

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

143

CR No.5440 of 2009 (O&M)

Date of decision: 29.08.2018

Yash Wanti

..... Petitioner

Versus

Kulwant Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Harminder Singh, Advocate
for the petitioner.

Mr. Vikram Bali, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM-16589-CII-2018

Application is allowed subject to just exceptions. Legal heirs of the petitioner as mentioned in para No.4 of the application are brought on record for the purpose of defending this revision petition only.

Main Case

Landlord-petitioner is in the revision petition against the order passed by the learned Appellate Authority reversing the order of eviction passed by the learned Rent Controller.

Only ground which survives for determination is:

“Whether the tenant has ceased to occupy the premises in dispute without sufficient cause?”

The petitioner-landlord while filing a petition against Sh. Puran Singh who is now no more, had pleaded that the tenant has ceased to

occupy the premises in dispute continuously for a period of more than four months without sufficient cause immediately proceeding the date of application. The petition was filed on 22.10.1999.

The tenant contested the petition and pleaded that he is doing business of manufacturing cement, tiles and jallies since 1962.

Learned Rent Controller after appreciating the evidence found that the landlord has successfully proved the ground 'ceased to occupy', as tenant had led no evidence to prove that he was doing any manufacturing activity. However, the learned Appellate Authority reversed the aforesaid judgment passed by the learned Rent Controller by placing the entire onus on the landlord.

Learned counsel for the petitioner-landlord has submitted that the onus could not be shifted on the petitioner-landlord as the petitioner had discharged his primary onus by leading oral evidence and the landlord cannot be called upon to lead evidence in negative. On the other hand, learned counsel for the respondents-tenant has pointed out that his clients has produced copy of receipt Ex.R-8 dated 21.12.1999 when charges of water bills for the period of April 1999 to 31.03.2000 were deposited with the Municipal Council, Dina Nagar. He further drew attention of the Court to copy of assessment register of the Municipal Committee with regard to house tax.

It is not in dispute that the respondent claims that he is in business of manufacturing cement, tiles and cement jallies. However, no document has been produced to prove either the purchase of the cement or any other raw-material . Still further, no document has been produced to prove that the items manufactured were sold or any books of accounts were

maintained. Son of the tenant has come in witness-box who has stated that he has been paying electricity bills but no document was produced on file. In such circumstances, the tenant was required to prove by leading positive evidence that the tenant had not 'ceased to occupy' the premises which is a bounded vacant land. If the respondent-tenant was carrying out any manufacturing activity, there would be various documents including invoices of purchase and sale of raw-material and finish products, receipts of electricity payment to show electricity consumption, register of employees maintained and other things, which admittedly have not been produced.

In the considered opinion of this Court, learned Appellate Authority committed an error in placing the entire onus on the landlord. It is the assertion of the tenants that they are carrying out manufacturing activity. It was for the tenants to prove that fact positively. Since the tenants have failed to produced any substantive evidence, therefore, the order passed by the learned Appellate Authority is erroneous.

Hence, the order passed by the learned Appellate Authority is set aside and that of the learned Rent Controller is restored.

Revision petition is allowed.

29.08.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No