

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

CR-4559-2010 (O&M)

Date of decision : 09.05.2016

Rajni Tandon

..... Petitioner

versus

Kanta Devi and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate
for the petitioner.

Mr. C.B.Goel, Advocate
for the respondents.

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?

AJAY TEWARI, J. (ORAL)

This petition has been filed against the order of the Appellate Authority reversing that of the trial Court and thereby dismissing the petition of the petitioner-landlady.

The case of the petitioner-landlady was that she was living in a rented accommodation with her married son and required the house for her own use and occupation. The Rent Controller held that her requirement was bonafide and consequently ordered eviction. In the appeal the appellate authority held that since it was proved that the respondent-Smt.Rajni Tandon had been changing her rented accommodation from time to time it was not a case of personal requirement because she had to pay heavy rent

only because she was time and again changing the houses.

Learned senior counsel for the petitioner has argued that the basic premise of this judgment is flawed. As per him the issue is not whether the landlady is paying a high rent or not but whether for any reason the landlady has a bonafide requirement of her own house. Developing his argument further he has stated that the landlady may be staying free in some other place but when she wants to live in her own house the presumption of bonafide necessity is not rebutted only on this ground. Learned senior counsel for the petitioner has further argued that originally the husband of the petitioner had filed a petition against the brother-in-law of the respondent No.1 and had succeeded on the ground of personal necessity but thereafter the respondent No.1 had taken the plea that she was also the tenant and that plea having been upheld the present petition was filed. During this interregnum the husband of the petitioner also died. As per the learned senior counsel, the issue regarding eviction of the house in question has now been pending in various Courts since 13.10.1984 when the first petition was filed by the husband of the petitioner.

Learned counsel for the respondents has, however, argued that admittedly the respondents are running printing press in the premises and consequently the building in dispute is a non-residential building and therefore, the petitioner can not seek to get it vacated for the residential purpose. He has further argued that it has been proven on record that during the pendency of this issue the petitioner has shifted her house four

times and therefore, she is completely covered under the mis-chief of having vacated the premises without sufficient cause.

As regards the argument that the building is a non-residential building the same pales into a significance because the respondents had themselves admitted that they were also living in the premises. A perusal of the record reveals that no such plea was taken in the written statement to the effect that the building was a non-residential building and consequently eviction could not have been sought on the ground of personal necessity for residential purpose. In the circumstances there was no occasion for the petitioner to have controverted this plea or brought any evidence in respect thereof in the evidence in infirmity.

Learned counsel for the respondents has further pointed out that the son of the petitioner himself admitted that a printing press was running in the premises in dispute. A perusal of the previous statement made by the said witness PW-1 shows that he stated that he did not know since when the respondents were running a printing press. On the other hand the witness RW-1 Ashok Kumar unequivocally stated that the printing press had been started by the respondents about 20 years ago, that is to say in the year 1998, since he gave his testimony in 2008. Thus the evidence of the respondent No.1 herself reveals that the respondents had started the printing press much after the tenancy had started and even after the premises had been purchased by the petitioner. This subsequent change of user of a residential building will not convert it a non-residential building.

As regards the argument that the petitioner has been shifting houses, in this regard the petitioner and her son had stated that they had been shifting the houses as and when the landlord had expressed requirement for the same. Obviously this kind of thought process is completely alien to the respondents who can not even conceive that there are people in the world who may vacate a premises because their landlord requires it. Courts can take judicial notice of the fact that though a large proportion of tenants would like to stick on to properties at any cost in view of the protection given to them by the rent laws yet there are also tenants in the world who would vacate a premises when they are asked to vacate and when they come to know that the landlord requires the same. Consequently the explanation offered by the petitioner and her son cannot be disbelieved.

In the circumstances, the findings on both the grounds on which the petitioner has been non-suited by the Appellate Authority has to be reversed and I consequently reverse the same and allow the petition. In that event, learned counsel for the respondents has prayed that some time be granted to vacate the premises in dispute. Keeping in view the longevity of this litigation, I do not deem it appropriate to grant any time.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

09.05.2016*Pooja sharma-I***(AJAY TEWARI)
JUDGE**