

Shiv Kumar Jain Vs. Daya Ram

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Court : Punjab and Haryana

Decided On : Sep-02-2004

Reported in : (2005)139PLR614

Judge : M.M. Kumar, J.

Acts : [East Punjab Urban Rent Restriction Act, 1949](#) - Sections 13(3) and 15(5)

Appeal No. : Civil Revision No. 17 of 2002

Appellant : Shiv Kumar Jain

Respondent : Daya Ram

Advocate for Def. : Arun Jain, Adv.

Advocate for Pet/Ap. : Rajesh Garg, Adv.

Disposition : Petition dismissed

Judgement :

M.M. Kumar, J.

1. This is tenant's petition filed under Section 15(5) of the [East Punjab Urban Rent Restriction Act, 1949](#) (for brevity, Act) challenging concurrent findings of facts recorded by both the courts below holding that the demised premises are required for the landlord-respondent for his own occupation as the accommodation where

he is presently housed, is too small for his family comprised of ten members. It has been concurrently found that the accommodation in which the landlord-respondent has been living comprises only of three rooms and he has to live with his two married sons, daughters-in-law and grand children which is extremely insufficient. The insufficiency of the accommodation is evident from a perusal of paragraphs 24 and 25 and the same read as under:-

'24. In the petition the landlord pleaded that in the present accommodation he is residing with his three children, two grand daughter-s-in-law another kids and that the present accommodation consists of only three rooms. In the written reply the tenant simply denied the said allegations and stated that the said accommodation is sufficient for the landlord and his family. In the written reply it is now where (sic nowhere) stated that the sons of the landlord are not living with him. Also from the perusal of the statements of AW3 Daya Ram, AW6 Ravi Datt it is clear that the landlord are married. AW5 Chaman Lal has proved ration card form Ex.PW5/A to Ex.PW5/C; from the perusal of said forms, it is clear that the landlord and his sons Surinder Kumar, Dinesh Kumar are residing in House No. 370. Both Surinder Kumar and Dinesh Kumar are married and their families are also living in the said house. Thus from the perusal of the statements of AW3, AW5 and AW6 coupled with the documents Ex.PW5/A to PW5/C it is evident that the landlord is residing in the present accommodation alongwith about 10 members of his family which include his sons, daughters-in-law and grand children.

25. The appellant while appearing in the witness box as RW1 stated that he has seen the site plan Ex.PW4/A which is pertaining to the residential house of landlord. From the perusal of Ex.PW4A it is evident that the said accommodation consists of two room, one store, one drawing room, one kitchen, bath room and courtyard. The said accommodation cannot be termed as sufficient for the family of landlord consisting of more than 10 members. In this context reference be made to 1993(1) R.C.R. 343, 1997(1) R.C.R. 437 (Supra). Reliance can also be placed on Anil Kumar Kaushik v. Mohinder Kaur, (2000-3) P.L.R. 279, wherein our Hon'ble High Court has held that the bona fide need has to be seen from the landlord's point of view and the Hon'ble High Court held that the accommodation of three living rooms available to landlord is not sufficient for the landlord and his

two sons.'

2. Mr. Rajesh Garg, learned counsel for the tenant-petitioner has however raised a solitary argument that the landlord-respondent has earlier filed three applications for ejectment of the tenant-petitioner and the last application out of those three, was decided on 09.09.1993. According to the learned counsel, both the sons of the landlord-respondent were already married before 1993 and the ground of personal necessity was available to him in those proceedings. The learned counsel has maintained that having not chosen to plead the ground of personal necessity in the earlier proceedings such a ground could not be raised by the landlord-respondent by filing another petition on 10.02.1995. Learned counsel maintained that the principle in the nature of res judicata/constructive res judicata would be attracted and fully apply to the instant case.

3. Mr. Arun Jain, learned counsel for the landlord-respondent has pointed out that earlier three applications filed by the landlord-respondent were not the result of any other ground except the claim of rent because every time there was default committed by the tenant-petitioner in payment of the rent, the landlord-respondent had to file the applications for payment of rent. In none of the earlier petitions, any other ground of ejectment was pleaded which may constitute a basis for application of the rate of res judicata against the landlord-respondent. The learned counsel has also maintained that the record of the earlier petitions has not been produced to facilitate the determination of the question with regard to res judicata/constructive res judicata for apparent reasons that the earlier petitions were only confined to claim of rent because the tenant-petitioner used to default in making payment of rent.

4. After hearing the learned counsel for the parties, I am of the considered view that this petition lacks of merit and is liable to be dismissed because it has been concurrently found by both the Courts below that the necessity of the landlord-respondent is genuine and is not a mere wish. In three rooms, the landlord-respondent could not accommodate 10 members of his family. It is an admitted case that two sons of the landlord-respondent are married and are living in a very congested accommodation of three rooms alongwith his daughters-in-law and the

grand children.

5. The aforementioned view is fully supported by the judgment of the Supreme Court in the case of *Atma S. Berar v. Mukhtiar Singh*, (2003-1)133 P.L.R. 371. In *Atma S. Berar's* case, the Supreme Court applied Section 13(3)(a) of the Act and concluded that an old man is entitled to occupy his house in the evenings of his life. In *Joginder Pal v. Nand Kishore Behal*, 2002(5) SCC 397 : (2002-2)131 P.L.R. 625 (S.C.), the Supreme Court has interpreted Section 13(3)(a) to include married sons even in respect of non-residential building by adopting the principles of wider construction. It is also proved on record that in the earlier petitions, the ground of personal necessity has not been pleaded as the earlier petitions were merely to claim the arrears of rent as the tenant-petitioner used to commit default in the payment of rent, which used to be rendered in fructuous after payment of rent by the tenant-petitioner. Moreover, for apparent reasons, no pleadings of the earlier proceedings have been produced before the Court to determine the question with regard to application of principle of *res judicata*. The position is squarely covered against the tenant-petitioner by virtue of judgments of the Supreme Court in the cases of *Suraj Mal v. Radhey Shyam*, (1988)3 S.C.C. 18 and *N.R. Narayan Swami v. B. Francis Jagan*, (2001)6 S.C.C. 473.

For the reasons stated above, this petition does not deserve to be admitted.

Dismissed.

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