rented to him at Rs. 10 per month. It was alleged that Harmit Singh, one of the landlords, had retired from Military service and had settled permanently in Banga. He intends to start his own business on the rented land in dispute and so it is required by him for his own use. He had no other such land, nor has he vacated any. This allegations of personal requirement was contested by the tenant and it was stated that the landlords only wanted to enhance the rent. On the pleadings of the parties, the Rent Controller framed the following issues:—

1. Whether the petitioners require the premises in dispute *bona fide* for their use and occupation? POP.
2. Relief.

The learned Rent Controller, relying upon a judgment reported as *Smt. Chandra Wati v. Narain Dass*, (1), came to the conclusion that the landlord bona fide required the premises for his own use and occupation. It was observed that "Keeping all these circumstances in view I feel that the statement on oath of Harmit Singh that after retirement from service he is without work and wants to start his business in the premises in dispute should be given due weight and being a landlord be not deprived of the genuine *bona fide* use which he can derive by occupying the premises particularly when he does not own any other premises in Banga nor he had vacated the same after the commencement of this Act." In appeal this finding of the Rent Controller has been maintained. The learned Appellate Authority has observed that "I do not think it is necessary for a landlord to take all steps to start business before he moves for ejectionment." It has been further observed that "All that has to be seen is whether the intention is *bona fide* and in fact he wants to use the land for his own purposes." Feeling aggrieved against this concurrent finding, the tenant has come up in revision to this Court.

3. The learned counsel for the tenant vehemently argued that in the application for ejectionment, the landlords did not disclose the nature of business which they intended to start on rented premises. He particularly referred to para 3(b) of the application which is to the following effect: —

"That Shri Harmit Singh one of the petitioners has since retired from service which he was hitherto doing & has settled permanently at Banga and he intends to start his own business or trade on the rented land in dispute itself to earn his livelihood, he requires it for his own use. The petitioners are not occupying in the Urban area of Banga for the purpose of their business any other such rented land nor they have vacated such rented land without sufficient cause after the commencement of the East Punjab Urban Rent Restriction Act, in the Urban Area of Banga."

For the first time the landlord Harmit Singh while appearing in the witness box as A.W. 1 stated that he wants to set up a

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factory for manufacturing parts for defence services. In cross examination it has been stated by him that he had not applied for any licence nor had he performed any other formality in this respect. The learned counsel for the tenant has contended that on this evidence alone, it could not be held that the requirement of the landlord was a bona fide one. The approach of both the authorities below that it is for the landlord to judge his needs unless it could be shown that the application had been filed with some ulterior motive, is not the correct approach after the decision of the Supreme Court reported in *Phiroze Bamanji Desai v. Chandrakant M. Patel and others*, (2) and of this Court reported in *Brij Lal v. Arjan Singh*, (3). According to the learned counsel it is the duty of the Rent Controller to find whether the need of the landlord is bona fide one or not. For that purpose the landlord himself should take the Court into confidence and lead some evidence to show that necessary steps in the direction for running a particular business etc. have been taken. Keeping in view this principle laid down by the Supreme Court, the Appellate Authority has mis-directed himself in regard to the true meaning of the word "requires" occurring in Section 13(3) (a) (ii) of the East Punjab Urban Rent Restriction Act. It was held by the Supreme Court in *Mattulal v. Radhe Lal* (4), as under:—

"That mere assertion on the part of the landlord that he requires the non-residential accommodation in the occupation of the tenant for the purposes of starting or continuing his own business is not decisive. It is for the Court to determine the truth of the assertion and also whether it is bona fide. The test which has to be applied is an objective test and not a subjective one and merely because a landlord asserts that he wants the non-residential accommodation for the purpose of starting or continuing his own business, that would not be enough to establish that he requires it for that purpose and that his requirement is bona fide. The word required, signifies that mere desire on the part of the landlord is not enough but there should be an element of need, and the landlord must show the

(2) AIR 1974 S.C. 1059.

(3) 1979 (2) R.C.R. 275.

(4) 1974 R.C.R. 441: 1974 (2) S.C.C. 365.

burden being upon him that he genuinely requires the non-residential accommodation for the purpose of starting or continuing his own business.”

Following this judgment S. P. Goyal, J. in *Brij Lal v. Arjan Singh* (supra), set aside the concurrent finding of the authorities below and came to a conclusion that “In the present case, apart from the bald averment in the petition that he wanted to use the rented land for the purpose of his own business and trade, nothing was said which could show that the landlord had the genuine need to start some business. In his statement also he never disclosed any fact or circumstances which could show that he had the genuine need to start some business or trade and the only fact which was disclosed, apart from the averment in the petition was that he wanted to start firewood stall on the demised premises. The landlord, as is evident from his statement, is an agriculturist by occupation and about 50 years of age. Nothing was stated by him in his statement as to why he wanted to leave his occupation and enter into the business of sale and purchase of firewood. His bald assertion in this respect, therefore, could not be accepted to hold that there was the genuine need on the part of the landlord for which he required the demised premises for his own use and occupation.” Thus, the learned counsel for the petitioner submitted that in view of the judgments, referred to above, the landlord has failed to prove his *bona fide* requirement and the authorities below have mis-directed themselves in their approach.

