

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

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1. Civil Revision No.6569 of 2016 (O&M)
Date of Decision: October 18, 2016
Radhika Parshad
...Petitioner
Versus
Smt. Akki Bai Oswal Trust (Regd.) and others
...Respondents

2. Civil Revision No.6875 of 2016 (O&M)
Jiwan Jhah
...Petitioner
Versus
Smt. Akki Bai Oswal Trust (Regd.) and others
...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Lakhwinder Singh Mann, Advocate
for the applicant-petitioner.

AUGUSTINE GEORGE MASI, J.

CM No.20159-CII of 2016 in CR No.6569 of 2016

Prayer in this application is for permission to place on record Annexures P-1 to P-3, photocopies of Annexures P-2 and P-3 and exemption from filing certified copies of all the Annexures.

Application is allowed.

The aforesaid documents are taken on record and exemption from filing certified copies of all the Annexures is granted subject to just exceptions.

CM No.21083-CII of 2016 in CR No.6875 of 2016

Prayer in this application is for permission to place on record Annexures P-1 to P-3, photocopies of Annexures P-2 and P-3 and

exemption from filing certified copies of all the Annexures.

Application is allowed.

The aforesaid documents are taken on record and exemption from filing certified copies of all the Annexures is granted subject to just exceptions.

CR Nos.6569 and 6875 of 2016

By this order, two rent revision petitions i.e. *Civil Revision No.6569 of 2016* titled as *Radhika Parshad Versus Smt. Akki Bai Oswal Trust (Regd.) and others* and *Civil Revision No.6875 of 2016* titled as *Jiwan Jhah Versus Smt. Akki Bai Oswal Trust (Regd.) and others*, which have been preferred by the tenants against the respondent-Trust, who is admittedly the owner and landlord of the demised premises and had filed petitions for eviction under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, on the grounds of personal necessity against the petitioner, which have been accepted both by the Rent Controller, Ludhiana and the Appellate Authority, Ludhiana, by orders dated 03.11.2014 and 28.07.2016 respectively.

2. The counsel for the petitioner has addressed arguments in *CR No.6569 of 2016* titled as *Radhika Prashad Versus Smt. Akki Bai Oswal Trust (Regd.) and others*.

3. Counsel for the petitioner asserts that the property which is being sought to be evicted and in possession of the petitioner is being used for commercial purposes i.e. shop which cannot be got vacated for a non-commercial purpose namely charitable. His further contention is that there is sufficient accommodation available with the respondent, where they

can start the proposed vocational courses. The purpose appears to be eviction of the petitioner from the property in dispute as it is in possession of the petitioner since long. Assertion has been made that none of the trustees of the respondent-Trust, who are also parties to the eviction petition, has appeared as a witness, rather one Mohan Lal has appeared as PW-3, who is an attorney and could not depose about the *bona fide* need on behalf of the respondents. Apart from this, he contends that respondent No.1 was a Charitable Trust which came into existence on 06.07.1955 but thereafter another trust deed dated 09.06.2008 has been executed and got registered by the respondents which is not permissible and, therefore, the present petition is not maintainable as they have not been able to prove the existence and continuation of the Trust after the original trustees have expired. He on this basis contends that the impugned orders passed by the Rent Controller, Ludhiana, dated 03.11.2014 and the Appellate Authority, Ludhiana, dated 28.07.2016, cannot sustain and deserve to be set aside.

4. He further contends that the Court below has wrongly dismissed an application for additional evidence preferred by the petitioner under Order XLI Rule 27 CPC for proving the certified copy of the eviction order dated 30.09.2015, whereby the eviction petition preferred by the respondent-landlord-Trust on the same grounds, has been dismissed by the Rent Controller. He submits that the said application should have been allowed. He, therefore, contends that the order dated 28.07.2016 dismissing the application preferred by the petitioner for additional evidence, cannot sustain and deserves to be set aside.

