

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

**C.R. No.4976 of 2015 (O&M)
Date of Decision : 03.05.2016**

Inderbir Singh

..... Petitioner

Versus

Paramjit Dhillon

....Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Anil Bansal, Advocate
for the petitioner.

Mr. Vaibhav Narang, Advocate,
for the respondent.

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 revision petition has been filed against the concurrent orders of eviction of the shop of which the petitioner is a tenant.

The respondent-landlord had purchased entire premises (of which the disputed shop was one part) and had thereafter filed a petition for eviction of the petitioner-tenant on the ground that though she was running a boutique in part of the

premises but she required the shop in dispute because she wanted to reconstruct the same and make a big showroom. The case of petitioner-tenant, on the other hand in the written statement was that the respondent had not disclosed that in fact there were four adjacent shops, out of which two were already in her possession and that she had filed another petition for eviction against the other tenant and was thus guilty of material concealment. Both the Courts below, however held that the respondent had succeeded to prove her bona fide necessity and ordered eviction.

Learned counsel for the petitioner has laid great stress on the concealment aspect. He has vehemently argued that once the respondent had not disclosed that she was in occupation of two shops and had already filed a petition for eviction of the third shop, she would be disentitled to seek eviction. To support this contention, he has relied upon judgment passed by this Court in **"Banke Ram vs. Smt. Sarasti Devi" AIR 1977 158 (P&H).**

Learned counsel for the respondent, on the other hand, has argued that even in Banke Ram's case (supra), the Full Bench of this Court in para 12 has held as under :-

" In the present case, we are concerned only with the question as a principle of law as to whether it is essential to plead in an eviction application the ingredients of Sub-clause (b) and (c) and not the question that if in a particular case these ingredients are not pleaded, but the parties have led evidence

with regard to them, what will be the effect? In any given case, where facts have not been averred in the pleading, a number of questions can arise as to whether proper evidence has been adduced by the landlord regarding those facts which do not find place in the pleadings and secondly whether such evidence will be admissible or not and lastly, whether the tenant was taken by surprise or not and had led evidence with full knowledge of the requisite contentions raised by the landlord and whether the tenant has in those circumstances being prejudiced or not. The court would be required to give full consideration to the contentions raised by the respective parties and the facts and circumstances of each case before giving its decision in favour of the landlord or the tenant, but the decisions of the High Courts or the Supreme Court, in this regard, cannot be of any avail to detract from the validity of the proposition that it is necessary for the landlord to make averments regarding the ingredients of Sub-clauses (b) and (c). However, it may be made clear that when it is held that it is essential to plead the ingredients of Sub-clauses (b) and (c) in the eviction application by the landlord, it should not be understood that under no circumstances, in the absence of pleadings, the evidence regarding the ingredients envisaged in Sub-clauses (b) and (c) can be looked into.

In fact in the subsequent judgments along with test of material concealment, the test of prejudice to tenant has been included and the Courts have held that if, like in the present case

the tenant knew about the other properties, no prejudice was caused to him since the Court considered these facts had emerged in the reply to the petition. Reference may be made to the judgment of this Court passed in the matter of **"Dr.S.S. Mann vs. A. K. Sharma" 2013 (4) RCR (Civil) 1054.**

In these circumstances, the plea regarding non-disclosure is negatived. As regards personal necessity, no fault can be found with the findings of Courts below that the respondent had succeeded in proving that after getting the premises vacated she would first raze it and then raise fresh construction. In these circumstances, finding no merit in the petition, I uphold the decision of both the Courts below and dismiss the same.

MAY 03, 2016
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(AJAY TEWARI)
JUDGE