

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R No. 3802 of 2011 (O&M)
Date of decision : May 12, 2016

Des Raj Tandon

..... Petitioner

v.

Aruna Singhal

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Chetan Mittal, Sr. Advocate
with Mr. Kunal Mulwani, Advocate
for the petitioner.

Mr. Ashok Gupta, Advocate
for the respondent.

1. **Whether Reporters of Local Newspapers 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 ?**

Ajay Tewari, J

This petition has been filed challenging the order dated 28.4.2011 whereby the application for leave to defend has been dismissed.

The first argument of learned counsel for the petitioner is that the respondent being a foreign citizen is not entitled to maintain the eviction petition. This argument has already been rejected by this Court vide order dated 09.05.2016 passed in CR No. 3509 of 2014, Krishan Kumar vs Kamla Devi.

The second argument raised by learned counsel for the petitioner is that in the year 2008, the respondent had filed an eviction

petition on the ground of personal requirement and a reading of that petition gives an indication that she had already shifted back to India. Thereafter, in the year 2010, she filed the instant petition wherein she claimed that because she was a USA citizen, she was an NRI, without clarifying as to whether she had already returned, and if so when. Even a copy of the passport was not placed on record either with the petition or with the reply to the application for leave to defend. Moreover, the petitioner had filed an application for issuance of a direction to the respondent to place on record a copy of the passport, and in reply thereto, she stated that the passport was with her son in USA.

Counsel for the respondent has argued that actually even now the position is that the respondent spends most of her time in USA and comes back to India periodically and can only think of coming back permanently once the possession of the property is given to her so that she, her husband and children can start work over here. He has further argued that the petitioner has been able to stall the handing over of possession for the past five years. He is, however, not in a position to deny the factual assertions made by learned counsel for the petitioner.

In my opinion, the present is a case where atleast one triable issue had arisen. Had the respondent placed on record a copy of her passport and had that shown that even on the date of filing of 2010 petition, she was permanently or temporarily settled abroad, it would have been a different thing but in the absence thereof, it cannot be said that she has been able to substantiate the fact that she was, on the date of the filing of the petition, covered under the definition of Section 2(dd) of the East Punjab

Rent Restriction Act, 1949. In the circumstances, this is a matter where leave to defend should have been granted. I order so. Consequently, this petition is allowed and the impugned order is set aside. Parties, through their counsel, are directed to appear before the Rent Controller on 23.5.2016. Keeping in view the long period which has lapsed since the filing of this petition, with the agreement of the learned counsel for the parties, it is directed that both the parties will get two effective opportunities each to conclude their evidence and the Rent Controller will decide the matter on or before 30.9.2016.

May 12, 2016
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(AJAY TEWARI)
JUDGE