4. On the other hand, the learned counsel for the landlord respondents submitted that when the landlord is not doing any other business and the application is not proved to be *mala fide*, the requirement will be taken to be a *bona fide* one. According to the learned counsel, the landlord need not to prove anything further in this respect. Moreover, no such question was put to the landlord while in the witness box as to the technical knowhow for the factory he wants to establish. Further he submitted that the story of the tenant that the landlords want to enhance the rent has been found to be false by both the authorities below and therefore under these circumstances the application for ejection has been rightly held to be a *bona fide* one. The learned counsel also contended that whether the requirement is a *bona fide* one or not is a question of fact and there being concurrent finding of fact by both the Courts below, the same cannot be interfered with in the exercise of revisional jurisdiction,

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5. After hearing the learned counsel for the parties at a great length, I find force in the contention raised on behalf of the tenant-petitioner. Both the authorities below have mis-directed themselves in their approach as to the *bona fide* requirement of the landlord. The view that the landlord is the best judge of his needs unless it could be shown that the application had been filed with some ulterior motive, is no more a good law after the authoritative pronouncement of the Supreme Court in *Phiroz Bamanji Desai's case* (supra) and subsequently followed by this Court in *Brij Lal v. Arjan Singh* (supra). It is not sufficient for the landlord to show that he needs the premises for his own use and occupation as he is out of job or he has retired from service. He has to take the courts into confidence and prove to the satisfaction of the Rent Controller that his need is a *bona fide* one. Unless from the evidence on the record it is proved that the requirement or the need of the landlord is a genuine one, no order of ejectment can be passed simply on the ground that the defence taken by the tenant that the landlord wanted to enhance the rent was not found to be a correct one.

The burden is always on the landlord to prove his *bona fide* requirement. Moreover, in the application no such need was disclosed by the landlord. It was simply stated that he intends to start his business on the rented land. The evidence regarding what steps have been taken by him in that respect for the business or factory he wants to start or whether he knows the business or the technical knowhow for the factory which he intends to start, is a most relevant one in order to arrive at the conclusion that his need is a *bona fide* one. No such evidence has been brought on the record in the present case. It has been wrongly observed by the Appellate Authority that it was not necessary for the landlord to take all the steps to start the business before he moves for ejectment. All these steps, or some of them, if taken, would prove the *bona fide* requirement of the landlord. If no such steps have been taken, it can be reasonably argued that the need is not a genuine one. In the present case the landlord has not applied for any licence, etc., nor had he undertaken any other formality for putting up the factory for manufacturing parts for defence services. Even the landlord has not stated as to what he was doing while in military service. Under these circumstances, both the authorities below

have acted illegally in coming to the conclusion that the need of the landlord is a *bona fide* one.

6. Of course, whether the need is a *bona fide* one or not may be a question of fact, but if the authorities below have mis-directed themselves in their approach, the finding arrived at is vitiated and is liable to be set aside in the exercise of the revisional jurisdiction under Section 15 of the East Punjab Urban Rent Restriction Act.

7. For the reasons recorded above, this petition succeeds and the order of the Appellate Authority is set aside and the application for ejection is dismissed with no order as to costs throughout.

N. K. S.

Before R. N. Mittal, J.

SANTOSH KUMARI,—Petitioner

versus

MOHAN LAL,—Respondent.

Civil Revision No. 2788 of 1979.

March 21, 1980.

Hindu Marriage Act (XXV of 1955)—Sections 13(1-A) and 23—Code of Civil Procedure (V of 1908)—Order 21 and Rule 32—Decree for restitution of conjugal rights obtained by the husband—Wife taking out execution of the decree and husband refusing to re-unite—Decree—Whether satisfied—Spouse refusing re-union—Whether entitled to apply for divorce under section 13(1-A)—Such refusal—Whether amounts to taking advantage of one's own wrong.

Held, that under section 13(1-A) of the Hindu Marriage Act, 1955 either of the party including a defaulting party can seek divorce on the ground that there has been no restitution of conjugal rights for a period of one year or more after the passing of a decree for restitution of conjugal rights and the question as to who is at fault for not coming together is not to be gone into by the courts. The words 'wrong or disability' referred to in section 23(1) (a) when read with section 13(1-A) mean a wrong or disability other