

CASE NO.:
Appeal (civil) 1263 of 2006

PETITIONER:
Mohinder Prasad Jain

RESPONDENT:
Manohar Lal Jain

DATE OF JUDGMENT: 24/02/2006

BENCH:
S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T
(Arising out of SLP(C)No.722/2005)

S.B. SINHA, J :

Leave granted.

The father of the respondent herein was the owner of a shop in which the appellant was inducted as a tenant on 1st April, 1972. The monthly rent payable in relation to the said tenanted premises was Rs.700/-. The original landlord, the father of the respondent having died on 5th March, 1979, the respondent along with his four sisters, became the owner of the said tenanted premises. He was an employee of Hero Honda Motors Limited. He retired from service having attained the age of superannuation. One year after his retirement, he filed an application under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 ('the Act') for eviction of the appellant from the shop in question on the ground of his bona fide personal requirement, i.e., for the purpose of running wholesale business in Ayurvedic medicines. The said application was dismissed by the Rent Controller holding that the bona fide requirement of the respondent in respect of the non-residential premises has not been proved and moreover he had not been able to show consent of his sisters in his favour in that behalf. An appeal preferred thereagainst was allowed by the Appellate Authority on a finding that he proved his bona fide requirement. In the revision petition filed before the High Court the appellant raised a contention that an application for eviction on bona fide requirement of a non-residential premises was not maintainable.

It is not in dispute that this Court as also the Punjab & Haryana High Court declared such a provision to be unconstitutional.

The High Court opined :

"Still further the learned counsel further argued that eviction on the basis of personal requirement is not available in respect of non-residential building. He has placed

reliance upon the Full Bench judgment of Delhi High Court reported as Satyawati Sharma Versus Union of India and another \026 2003 (1) R.L.R. 91.

However, I am bound by the judgment of the D.B. of this Court in State of Haryana Versus Ved Parkash Gupta and others. \026 1999 (1) R.L.R. 689, wherein the provision of Haryana Urban (Control of Rent and Eviction) Act, 1973 have been struck down and consequently, the landlord is entitled to seek eviction of the tenant from the non-residential building. In view of the above judgment the reliance of F.B.'s Judgment of Delhi High Court is not tenable."

We may notice that this Court in Harbilas Rai Bansal vs. State of Punjab & Anr. [(1996) 1 SCC 1] held such a provision to be unconstitutional, whereas in Gian Devi Anand vs. Jeevan Kumar & Ors. [(1985) 2 SCC 683] somewhat different note was struck. The question recently fell for consideration before a Three Judge Bench of this Court in Rakesh Vij vs. Dr. Raminder Pal Singh Sethi & Ors. reported in (2005) 8 SCC 504 wherein this Court upheld the ratio laid down in Harbilas Rai Bansal (supra) stating :

"We allow the appeal, set aside the impugned judgment of the High Court, declare the abovesaid provisions of the amendment as constitutionally invalid and as a consequence restore the original provisions of the Act which were operating before coming into force of the amendment. The net result is that a landlord \026 under the Act \026 can seek eviction of a tenant from a non-residential building on the ground that he requires it for his own use."

In view of the afore-mentioned decision of this Court, we are not called upon to answer the said question.

The learned counsel appearing on behalf of the appellant faced with the said decision, however, submitted that whereas a clear finding of fact was arrived at by the Rent Controller that the respondent had failed to prove his bona fide requirement in relation to the said premises in view of the fact that his sisters did not give any consent for starting a business in the said shop, the Appellate Authority did not delve deep into the matter. Our attention in this behalf has been drawn to the following findings of the Rent Controller:

"The third ground which has been raised by the counsel for the

respondent for nailing the petitioner's case by itself has a force to upset the petitioner's case because firstly in the case in hand the petitioner has no where pleaded that he is the sole owner of the shop in dispute and secondly from the perusal of Ex.D6-the petition under Section 4 of the Act for the Determination of the Fair Rent which was filed by the petitioner alongwith his four sisters, this Court is satisfied that the shop in dispute is jointly owned by the petitioner alongwith his four sisters. In para No.1 of the aforesaid petition Ex.D6 this has been categorically pleaded that the petitioners (i.e. the Manohar Lal Jain-the petitioner and his four sisters) are owner of the shop. Consequently the testimony of the petitioner that he is owner of the shop in dispute is not only beyond pleading but is also devoid of truth. Since the petitioner is not the sole owner of the shop in dispute, therefore, the petitioner's version that the shop in dispute is required solely by him for his personal use and occupation for running a wholesale business of Ayurvedic Business appears to be a concocted version because the petitioner has no where stated that his other four sisters who are also the owner of the shop in dispute have consented him to use the shop in dispute for his own use and occupation."

The appellate Authority although should have dealt with the said question, had otherwise considered the matter from all aspects.

He had taken note of the fact that the landlord was one of the co-owners and non-joinder of other co-owners in eviction petition is not fatal.

This question now stands concluded by a decision of this Court in *India Umbrella Manufacturing Co. & Ors. vs. Bhagabandei Agarwalla (Dead) by Lrs. Savitri Agarwalla (Smt.) & Ors.* [(2004) 3 SCC 178] wherein this Court opined:

"Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See *Sri Ram Pasricha v. Jagannath* [(1976) 4 SCC 184] and *Dhannalal v. Kalawatibai* [(2002) 6 SCC 16], SCC para 25.) This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his

own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law."

A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceeding before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event, a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings initiated by the respondent herein. The submission of the learned counsel for the appellant to the effect that before initiating the proceedings, the appellant was required to show that he had experience in running the business in Ayurvedic medicine, has to be stated to be rejected. There is no law which provides for such a pre-condition. It may be so where a licence is required for running a business, a statute may prescribe certain qualifications or pre-conditions without fulfilment whereof the landlord may not be able to start a business, but for running a wholesale business in Ayurvedic medicine, no qualification is prescribed. Experience in the business is not a pre-condition under any statute. Even no experience therefor may be necessary. If the respondent has proved his bona fide requirement to evict the appellant herein for his own purpose, this Court may not, unless an appropriate case is made out, disturb the finding of fact arrived at by the Appellate Authority and affirmed by the High Court.

For the foregoing reasons, there is no merit in this appeal. It is dismissed. In the facts and circumstances of this case, there shall be no order as to costs.