

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

**CM No.793-CII of 2014 and
CR-322-2014**

Date of decision: August 22, 2016

Bal Kishan and another

...Petitioners

Versus

Pratishth Mandir Murti Thakur Shyama Ballabji (Trust)

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. B.S. Tewatia, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J.(ORAL)

Challenge in this revision petition is to the impugned order 11.02.2011 passed by the Rent Controller, Faridabad whereby the ejectment petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 preferred by the respondent/Trust-landlord against the petitioners, on the ground of “ceased to occupy” the shop has been accepted ordering the ejectment of the petitioners, appeal against which preferred by the petitioners has also been dismissed by the Appellate Authority, Faridabad vide impugned order dated 24.07.2013. It is the contention of learned counsel for the petitioners that the petitioners are running a shop of fruit vendor which does not require any electricity connection and therefore, merely because there is no electricity connection running in the shop in question for the last 11-12 years would not be enough to prove that the premises have been abandoned by the petitioners, rather the evidence which has been brought on record, apart from the assertion of the petitioners i.e. the statements of RW2-Hari Ram Gupta and RW3-Darshan Lal, where they have categorically stated that they have been purchasing fruits from the

petitioners for the last 10-12 years clearly establishes that the shop was being used for the purposes for which it was rented out to them by the respondent-Trust. He, therefore, contends that the findings as recorded by the trust is not sustainable and is to be set aside.

I have considered the submissions made by learned counsel for the petitioners and with his able assistance have gone through the impugned judgments.

The evidence, which has been brought on record by the respondent-landlord, without doubt, establishes that there is no electricity meter in the demised shop for the last 16-17 years. The contention of the petitioners' counsel that merely because there is no electricity connection, cannot be a ground to come to a conclusion that the shop has been abandoned and the petitioners have ceased to occupy, would not be enough to establish the same is acceptable if there is no other evidence in support led by the petitioners. Rather, this plea cannot be accepted in the light of the testimony of PW1-Pratap Singh Chauhan and PW2-Nand Kishore, who have clearly proved that the shop is lying vacant since 2004, when PW-1 Pratap Singh Chauhan became the President of the Trust. The two star witnesses, who have been produced by the petitioners namely, RW2-Hari Ram Gupta and RW3-Darshan Lal, are small time fruit vendors. It is not the case of the petitioners that they are running a wholesale fruit shop. Evidence has also come on record in the cross examination of these two witnesses that there is full fledged wholesale market of vegetables and fruits at Ballabgarh. The Courts have, therefore, proceeded to doubt the evidence of these two witnesses with regard to purchase of fruits from the petitioners for running their business of small time fruit vendor. That apart, RW3- Darshan Lal has

stated in his cross-examination that the demised shop is Shop No.1 and is adjacent to the gate of temple whereas in the site plan the demised shop abuts road and it is no where near the temple gate. This clearly shows that the said witness had not even visited the shop and has, therefore, not truthfully deposed before the Court. No documents or receipts have been produced with regard to the purchase of any of the fruits from the petitioners by the witnesses produced by them. RW3-Darshan Lal has also not been able to identify the location of the shop which further shows that this witness has also not correctly deposed before the Court. The findings as recorded by the Courts below are based on proper appreciation of the pleadings and evidence brought on record which do not call for any interference by this Court.

In view of the above, finding no merit in the revision petition, the same stands dismissed.

Since the main appeal stands dismissed, *CM No.793-CII of 2014* also stands disposed as infructuous.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

August 22, 2016
ps-I

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No