

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

C.R No. 4919 of 2015 (O&M)
Date of decision : February 12, 2018

Tarun Kumar Aggarwal

..... Petitioner

v.

Dera Samadh Baba Sarv Viapi & another

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Rakesh Chopra, Advocate
for the petitioner.

Mr. Arun Jindal, Advocate
for the respondents.

Ajay Tewari, J (Oral)

This petition has been filed against the judgment/order of the lower appellate Court allowing an appeal filed by respondent No.1 and thereby allowing an application for eviction of the petitioner.

Respondent No.1 is described as Dera of Udasi sect which had rented out the shop in dispute to the petitioner and had sought his eviction on the grounds of sub-letting, change of user and non payment of rent. The issue of non-payment of rent is not before this Court. As regards sub-letting also, both the Courts have returned a finding in favour of the petitioner and, therefore, this Court need not go into this issue. The crucial point is that of change of user which depends on two facts. The first fact is whether the petitioner executed the rent note or not. As far as this aspect is concerned,

both the parties examined hand writing experts and respondent No.1 also examined the marginal witnesses. On a consideration of the evidence, both the Courts have come to a conclusion that the rent note was duly proved. The second aspect is that clause 5 of the rent note, Ex.PX stipulated that the tenant could use the shop in dispute for any commercial purpose except sale of liquor, meat, eggs and fish. The case of respondent No.1 was that with effect from March 2004, the petitioner had started selling liquor in the shop in dispute and that is why the eviction petition had been filed. The trial Court held that by way of starting the business of liquor, the petitioner had not made any unauthorized change of user since the premises had been taken for commercial purpose and continued to be used for commercial purpose.

The lower appellate Court held that in view of the clear stipulation in the rent note that except the sale of meat, eggs, fish and liquor, any other trade could be permitted in the shop in dispute because the sale of these articles was against the religious principles of the Dera.

Counsel for the petitioner has argued that both the Courts below erred in holding that the rent note had been established because neither the stamp vendor was examined nor the hand writing expert of respondent No.1 had considered certain crucial aspects and, therefore, the finding thereon is perverse. In my opinion, the finding cannot be termed to be perverse. Once two Courts have seen the evidence as well as the original documents and have come to the conclusion that the rent note had been signed by the petitioner, it would not be proper for this Court to revisit the arguments raised by the petitioner.

As regards the second aspect, counsel for the petitioner has

argued that the approach of the lower appellate Court was wrong as once it was proved that the shop was taken for commercial purpose and was being used for it, the fact that it had been barred for the sale of liquor cannot be held to be change of user. In my opinion, the approach of the lower appellate Court was correct, since, in view of the religious principles of respondent No.1-Dera, sale of meat, eggs, fish and liquor was barred, it was open to the petitioner to start any other business, as per clause 5 of the rent note. Consequently, finding no merit in this petition the same is dismissed.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

February 12, 2018
'kk'

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No