5. Another submission which has been made by the counsel for the petitioner is that *CR No.6295 of 2015* titled as *M/s Jainson Hosiery Industries Versus Smt. Akki Bai Oswal Trust (Regd.) and others* is a similar revision petition, where one of the tenants in the building in question of which the shops in possession of the petitioners are also situated, has been admitted by a coordinate Bench and the Registry has been directed to list the petition for final disposal in the opening after summer vacation of the year 2017 vide order dated 25.05.2016.

6. I have considered the submissions made by learned counsel for the petitioner and have gone through the impugned orders.

7. The admitted facts are that the petitioners are tenants in the demised premises, of which respondent No.1-Trust is the owner and respondents No.2 to 6 are the trustees. The relationship of landlord and tenant *inter se* the parties has been admitted. The factum of coming into existence of the Smt. Akki Bai Oswal Trust (Regd.) in the year 1955 is not in dispute, what has been asserted is that the registration of the Trust again on 09.06.2008 is not sustainable. The factum that the Trust was formed for charitable purposes and is running a hospital under the name of Smt. Akki Bai Oswal Charitable Eye Hospital at Chauri Sarak, Ludhiana, for the past more than four decades and a charitable school namely Smt. Akki Bai Oswal Vidya Mandir School for the last 8/9 years, where there are 400 students studying which is upto 10th standard and is being run on 'no profit no loss' basis, thus, catering to the need of poor and needy, has also not been disputed. The resolution dated 26.02.2007 passed by the

respondent-Trust to start vocational courses in hosiery, printing, spinning, weaving and garmenting to cater to the needs and demands of the students, who are not able to obtain expert training or coaching in their field from anywhere else due to non-availability of funds and no other institute is offering any such facilities to the students, who are economically weak and not well to do, has also not been disputed. The location of the property in an area which is mostly inhabited by labour class people and, therefore, more suitable for starting the classes as they are not in a position to travel long distances because of paucity of funds, also could not be disputed.

8. It is also not disputed that the respondent-Trust has only three properties in Ludhiana. In one of the properties in Chauri Sarak, Ludhiana, the school and the hospital are being run. The second property is the one in dispute and the third is situated in G.T. Road, Millar Ganj, Ludhiana, which is a market. Evidence has been brought on record to prove the factum of there being paucity of space and accommodation in the property situated in Chauri Sarak, Ludhiana, for starting the proposed vocational courses, the disputed property is being got evicted primarily because of its location and for the purpose for which it is being sought to be evicted i.e. for starting vocational courses of hosiery, printing, spinning, weaving and garmenting. Therefore, it cannot be said that there is other space/accommodation available for the purpose for which the eviction is being sought and in any case, it is by now a settled preposition of law that it is for the landlord to decide as to which would be the best suited accommodation/building for the purpose of personal necessity. The plea, thus, of the counsel for the

petitioner that there is alternative accommodation available, cannot sustain.

9. As regards the contention of learned counsel for the petitioner that the eviction petition is not maintainable because of the building being used for non-residential purposes cannot be got evicted for any other purpose except non-residential purposes, suffice it to say that the said position would not be acceptable in the light of the judgments of the Supreme Court in *National Spiritual Assembly of India Versus Maharashtra State of Khadi and Village Industry Board*, 1995(2) R.C.R. (Rent) 130 as also *Rajinder Kumar Versus Parbraham Ved Parkash Sat Guru Mission*, 2011(2) R.C.R. (Civil) 561, wherein it has been held that a Charitable Trust can seek eviction of non-residential building for the purpose of personal necessity which would include starting such works/vocations which would fall within the ambit of the aims and objects of the Trust Deed. In the present case, it is an admitted fact that the respondents are running a charitable school and hospital and now, they want to start vocational courses, which again is for charitable purposes which cannot be said to be beyond the object of the Trust. Thus, this plea of the counsel for the petitioner stands rejected.

