

In the High Court of Punjab and Haryana at Chandigarh.

**CR No. 1275 of 2014
Decided on 09.2.2015**

Indian Oil Corporation Ltd.

--Petitioner

Vs.

Baldev Sharma @ Baldev Singh etc.

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr. Ashish Kapoor, Advocate, for the petitioner
Mr. Harshit Jain, Advocate, for the respondents

Rakesh Kumar Jain,J: (Oral)

This petition is against the order dated 11.12.2013, dismissing an application filed by the petitioner under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short, 'the CPC').

In short, the petitioner is the lessee of respondent No.2 (Harmesh Lal) for a period of 30 years. It is alleged that the land in dispute was let out to him by respondent No.2 for a period of one year i.e. from 1.10.2005 to 30.9.2006. The petitioner gave the land in dispute to the contractor for a period from 1.10.2007 to 30.9.2008. During this period, respondent No. 1 entered into possession and constructed a Dhaba and alleged that he has been inducted as tenant by respondent No.2.

The petitioner initiated the proceedings for eviction by serving a notice upon respondent No.1 under Section 4 of the Public Premises (Eviction of Unauthorised) Act, 1971 (for short,'the Act') on 23.9.2013 which was challenged by respondent No.1. by filing a suit for permanent injunction. While the proceedings before the Civil Court were pending, the proceedings before the Estate Officer under the Act, continued in which a specific issue was framed as to *'whether respondent no.1 is in unauthorised possession of the property in dispute ?* That suit was decided in favour of the petitioner and eviction order was passed on 23.1.2014.

Respondent No.1 filed the appeal against that order. During the pendency of the appeal, the petitioner also filed CWP No. 8629 of 2014 in which it was ordered that if eviction order is sustained by the Appellate Authority, then the Senior Superintendent of Police, Patiala-respondent No.2 shall provide police assistance to the petitioner to ensure peaceful delivery of possession of the demised premises. The writ petition was disposed of on 07.5.2014 by giving a direction to the Additional District Judge, Patiala-Appellate Authority to decide the appeal pending before it within a period of three months from the date of receipt of certified copy of the order.

Learned counsel for the petitioner has produced a copy of the order passed in Civill Appeal No. 31 of 2014 titled as Baldev Sharma @ Baldev Singh Vs. M/s. Indian Oil Corporation. The said appeal is dismissed by the Additional District Judge, Patiala on 17.5.2014 and has not been challenged by respondent No.1.

It is submitted by learned counsel for the petitioner that in pursuance of the orders passed by the Estate officer and the Appellate authority, possession has already been taken of the premises in dispute on 04.7.2014 and Dhaba owned by respondent No.1 has been demolished. Thus, it is submitted that even the suit filed by respondent No.1 for permanent injunction has become infructuous.

On the other hand, learned counsel for respondent No.1 has argued that there is no error in the orders passed by the Court below because the application filed by the petitioner under Order 7 Rule 11 of the CPC has been dismissed and it is yet to be decided by the Court below as to whether respondent No.1 or respondent No.2 is a tenant or not?

After hearing learned counsel for the parties and examining the record, I am of the considered opinion that the application filed by the petitioner under Order 7 Rule 11 of the CPC should have been allowed by the trial Court in view of the facts and circumstances narrated here-in-above because respondent No.1 has been held to be in unauthorised possession before the Estate Officer, whereas a specific issue was framed in that regard and his appeal was also dismissed by none else than the Additional District Judge, Patiala.

The findings recorded by the Estate Officer about the status of respondent No.2 as to whether he is in unauthorised occupation of the

property in dispute and of the Appellate Authority have not been challenged by respondent No.2 in the higher Court.

Once it has been held that respondent No.1 is in unauthorised possession over the property in dispute of which possession has already been taken by the petitioner, the suit filed by respondent No.1 seeking possession cannot be allowed to continue and as such, the application filed by the petitioner under Order 7 Rule 11 (a) of the CPC has to be allowed.

Consequently, the present petition is hereby allowed and the order of the Court below is set aside.

09.2.2015
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(Rakesh Kumar Jain)
Judge