

LPA No. 787 of 2015 (O&M)
LPA No. 825 of 2015 (O&M)

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

LPA No. 787 of 2015 (O&M)
DECIDED ON: DECEMBER 18 , 2015

ASHOK KUMAR

.....APPELLANT

VERSUS

SATYAWATI AND OTHERS

.....RESPONDENTS

AND

2.

LPA No. 825 of 2015 (O&M)

DINESH BAJAJ

.....APPELLANT

VERSUS

SATYAWATI AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE JASPAL SINGH.

Present: Mr. Anupam Gupta, Sr. Advocate with
Mr. Abhishek Sharma & Mr. Gautam Pathania, Advocates,
Mr. Rajesh Sethi, Advocate
for the appellant(s).

Mr. Balwinder Kaushik, Advocate
for respondent No.4.

Ms. Kirti Singh, DAG, Haryana.

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1. *Whether Reporters of Local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

JASPAL SINGH, J.

CM No. 1651 of 2015

In view of averments made in the application, the same is allowed and delay of 59 days in filing the instant appeal is condoned.

LPA No. 787 of 2015

Vide this common order, we intend to dispose of LPA No. 787 of 2015 preferred by Ashok Kumar and LPA No. 825 of 2015 preferred by Dinesh Bajaj, as both these appeals have arisen out of the judgment/order dated February 11, 2015 passed by learned Single Judge in CWP No. 14362 of 2012, titled *Satyawati & another v. State of Haryana and others*.

2. Brief facts of the case are that Vinod Kumar (now deceased) was given the disputed shop on lease @ ₹360/- per month as rent, in the year 1985 where he used to work as auto mechanic. After the death of Vinod Kumar, his mother, wife and minor daughter have inherited his property being legal heirs. Ashok Kumar who allegedly had an evil's eye on the disputed shop, approached the petitioners (in writ petition) with the request that he would work on the shop as an employee. Consequently, he started working as employee. In the year 2006, petitioners came to know that Ashok Kumar had not paid the rent to respondent-Municipal Corporation for the last many years and was not performing his duties diligently, rather with evil design he got installed telephone and electricity connections in his name. Thereafter, petitioners approached the Municipal

Corporation, Ambala and came to know about the intention of Ashok Kumar to get the disputed shop transferred in his name. When information under the Right to Information Act was got from the authorities, it transpired that Ashok Kumar was trying to claim the ownership. In this regard, a complaint was filed before the Hon'ble Governor of Haryana. Upon this, inquiry was got conducted and direction was issued to the petitioners to move application to the Secretary, Municipal Corporation (City), Ambala for getting the shop transferred in their favour. Pursuant to it, petitioners moved application for getting the shop transferred in their name. On the other hand, Ashok Kumar also moved application claiming his title over the disputed shop. Ultimately, Secretary, Municipal Corporation processed the matter vide letter dated December 20, 2011. Vide letter dated December 28, 2011 opinion of District Attorney, Ambala was sought and he gave his opinion that Ashok Kumar has taken the possession of the disputed shop from the family members of the deceased-Vinod Kumar and has paid entire consideration for transfer of possession of the disputed shop to Mamta Rani, widow of Vinod Kumar. Therefore, he has a better case for transfer of the lease of the disputed shop in his name. Thereafter, the Secretary and Commissioner, Municipal Corporation, Ambala relying upon the legal opinion of the Deputy District Attorney directed to transfer lease/tenancy of the disputed shop in favour of Ashok Kumar. The aforesaid decision was challenged by the petitioners and learned Single Judge has allowed their writ petition.

3. Through LPA No. 825 of 2015, appellant-Dinesh Bajaj has sought the setting aside and expunction of disparaging remarks and adverse observations made qua him by learned Single Judge in the impugned judgment dated February

11, 2015 passed in CWP No. 14362 of 2012. The learned Senior Counsel for the appellant-Dinesh Bajaj has assailed the adverse remarks submitting that recording of disparaging remarks by learned Single Judge were not at all required to adjudicate upon the issues. In fact, neither appellant-Dinesh Bajaj was a party to the proceedings nor he has been afforded any opportunity of explaining or defending himself. Time and again the Hon'ble Apex Court has deprecated the practice of making observations in judgments, unless the person(s) in respect of whom comments and criticisms were being made were parties to the proceedings and further they were granted an opportunity of having their say in the matter. On this score alone the adverse remarks made by learned Single Judge are not sustainable in the eyes of law. To buttress his contention learned Senior Counsel for the appellant-Dinesh Bajaj has relied upon the judgment of Hon'ble Apex Court captioned as ***Om Parkash Chautala v. Kanwar Bhan, (2014) 5 SCC 417.***

4. We have given an anxious thought to the submissions made by learned Senior Counsel for the appellant-Dinesh Bajaj and have perused the records. Though the opinion expressed by appellant-Dinesh Bajaj, which was made the basis for leasing out the shop in question to Ashok Kumar-appellant in LPA No. 787 of 2015 appears to be erroneous but the adverse remarks were uncalled for qua appellant-Dinesh Bajaj. It has been judicially recognized that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks;

(c) whether it is necessary for the decision of the case, as an integral part thereof.

