

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

CR No.8266 of 2016 (O&M)
Date of decision : 24.09.2018

Asha Sood

...Petitioner

Versus

Jagat Singh @ Jagjit Singh (deceased) through LRs

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunil Chadha, Sr. Advocate with
Mr. Chetan Bansal, Advocate for the petitioner.

Mr. K.S. Rekhi, Advocate with
Mr. Satish Jaswal, Advocate for respondent No.1(ii).

ANIL KSHETARPAL, J. (ORAL)

Landlady-petitioner is in the revision petition against the order passed by the Rent Controller dismissing her petition, affirmed by the Appellate Authority. The operative part of the order passed by the Appellate Authority, reads as under:-

“12. After hearing rival contentions and going through the file, this court is of the considered opinion that in the present case the the shop in dispute is measuring 7 feet 12 inch and property in possession of the appellant and his wife is large as shown in the site plan Ex.A/5 as well as admitted in cross examination by petitioner/appellant and it is not duly proved on record how and under what circumstances, this shop in question is required for necessity i.e. for business purpose for his son as alleged and further as per site plan and cross

examination appellant and his son categorically admitted that entire property except the shop in dispute belongs to them and they are having possession over the entire property except shop in question in which respondent is running business of Halwai and as per record, it reveals that earlier on the same ground, ejectment petition was also filed by appellant/petitioner on the same ground of necessity for his son. The ld.lower Court has rightly dismissed the petition on the ground that petitioner failed to prove the ground how and in which manner disputed shop is very much necessitated for the business of his son. Even son of petitioner appeared as a witness as AW3 Sarjoo Sood also admitted in his cross examination that he has no knowledge of the business which is required to be done in the shop in dispute. Even earlier petition was dismissed a withdrawn on the same ground which was not pleaded in the present petition by the petitioner/appellant. I have also gone through the case law relied upon by the counsel for the appellant, which is not applicable to the facts and circumstances of this case, whereas the cases law relied upon by counsel for the respondent is applicable to the facts and circumstances of this case. Accordingly, I do not find any ground to interfere with the impugned reasoned order passed by the learned trial Court, which is ordered to be affirmed and present appeal is ordered to be dismissed. However, the parties are left to bear their own costs. Memo of costs be drawn. Record of lower court be returned and appeal file be consigned to record room.”

This Court has heard the learned counsel for the parties at length.

Learned Senior Counsel has pointed out that the previous petition which was filed seeking eviction of the tenant was not on the same

ground. He pointed out that at that time, son Sarju Sood was young and the requirement pleaded was that of the father i.e. the husband of the landlady wants to open a floor mill and son would be associated in the aforesaid business, whereas in the present petition, it has been pleaded that son, Sarju Sood was doing the business of Public Call Office in the adjoining shop and since the aforesaid work is almost finished because of advent of the mobiles telephones, therefore, she wishes to open a showroom for the sale and purchase of electronics and electrical goods. The shop which is in possession of Sarju Sood is only having a width of 7 ½ feet and he wants to merge both the shops to make it one big showroom. He has further pointed out that the Appellate Authority has erred in mis-reading the statement of Sarju Sood while recording a finding that he has no knowledge of the business which he wishes to open in the shop in question.

On the other hand, learned counsel for the respondent has pointed out that the requirement as pleaded in the first petition and the requirement as pleaded in the second petition, are same. He further submitted that son Sarju Sood has no prior experience of sale or purchase of the electrical goods.

This Court is of the considered view that the order passed by the Appellate Authority is in fact a non-speaking order. The Appellate Authority is a last Court for appreciation of the evidence. The Appellate Authority must while deciding the first appeal, re-appreciate the evidence and thereafter pass an order. Since, the matter is being remitted back, therefore, it would not be appropriate for this Court to give any finding lest it may prejudice any of the parties.

Keeping in view the aforesaid facts, the order passed by the Appellate Authority is set aside. The Appellate Authority is directed to re-decide the appeal within a period of two months from the date of receipt of certified copy of the judgment.

Parties through their counsel are directed to appear before the Appellate Authority on 05.10.2018.

In view of the above, the present revision petition stands disposed of.

24.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No