

C.R No. 5147 of 2004 (O&M)

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

C.R No. 5147 of 2004 (O&M)
Date of decision : July 04, 2016

Shanti Devi

..... Petitioner

v.

Nanak Chand

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. SK Garg Narwana, Sr. Advocate
with Ms. Shweta Nahata, Advocate
for the petitioner.

Mr. CB Goel and Mr. Manoj Sharma, Advocates
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 against the judgment of the Appellate Authority dated 30.08.2004 reversing that of the Rent Controller dated 12.03.2004 and thereby dismissing the eviction petition filed by the petitioner.

The case of the petitioner was that she required the shop in

dispute for bona fide use and occupation to start the business of cycle and cycle parts. The Appellate Authority held that the petitioner in the pleadings had falsely denied the fact that she had sold one shop and had got another one vacated and had let the same out again, whereas in the cross-examination, she had to admit the same. The Appellate Authority also held that apart from the ground of material concealment, the case set out by the petitioner did not come within the parameters of bona fide necessity and seemed to be more a case of greed than need.

Learned senior counsel for the petitioner has argued that what had actually emerged in the evidence was that one shop was sold by the petitioner about 15 years prior to the filing of the present petition and in that sale deed it was mentioned that the shop was sold because she was in need of money. The second thing which emerged was that the shop which was let out after getting the same vacated was also done about 8 years prior to the filing of the instant petition. As per him, viewed from this angle, the averment made by the petitioner to the effect that she had not 'recently' sold a shop or let out another one could not be taken to be a material concealment so as to non-suit her.

Learned counsel for the respondent, on the other hand, has argued that even if the petition does not suffer from the vice of material concealment yet the need projected by an old lady to restart the business

of her late husband after 18 years does not inspire any confidence. As per him, if the petitioner had the experience of running the business as is being claimed by her, there would have been no impediment for her to continue the business of her late husband rather than close it down and sell the premises where that business was being run.

In my opinion, arguments of counsel for the respondent carry more weight. No doubt, in the circumstances of the case and keeping in view the time period of the sale of one shop and letting out of another shop and the date of filing the petition, it can be argued that when the petitioner pleaded that she had not 'recently' sold/let out the premises it cannot be taken to be material concealment. However, the argument of counsel for the respondent also cannot be denied that if the petitioner, as is claimed, had the experience of running the business of her husband, there was no reason for her to have closed it down, sold the premises where it was being run and then decide to restart it in a different premises after 18 long years when she had become an old lady. In this view of the matter, I find no reason to take a different view than that taken by the Appellate Authority. Consequently, finding no merit in this petition, the same is dismissed.

July 04 , 2016
'kk'

(AJAY TEWARI)
JUDGE

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