

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

CR No.2239 of 2016 (O&M)

Date of decision: 17.11.2018

Jatinder Kaur

..... Petitioner

Versus

Gurcharan Singh (deceased) through
his LRs and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. P.S. Sarna, Advocate
for the petitioner.

Mr. Charan Jit Sharma, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM-21015-CII-2018

Application for restoration is allowed. With the consent of learned counsel for the parties, arguments have been heard in the main case as notified in the order dated 02.11.2018.

Main Case

Tenant-petitioner is in the revision petition against the concurrent finding of fact arrived at by the Rent Controller affirmed by the Appellate Authority.

Two brothers namely late Sh. Gurcharan Singh and Amrik Singh sons of Karam Singh had sought eviction of the petitioner-tenant from booth No.201, Sector 35-D, Chandigarh on the ground that Amrik Singh runs his transport business from Calcutta whereas Gurcharan Singh

conducts its transport business from Mohali and Chandigarh. It was pleaded that Amrik Singh wants to shift to Chandigarh and wives of both the brothers would open their business in the booth in question. Learned Courts below after appreciating the evidence have ordered eviction on the ground that the requirement of the landlords is bona fide.

Learned counsel for the petitioner has submitted that Gurcharan Singh had died during the pendency of the appeal and the application for amendment of the written statement had been filed which has not been decided. In the application for amendment, the petitioner-tenant has herself pleaded that Gurcharan Singh had died and now his wife has taken over the transportation business. Hence, he submits that the order passed by the learned Appellate Authority is liable to be set aside.

He further submitted that there is no evidence that wives of both the brothers namely the landlords had any prior experience or exposure of business. Only Gurcharan Singh has appeared in evidence, therefore, the bona fide necessity is not proved. He further submitted that the family of Amrik Singh has not shifted from Calcutta and therefore, the order of eviction is erroneous.

Learned counsel for the petitioner has read over the statement of late Sh. Gurcharan Singh when he appeared in evidence. Gurcharan Singh in his examination-in-chief has specifically stated that wives of both the brothers want to start their business from the booth in question. On careful reading of the cross-examination, it is apparent that the positive assertion made in the examination-in-chief was not challenged during the cross-examination, therefore, the statement of one of the landlord which has gone un-rebutted is sufficient to prove their case.

As regards argument that the Appellate Authority has not decided the application for amendment of the written statement, this Court has considered the effect of the aforesaid amendment and rather, it goes in favour of the landlords. After the death of Gurcharan Singh, it is the case of the tenant that his widow is handling the business, therefore, now in view of the subsequent development, even the bona fide necessity has become more severe.

As regards argument of learned counsel for the petitioner that Amrik Singh, the other landlord has not shifted his business from Calcutta to Chandigarh, what has been pleaded is that they want to shift to Chandigarh. It cannot be expected that the family of Amrik Singh would shift from Calcutta and start living in Chandigarh in the hope that the eviction proceedings which have remained pending for the last 16 years would one day fructify and thereafter, they would start business. The landlord cannot be expected to shift first and then file a petition.

There is already a provision in the Rent Act enabling the tenant to seek restoration of possession if the premises got evicted is not utilized for the purpose with the time prescribed by landlords.

In such circumstances, this Court does not find any good ground to interfere with the orders passed by the Courts below.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Revision petition is dismissed.

17.11.2018

Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No