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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3512-2014(O&M)

Date of Decision: August 28, 2019

Ibrahim since deceased through his Lrs

.....Petitioners

Versus

Gian Chand

.....Respondent

CORAM: HON'BLE MS.JUSTICE NIRMALJIT KAUR

Present: Mr.Abhinav Gupta, Advocate
for the petitioner.

Mr.Abhimanyu Kalsy, Advocate for
Mr.A.K.Kalsy, Advocate
for the respondent.

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NIRMALJIT KAUR, J.

The revision petition is filed against the judgment and order dated 07.02.2014 passed by the Appellate Court, vide which the judgment and order dated 15.05.2009 passed by Rent Controller, Malerkotla dismissing the eviction petition was allowed and the petitioner-tenant was ordered to be evicted.

While praying for setting aside the order passed by the Appellate Court and up-holding the order of the Rent Controller dismissing the eviction petition, learned counsel for the petitioner submitted that the Appellate Court lost sight of the fact that the respondent in his cross-examination has admitted that he has given a special power of attorney in favour of his brother Lal Chand for getting the shop vacated and that he remains unwell. The shop is being vacated for the benefit of the brother.

Hence, the ingredients required for ejectment of the tenant, as envisaged

under Section 13(3)(a) of the East Punjab Urban Rent Restrictions Act, 1949, are not made out as the brother does not fall in the ambit of dependent family. The respondent is idle since 1970 and keeps on wandering in the street and markets which makes it highly improbable that he requires the shop for running a business in the fag end of his life. He was a mentally disturbed person and has not been able to prove that his requirement is *bona fide*.

Learned counsel for the parties are heard at length.

It would be appropriate to reproduce the finding of the Appellate Court, which is as under:-

“The requirement of petitioner was declined only on the ground that he is simpleton person and he is suffering from mental tension. Even these findings of the learned lower Court are not according to the settled provision of law. There is no bar that a simpleton person cannot start his own business. Even if he is suffering from any mental tension, does not mean that he is insane or mentally disturbed to such a extent that he is not in a position to start his own business. RW-2 Noor Mohd. has admitted in his cross examination that he has not seen any certificate or any treatment chart of Gian Chand being of unsound mind. He is alleged that he is describing Gian Chand as insane person on the basis of his personal observation. Only on the personal observation of any person, other person cannot be declared as insane. Rather this witness has further admitted in cross examination that Gian Chand was also running cloth merchant shop in Moti Bazar and Kiryana Shop at Telian Bazar at Malerkotla. When admittedly Gian Chand was doing business in another shop, then it does not lie in the mouth of RW-2 to allege that Gian Chand is an insane person. He further admitted that he cannot produce any medical certificate about insanity of Gian Chand.

Similarly, respondent himself while appearing in the witness box as RW-3 has admitted in his cross examination that he cannot produce the certificate regarding mental illness of the petitioner. He also admitted this fact that petitioner was earlier doing karyana shop in Telian Bazar. When petitioner was already doing business in Telian Bazar, then there is no material on the record to prove this fact that petitioner is an insane person and is unable to do the business in the disputed shop. Only on the ground that petitioner is a simpleton person and is religious minded, is no ground to debar him from running his business in the shop in dispute to earn his livelihood. It is a settled proposition of law that it is for the landlord to see that which premises are required by him to do business properly. ”

Learned counsel for the petitioner has not been able to dispute or meet the said finding. Besides, the very basis of the argument of learned counsel for the petitioner is that the respondent-landlord required the shop for his brother and not for himself and since his brother was not dependent upon him, his *bona fide* need cannot be accepted. The said argument has no basis because it is the own case of the petitioner that :

- “(i) the respondent was not well;
- (ii) he has been roaming around on the streets and has been idle since 1970 and he is a simple and an uneducated person;
- (iii) that he has given power of attorney to his brother for vacating the shop.”

The above stand of the petitioner, in fact, demolishes the case of the petitioner because the case projected by the respondent-landlord was that he required the shop in dispute for business of sale and purchase in stationery articles, which he said he would run with the help of his brother,

he could not run the shop himself but now that his brother Lal Chand has “Retired as Clerk from Government College, Malerkotla”; and is free to help him, he has filed the eviction petition. Hence, he decided to use the services of his brother to help him to run the shop, which he could not do earlier on account of his alleged ill health.

The argument may have come to the rescue of the petitioner in case the petitioner had said that he wanted to run the shop on his own. In fact, the landlord has come forward very honestly and the very argument of the petitioner-tenant that Gian Chand-landlord was unfit to run the shop coupled with the statement of Lal Chand, the brother of the landlord, Ex.AW1, show that respondent- Gian Chand wanted the shop for himself to be run with the help of his brother Lal Chand as services of Lal Chand had now become available after his retirement.

Therefore, there is not an iota of ground to interfere in the well reasoned order and judgment dated 07.02.2014 passed by the Appellate Court.

Dismissed.

August 28, 2019
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(NIRMALJIT KAUR)
JUDGE

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |