

CR No.8170 of 2014

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.8170 of 2014
Date of decision:12.01.2015**

Ashwani Mehta and another ...Petitioners

Versus

Smt. Prabha Sehgal and another ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Arpandeeep Narula, Advocate,
for the petitioners.

Rakesh Kumar Jain, J.

The application filed by the petitioners for framing and deciding issue with regard to maintainability of the suit as a preliminary issue has been dismissed by the trial Court against which the present revision petition has been preferred in which it is submitted that if issue no.5 is treated as a preliminary issue, it could save time of the Court as the legal question involved in this case is as to whether the property in dispute is exempted from the purview or operation of the Haryana Urban (Control of Rent and Eviction) Act, 1973, having been constructed within the period of 10 years from the date when the suit was filed.

There is no dispute that on the pleadings of the parties, as many as 8 issues have been framed by the trial Court on 12.02.2013 and the trial Court has dismissed the application of the petitioners on the ground that

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issue no.5 is not an issue of law but a mixed question of law and facts which could only be decided after both the parties lead their respective evidence.

Counsel for the petitioners has submitted that as per Order 14 Rule 2 of the Code of Civil Procedure, 1908, the Court may try issue no.5 as a preliminary issue as it is an issue of law as it relates to the bar to the suit filed by the respondents.

After hearing learned counsel for the petitioners and examining the record, I am of the considered opinion that there is no error in the impugned order because the question as to whether the property is 10 years old or not is a matter of evidence and is not a pure question of law, therefore, the trial Court has rightly observed that it cannot be taken up as a preliminary issue and has relied upon a judgment of the Delhi High Court in the case of **M/s Atma Ram Properties (P) Ltd. v. Delhi Transport Corp.,** 2014(2) CCC 206 (Delhi).

Since there is no error in the order of the Court below, therefore, there is no scope in this revision petition for the purpose of interference by this Court.

Dismissed.

January 12, 2015
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(**Rakesh Kumar Jain**)
Judge