10. The plea of the counsel for the petitioner that none of the trustees has appeared in the witness box and the statement of the power of attorney Mohan Lal PW-3 cannot be accepted as regards the personal necessity, suffice it to say that the said plea cannot be accepted in the light of the judgment of this Court in *Brij Bhushan Versus Munish Singal*, Additional District and Sessions Judge, Ludhiana and

others, 2011 (1) PLR 702 where it has been held that it cannot be held to be a rule of the thumb that the power of attorney is not competent to speak on behalf of the principal, especially when the case is of eviction, where the primary issue is the creation of tenancy and the maintainability of the claim for ejectment which is not particularly based upon personal knowledge which the principal alone can plead and the agent could not have spoken about. As per the pleadings and the evidence in the present case which is primarily documentary or based on documents, there is no such issue which would be in the exclusive knowledge of the trustees alone. Further the resolution dated 26.02.2007 passed by the respondent-Trust, where it was decided to start vocational courses, has been duly proved in evidence and, therefore, the conclusions as drawn by the Courts below with regard to the acceptability of the statement of Mohan Lal PW-3, cannot be said to be not in accordance with law.

11. As regards the plea of the counsel for the petitioner that there is nothing on the record to show as to how the trust deed dated 09.06.2008 came into existence as the trust deed cannot be written again, suffice it to say that the petitioner has admitted the factum of coming into existence of the respondent-Trust on 06.07.1955 which has been duly proved by production of the trust deed Exhibit P-9 and after the death of certain trustees, Trust has been reconstituted on 09.06.2008 with the present trustees, who are respondents 2 to 6 to this petition. Further, the same has been proved on record as Exhibit P-10. It is a settled preposition of law that when the relationship of landlord and tenant is not in dispute between the

parties, the tenant cannot dispute the ownership of the entity, especially when as in the present case it has admitted that he is the tenant of the respondents. Petitioner, who is a tenant, cannot challenge the status of the Trust in the light of the judgment of the Supreme Court in *National Spiritual Assembly of India's case (supra)*. None of the pleas and the grounds, which have been pressed into service by the counsel for the petitioner, would sustain as the order passed by the authorities below do not suffer from any bias of misreading or misinterpretation of the pleadings or the evidence which has been brought on record. The orders being based on proper appreciation of the pleadings and the evidence after taking into consideration the statutory provisions and the law on the subject, do not call for any interference by this Court in exercise of its revisional jurisdiction.

12. As regards the contention of the counsel for the petitioner that the application for additional evidence, as has been preferred by the petitioner, has been wrongly rejected by the Appellate Authority, suffice it to say that there were different eviction petitions preferred against the tenants, who were occupying shops in the same buildings qua which most of the petitions have been allowed and this is the sole petition which has gone against the respondents which factum is not disputed. It is also a settled preposition of law that each case is based upon the specific pleadings and the evidence which is brought on record which are independent of each other and not two cases can be said to be identical in all respects. In the absence of the pleadings and the evidence brought on record in that particular case, judgment of which is being sought to be proved on record,

the application has rightly been dismissed holding it to be not binding on the Court which is fully justified and in accordance with law. The said impugned order dated 28.07.2016 passed by the Appellate Authority is, therefore, upheld.

13. The only plea which is left to be considered is with regard to the admission of *CR No.6295 of 2015* titled as *M/s Jainson Hosiery Industries Versus Smt. Akki Bai Oswal Trust (Regd.) and others*, which has been preferred by another tenant of the respondents, suffice it to say that each case is based upon its own pleadings and the evidence which has been led by the parties and the Court on the basis of the said pleadings and evidence and the statutory provisions, proceeds to decide the same. On consideration of the case in hand, this Court is of the view that there is no merit in these two revision petitions and, therefore, do not call for any interference by this Court.

14. These revision petitions are accordingly dismissed.

15. In the light of the dismissal of the revision petitions, the applications for stay i.e. CM No.20160-CII of 2016 in CR No.6569 of 2016 and CM No.21084-CII of 2016 in CR No.6875 of 2016, stand disposed of as infructuous.

October 18, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No