

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

CR No.5742 of 2006 (O&M)
Date of decision: 26.05.2016

Mohm. Taj

.... Petitioner

versus

Abdul Hamid

.... Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Narender Pal Bhardwaj, Advocate
for the petitioner.

Mr. Prateek 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.(Oral)

This petition has been filed against the order dated 07.03.2006 passed by the Appellate Authority reversing the order dated 16.10.2002 passed by the Rent Controller and thereby dismissing the petition filed by the petitioner for vacation of the demised premises.

The case of the petitioner was that he had inducted respondent as a tenant and since he required the shop in dispute for personal requirement, the tenant should vacate the shop.

The claim of the respondent on the other hand was that in fact his father was a tenant and he was not the tenant and consequently, petition was not maintainable.

The Rent Controller held that petitioner was the landlord and the respondent was his tenant and after accepting the personal

requirement of the petitioner, allowed the rent petition.

The Appellate Authority, however, held that the respondent had able to prove that he was not the tenant but his father was the tenant and consequently, allowed the appeal.

Learned counsel for the petitioner has assailed the finding of the Appellate Authority. He primarily argued that during the pendency of the petition the father of the respondent (to bolster the case of the petitioner) had filed a civil suit for injunction claiming that he was the tenant in the premises in dispute. However, the civil suit was dismissed and appeal against that order was also dismissed and this fact has not been alluded to by the Appellate Authority. As per him, by ignoring this vital piece of evidence the findings of the Appellate Authority are touched by perversity and are liable to be set aside.

On the other hand, learned counsel for the respondent has argued that even though the fact that the father of the respondent had filed a civil suit and lost therein cannot be deemed to be the completely extraneous, yet the fact that the suit was dismissed, cannot give rise to the conclusion that present eviction petition has to be allowed. As per him, the present eviction petition could be allowed only if the petitioner was able to prove that in fact the respondent was his tenant and in the present case the petitioner has not been able to prove the same.

I find that there is no written record of the tenancy but only oral evidence is there on behalf of both the parties as per which the witnesses have given evidence in support of the party in whose favour they have appeared. The only piece of evidence which is

undisputed is that the electricity connection of the demised shop is in the name of the father of the respondent. During the evidence, the Clerk of the Electricity Board has come and stated that the necessary procedure for getting electricity connection was not followed in this case but the father of the respondent was in possession of the same.

Learned counsel for the petitioner is not in a position to explain as to how this has happened. As mentioned above all other evidence is of persons who have supported the party who have produced them and consequently, not much reliance can be placed upon them. Learned counsel for the petitioner is not able to persuade me that no court could have arrived at the finding recorded in the case while learned counsel for the respondent has argued that while exercising revisional jurisdiction, the Court cannot substitute the findings of a subordinate court only on the ground that a different view was possible but can interfere only when the findings of the lower court are vitiated in any manner.

I find myself in agreement with the arguments of the counsel for the respondent.

The petition is dismissed.

May 26, 2016
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(AJAY TEWARI)
JUDGE