5. On perusal of the impugned judgment, we find that appellant-Dinesh Bajaj was neither before the court nor he was given any opportunity of being heard before passing the impugned judgment/order by learned Single Judge. In view of the aforesaid settled legal proposition as well as observation made by Hon'ble Apex Court in Om Parkash Chautala's case (supra), the order dated February 11, 2015 passed in CWP No. 14362 of 2012, as far as it relates to the adverse remarks qua appellant-Dinesh Bajaja is not sustainable. Thus, the same deserves to be set aside/expunged.

6. Now coming to LPA No. 787 of 2015 preferred by Ashok Kumar. The contention of learned counsel for the appellant-Ashok Kumar is that Vinod Kumar since deceased was granted lease of shop in question in the year 1985 at a monthly rent of ₹360/- for running auto mechanic and spare parts. Unfortunately, he expired on April 22, 1987 at the age of 27 years leaving behind his mother, wife and a minor girl as his legal heirs. After the death of Vinod Kumar, a settlement was arrived in between appellant-Ashok Kumar and mother and wife of Vinod Kumar-deceased and they transferred the possession in the year 1997. Appellant-Ashok Kumar started running the business of auto repairs in the name and style of Pardhan Auto Care Centre. He has been regularly paying the monthly arrears of rent to Municipal Committee, Ambala. He deposited the arrears of rent on April 30, 1997 besides, he also got installed a telephone and electric connection. Upto the year 2007, there was no complaint of running of a business and paying the arrears of rent regularly by appellant-Ashok Kumar. But thereafter by concocting a false story that appellant-Ashok Kumar was got employed in the

shop in question by Satyawati mother of Vinod Kumar-deceased, an application was moved by the legal heirs of Vinod Kumar-deceased for getting the shop in question transferred to them. It was only thereafter, a dispute arose in between the parties. Similar application for getting the shop in question transferred in his name by appellant-Ashok Kumar was also moved. Since appellant-Ashok Kumar has been continuously occupying the shop and was running his business, it was rightly transferred by Municipal Corporation, Ambala in his name. Thus, the impugned judgment/order is not sustainable in the eyes of law and the same is liable to be set aside.

7. After bestowing due consideration to the submissions made by learned counsel for the appellant-Ashok Kumar as well as scanning the impugned judgment/order, we do not find any legal weight in the submissions made by learned counsel for the appellant-Ashok Kumar, especially in view of the fact that undoubtedly, the shop in question was leased out to Vinod Kumar in the year 1985 and subsequent thereto, who started running his business of auto mechanic as well spare parts. Unfortunately, he was taken away by nature in the year 1997. He left behind his mother (Satyawati), his wife (Mamta Rani); besides, a minor daughter.

8. It is pretty settled that if lease is transferable, the same is required to be transferred in the names of legal heirs of the deceased. The possession of appellant-Ashok Kumar if any, over the shop in question can be termed to be unauthorised and the authorities should have proceeded under Section 408-A of the Haryana Municipal Corporation Act, 1994 (for short “the Act”) for his eviction from the premises belonging to the Municipal Corporation/Council. But instead of doing so, the shop in question was transferred in the name of appellant-Ashok

Kumar. The learned Single Judge has rightly set aside the order dated January 19, 2012 passed by Commissioner, Municipal Corporation, Ambala transferring the property in the name of appellant-Ashok Kumar. Satyawati and others are legally entitled for the transfer of shop in question being legal heirs of Vinod Kumar-deceased and the order in this regard passed by learned Single Judge cannot be faulted with.

9. In the light of what has been discussed above, LPA No. 825 of 2015 preferred by Dinesh Bajaj is allowed and disparaging/adverse remarks passed by learned Single Judge are set aside/expunged. Whereas, LPA No. 787 of 2015 preferred by Ashok Kumar stands dismissed.

[JASPAL SINGH]
JUDGE

[SURYA KANT]
JUDGE

DECEMBER 18, 2015
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