

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

112

CR No.3833 of 2012 (O & M)
Date of Decision:07.08.2018

Deepak Memorial Charitable Trust and another

...Petitioners

Versus

Aditya Gupta

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajinder Goyal, Advocate
for the petitioners.

Mr. O.S. Batalvi, Advocate
for the respondent.

ANIL KSHETARPAL, J.(Oral)

Landlord-petitioner is in the revision petition against the order passed by the Rent Controller affirmed by the Appellate Authority dismissing petition filed for eviction of the tenant for bona fide requirement of the landlord. Petitioner-landlord is a Deepak Memorial Charitable Trust, which is running a Deepak Hospital. Landlord pleaded that they are expanding and they wish to construct a hall and a canteen for indoor patients. In the written statement, the tenant disputed and pleaded that two more floors have already been added.

In the replication, it was pleaded by the landlord that even number of outdoor patients have increased and, therefore, they need the premises for construction of hall and canteen.

Both the Courts dismissed the petition on the ground that the petitioner has been changing the stand. The Courts have held that since in the original petition, requirement was for construction of hall and canteen for indoor patients, whereas in the replication, it has been pleaded that it is required for outdoor patients.

Courts have further held that resolution of the Trust authorizing filing of the petition has not been proved. It has further been held that resolution through which witness was authorized to appear also has not been proved.

Learned counsel for the petitioners while drawing attention of the Court to the evidence of Ajay Kumar Sharma has submitted that the hospital is being expanded and total area of the hospital is 5000 to 6000 square yards. He further drew attention of the Court to the statement of the tenant, who has admitted that now the hospital is 40 to 50 beds hospital including private rooms. Although, it was suggested to him that the hospital is 100 beds hospital. He admitted that five months back 45 nurses were working in the hospital but now only 15 to 20 nurses are working. He further admitted that complete building plan of the hospital has been produced.

Resolution passed by the Trust on the letter head of Deepak Hospital authorizing Sohan Lal Aggarwal and Shiv Parsad to file the petition Ex.A-1 is on the file. List of Trustees is Ex.A-2 and the resolution passed by the Trust authorizing Ajay Kumar Sharma to appear on behalf of Trust is Ex.A-3 on the file. Therefore, the findings of the Courts that authorization in favour of the concerned has not been proved is factually

incorrect. Even the finding of the Court that list of trustees is not available

is also factually incorrect because document containing the list of names of trustees is Ex.A-2.

Still further, if one reads the statement of Ajay Kumar Sharma AW-1, it is apparent that the Trust requires the premises as in flow of the patients has increased and more units have been added. No doubt, two floors have been added but those have been utilized for adding various Departments/Units. He has further stated that indoor patients come to the hospital along with their attendants and suitable accommodation is required.

In these circumstances, learned Courts were not correct in recording a finding that the petitioner-landlord is shifting its stand. In fact the landlord was only required to plead that they require the premises for expansion of the hospital. It may be noted that in the replication, it has been pleaded by the petitioner that there is a staff of 129 persons and the hospital is having 100 beds and 13 private rooms.

In such circumstances, the Courts erred in dismissing the eviction petition on the ground that the petitioner has been changing its stand.

In view of the discussion made above, orders under challenge are set aside.

Revision petition is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

07.08.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No