

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
212**

C.R. No. 6387 of 2014 (O&M)

Date of decision: May 30, 2016

Pritam Dass

...PETITIONER

Versus

Dr. Hari Ram Mittal

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Dhruv Gupta, Advocate,
for Mr. Aditya Kumar Sharma,
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this revision petition is to the order dated 04.06.2012 passed by the Rent Controller, Chandigarh, whereby the petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 preferred by the petitioner-landlord for eviction of the respondent from the demised premises, which is, admittedly, a garage, has been dismissed on the ground that the said premises was given to the respondent for the purpose of running a clinic, which was asserted by the petitioner to be a change of user as it was only rented out for residential purpose, appeal against which preferred by the petitioner has also been dismissed by the Appellate Authority, Chandigarh on 28.02.2014.

It is the contention of the learned counsel for the petitioner that

the petitioner had, on the basis of an oral tenancy, rented out a garage of House No. 3, Sector 27-A, Chandigarh on the ground floor on the left side of the entrance to the respondent for the purpose of residence. He contends that as a matter of fact, the respondent was working in an adjacent dispensary in a temple where he was rendering voluntary services and had taken the said room for resting in between. He contends that the finding recorded by the Courts below that the tenancy has come into existence on the basis of an advertisement dated 26.07.1981 published in the newspaper, The Tribune, for the purpose of some office or clinic, cannot be accepted as the said advertisement has not been proved on record. He further contends that a notice has been issued by the Chandigarh Administration initiating redemption proceedings which clearly establishes the misuse of the premises as it is meant to be residential house while it is being used for commercial purpose i.e. clinic. He, thus, contends that the Courts below have not appreciated the correct factual position and have misled themselves in proceeding to decide the eviction petition against the petitioner.

I have considered the submissions made by the learned counsel for the petitioner and with his able assistance, have gone through the impugned orders but do not find myself in agreement with him.

It is not in dispute that the demised premises is one room only with no amenities attached thereto such as toilet etc. However, it is the stand of the petitioner that the toilet facilities were made available from the house itself, which the respondent could use as and when required. It is, admittedly, a portion which was used and meant for the purpose of garage as is depicted in the eviction petition itself that it is in the left side of the

house and in front of the gate. The stand, which has been taken by the respondent, is that an advertisement dated 26.07.1981 was published in the newspaper, The Tribune. As per the said advertisement, one room was advertised for being let out and it was categorically mentioned that the same was suitable for doctors/office. Although the advertisement has been denied to have been got published by the petitioner, however, the advertisement has been brought on record by the respondent and has been exhibited on record. The official of the newspaper has come and stated that the said advertisement has been published, although in the cross-examination he was unable to say as to whether the same was got published by the petitioner or not. In the light of the fact that there is neither any toilet attached with the garage nor is there any kitchen attached to it, it is difficult to accept it to be a residential portion. The plea of the respondent, thus, appears to be genuine that an advertisement was issued for giving on rent the demised premises where it was categorically mentioned that it was suitable for the doctors and office. The findings, thus, recorded by the Courts below, on this aspect, cannot be faulted with.

As regards the contention of the counsel for the petitioner that the resumption notice has been issued for initiating the proceedings against the petitioner because of use of the premises for commercial purposes whereas it is purely a residential area, suffice it to say that as per notification dated 14.08.1996 Ex. RW5/H, 25% of the area of the residence can be used for commercial purposes while restricting the same only to the Doctors/Advocates and Engineers and as per the admitted fact, the respondent, who is a doctor, is running a clinic in the room and the said room is less than 25% of the building area and, therefore, the notification, as

such, would not affect the claim of the petitioner to the extent of his ownership being in any sort of jeopardy regarding the residential house because of initiation of resumption proceedings.

This clearly shows that none of the grounds, which have been projected by the petitioner for evicting the respondent from the demised premises, hold good as far as the present petition is concerned and the Courts below have rightly appreciated the pleadings and the evidence brought on record which cannot be faulted with. The impugned orders/judgments being in accordance with law do not call for any interference by this Court.

In view of the above, the revision petition stands dismissed being devoid of merit.

May 30, 2016
pj

(AUGUSTINE GEORGE MASIH)
JUDGE