

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102 (cases)

Date of Decision : 01.05.2018

1) CR No.7820 of 2017 (O&M)

Vijay Kumar

..... Petitioner

Versus

Ashok Kumar Garg

..... Respondent

2) CR No.7860 of 2017 (O&M)

Anil Vaid and another

..... Petitioners

Versus

Ashok Kumar Garg

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Arvinder Arora, Advocate
for the petitioner(s).

Mr. Sunil Panwar, Advocate
for Mr. Dhananjay Singh, Advocate
for the respondent.

AJAY TEWARI, J. (Oral)

These two petitions have been filed against the concurrent judgments of the courts below ordering eviction of the premises in dispute. Since identical questions of fact and law have arisen and since in both cases the tenants are brothers and landlord is common, I am deciding both the appeals by this common order.

The landlord respondent had filed the eviction petition with the averments that these shops were a part of six contiguous shops. He had filed eviction petitions against all the tenants because he needed the premises for his own use in so much as his wife wanted to open a departmental store alongwith her son. It was further averred that he had about 20 other shops at different places which were given on rent to different tenants. The case of the petitioners-tenants was that actually the respondent had no personal necessity; he was a well established Advocate and there was no occasion for his wife or son to start a business. It was further pleaded that these eviction petitions had been filed only to pressurize the petitioners into purchasing the shops on higher rates. It was further mentioned that in fact the respondent had already entered into an agreement to sell with the tenant of one of these very six shops. It was further averred that after filing of these eviction petitions the landlord had sold two contiguous shops in the main bazaar of the town. Both the courts below considered all these facts and held that there was no inherent impossibility in a 55 year old highly educated woman wanting to start her own business. They further held that the omission of the son to appear in the witness box would not be fatal to the case of the respondent particularly in view of Section 13(4) of The Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short '*the Act*'). The courts further held that the sale of the shops in the main bazaar could not erode the personal necessity of the landlord and hence allowed the eviction petitions and that is how the petitioners are before me. At the very outset, it would be profitable to notice that though the revisional jurisdiction under the Act is wider than that, say under

Court turn itself into the Court of Rent Controller and appreciate the entire evidence *de novo* without having due regard to the concurrent findings of the courts below.

Counsel for the petitioners has vehemently argued that the falsity of the need of the respondent is well exhibited by the fact that he sold two shops in the main bazaar which were obviously much more suitable for business than the present premises which are in the side street. He has further argued that there is a catena of judgments which have laid down that if the need of a family member/s of the landlord is projected it is imperative that those family member/s come and not only testify in favour of the case but make necessary averments.

On the other hand, the counsel for the respondent has argued that the two shops were sold more than one year after the filing of the present eviction petition and that would have no effect on the need of the respondent for these particular properties. As per him the admitted dimensions of these six shops is 17"x70" and the sale of another property which is 25"x35" cannot be said to negative the need of the respondent for these premises and further as noticed by the appellate authority, the issue of personal necessity is a widely variable issue and no straight jacket formula can be devised to slot cases of personal necessity. He has also argued that equally there are a series of judgments where it has been held that it is the quality of the evidence which is determinative and the mere omission of a particular member of the family to appear in witness cannot be in all circumstances taken to be a fatal to his case.

After hearing both the counsel, I find more weight in the arguments of the counsel for the respondent. Coming first to the sale of the

shops in the main bazaar; suffice it to say that the court can not project itself into the mind of the landlord and decide what would be better for him. The consideration before a court in evaluating the case of personal necessity is only that its judicial conscience should be satisfied that the landlord would use the premises on the basis of even a slight preponderance of probability. It is not the job of the court to assess the intellectual capacity of the landlord to run a business or not but if the court comes to the conclusion that the landlord is not making an outright false claim the presumption would always operate in his favour. In the present case, the petitioner has not been able to rebut the presumption that the respondent-landlord would use the premises to start the business for his wife and son. The same applies to the omission of the son of the landlord to testify. It has come on the record that he is 18 years old. In the circumstances, there are chances that if the business starts and is doing well the son will join the same. However, if after a few years the business is not doing so well and the son decides not to join the same, it cannot be said that at the time when the eviction petition was filed a false case was made out.

Resultantly, I find no reason to interfere with the impugned judgments. Petitions are dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

May 01, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No