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

C.R. No.4751 of 2006

Date of Decision : 27.02.2016

Dr. Y. P. Aurora

..... Petitioner

Versus

Dr. Manphool Dhiman

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. A.K. Chopra, Sr. Advocate
with Mr. Gursheer Singh Bhandal, Advocate
for the petitioner.

Mr. P.L. Singla, 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 has been filed against the concurrent orders of the Courts below declining eviction of the respondent-tenant from the shop in dispute on the ground of person necessity of the petitioner-landlord.

As per the case set up by the petitioner-landlord, he had retired as a Doctor from the Hindustan Machine Tools (HMT), Pinjore on 31.01.1996 and after retirement had started operating his clinic in the adjoining premises owned by him and required the shop in dispute for establishing Nursing Home and also wanted to instal X-Ray machine and

Ultrasound machine because his son was also in the final year of MBBS and was going to qualify as doctor. Therefore, the petitioner filed an eviction petition 17 years ago i.e. in the year 1999. During the pendency of the petition the son of the petitioner qualified as a doctor and got married to a qualified doctor and joined service. Both the Courts below held that since neither the petitioner nor his son were qualified Radiologists they could not set up an X-Ray machine and that the Nursing Home could not be run in an area where there was no sewerage and water system and apart from radiology there were no specialists in pathology and cardiology, The Appellate Authority also held that since neither the petitioner nor his children were specialists in any field of medicine, they were not qualified to open a clinic and consequently rejected the plea of bonafide necessity.

Learned senior counsel for the petitioner has argued that the Courts below have taken an unduly pedantic approach and a qualified doctor can well install X-Ray machine with a consulting radiologist. Further he has relied upon the judgment of the Hon'ble Supreme Court in the matter of *Sarla Ahuja vs. United India Insurance Company, reported as AIR 1999 SC 100*, to contend that unless shown to the contrary the presumption of bonafide need would be in favour of the landlord and a heavy burden lies on the tenant to rebut the same. As per the learned senior counsel, merely by pointing out that the petitioner is not a qualified radiologist a presumption that he would install an X-Ray machine can hardly be said to be rebutted. As regards the fact that the son of the petitioner had joined service, the learned senior counsel has relied upon the

judgment of the Hon'ble Supreme Court in the matter of ***M/s Sait Nagjee Purushotham and Company Limited vs. Vimalbai Prabhulal and others, reported as 2005(2) RCR 437***, wherein it was held as follows:-

“Learned counsel for the appellant submitted that in fact this plea of either starting business or expanding it at Calicut is nothing but sham and it was also pointed out that some of the sons have multifarious activities and are already established in some other business and one of the sons i.e. respondent No.9 had already gone to United States of America and he has settled there. Therefore, the need is not bona fide. We fail to appreciate that when two sons are there and if they want to expand their business at Calicut then it cannot be said that the need is a sham one. It is not possible for the landlords and their sons to wait till the disposal of the case. They have to do something in life and they cannot wait till the appellant is evicted from the premises in question. It is common experience that landlord tenant disputes in our country take long time and one cannot wait indefinitely for resolution of such litigation.”

Learned senior counsel for the petitioner has further relied upon the judgment of the Hon'ble Supreme Court in the matter of ***Gaya Prasad vs. Pradeep Srivastava, (2001) 2 SCC 604***, where their Lordships observed that the landlord should not be penalized for the slowness of the legal system and the crucial date for deciding the bonafide of the requirement of the landlord is the date of his application for eviction. However, their Lordship further added that subsequent events may in some situations be considered to have overshadowed the genuineness of the landlord's need but only if they are of such nature and dimension as to completely eclipse such need and make it lose significance.

Learned counsel for the respondent has tried to defend the impugned judgments and has only stressed that the respondent has been running his business in the shop in dispute for the last 37 years. He has not been able to produce any contrary judgments.

On the last date, the learned senior counsel for the petitioner has taken instructions and had stated that even though the petitioner has been seeking this premises for the last 17 years yet if the respondent agreed to vacate, he would not oppose the grant of reasonable time (even upto 31.03.2017) to enable the respondent to relocate his Homeopathy practice and the matter had been adjourned. Today the learned counsel for the respondent has expressed an inability of the respondent to agree even to this condition.

In my opinion, the judgments of the courts below are vitiated by the fact that they have been influenced only by the ground that the petitioner is not a trained radiologist and also by the fact that his son subsequently obtained a job. As has been argued above by the learned senior counsel for the petitioner, it is not mandatory that only a qualified radiologist will install an X-Ray machine. Once the petitioner has the premises the X-Ray machine can be installed with a consulting radiologist which is the practice in many clinics. This would increase the efficiency and the viability of the practice of the petitioner.

In the circumstances, keeping in view the entire conspectus of facts and the judgments cited above, I allow this revision. The impugned judgments of the courts below are set aside. The respondent is granted three

months time from today to hand over the vacant possession of the demised property to the petitioner.

Since the main case has been decided, the pending Criminal Misc. Application, if any, also stands disposed of.

February 27, 2016
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(AJAY TEWARI)
JUDGE