

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.2237 of 2006 (O&M)
Date of Decision:14.08.2018

Hari Chand

...Petitioner

Versus

Raj Kumar (since deceased) through LRs

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.B.R.Mahajan, Senior Advocate with
Mr.Prateek Mahajan, Advocate for the petitioner.
Mr.Kunal Mulwani, Advocate for the respondent.

ANIL KSHETARPAL, J.

The tenant-petitioner is in the revision petition against the order of eviction passed by the learned Rent Controller, affirmed in appeal by learned Appellate Authority.

The petitioner pleaded that the shop in question is required by him and his sons for carrying out the work of repair and sells of watches. The landlord pleaded that he is not in occupation of any other commercial building in the urban area concerned nor he has ever vacated the premises after the commencement of East Punjab Urban Rent Restriction Act, 1949 Act. The petitioner-tenant contested the petition on the ground that requirement is not bonafide.

Learned Rent Controller ordered eviction. The tenant preferred an appeal. During the pendency of the appeal, tenant filed an application under Order 41 Rule 27 of the Code of Civil Procedure for leading additional evidence on the ground that he has come to know that there are

other properties owned and possessed by the landlord-respondent.

Notice of the application was issued. Reply was filed. The facts as alleged in the application for additional evidence were disputed. Learned Appellate Authority by a separate detailed order of even date dismissed the application for additional evidence as also the appeal.

Learned senior counsel for the tenant-petitioner has submitted that the order passed by learned Appellate Authority, dismissing the application for additional evidence, is erroneous. He has further submitted that learned Appellate Authority ought to have at least examined the facts which had come to the notice of the tenant-petitioner subsequently as these facts go to the root of present case.

On the other hand, learned counsel for the respondent has pointed out that the landlord has specifically pleaded that he is not in possession of any commercial building. While filing reply to the application for additional evidence, the landlord has clarified about all the properties, details whereof were given in the application for additional evidence. Hence, there is no merit in the petition.

This Court has considered the submissions and with their able assistance gone through the judgments passed by both the courts below and the record.

No doubt, there is some substance in the argument of learned senior counsel for the petitioner that learned Appellate Authority ought to have allowed the application for additional evidence. The Courts are to do substantial justice.

This Court with the help of learned counsel for the parties have

once again examined the contents of the application for additional evidence and the reply filed. It would be noted that Property No.B-V-1/1 is in possession of another tenant namely Krishan Murari Goyal and after his death, the property is in occupation of his successors and litigation is pending before the Rent Controller. First Floor of the aforesaid premises is owned by Sharwan Kumar and is also in possession of a tenant. Hence, landlord has no concern with the first floor.

With regard to Property No.2, B-V-3/1/2, it has been explained that this property is in possession of the tenant-petitioner and first floor thereof is owned by Sharwan Kumar and is occupied by a tenant under Sharwan Kumar.

With regard to Building bearing No.B-VI-141/124, it is a residential building and the landlord therein has only 1/6th share for which the litigation is pending in the court. It would be noted here that the aforesaid property is not in the name of the respondent-landlord in the Municipal Record.

With regard to property No.B-VI-22/201, it is a residential-cum-commercial building. Ground floor thereof is commercial and is in possession of Mahender Kumar, whereas upper floor is in possession of the respondent-landlord, being co-owner, but nature of such property on the first floor is residential.

There is another property bearing No.B-11-654, in which the respondent-landlord is alleged to be running a school. In the reply, it has been clearly mentioned that this is also a residential property and school has already been closed.

Keeping in view the aforesaid facts, even if application for additional evidence is considered on merits, there is no ground to interfere with the findings of fact arrived at by the authorities below in exercise of revisional jurisdiction.

No other argument was raised.

In view thereof, the present revision petition is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

14.08.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No