

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

CR No.4850 of 2014

Date of Decision : 05.12.2019

Krishna Devi

.....Petitioner

Versus

Shiv Kumar

.....Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Rajesh Garg, Senior Advocate assisted by
Mr. Rakesh Dhiman, Advocate
for the Petitioner.

Mr. Sanjay Mittal, Advocate
for the Respondent.

SUDIP AHLUWALIA, J. (ORAL)

This Revision Petition has been preferred against the impugned Judgments passed by the Ld. Rent Controller, Narnaul, vide which the Petitioner's Eviction Petition against the Respondent/Landlord was dismissed, and that of the Ld. Appellate Authority dismissing the Appeal of the Petitioner.

2. The Petitioner had sought eviction of the Respondent basically on the ground of *bona fide* personal use and occupation inasmuch as she wanted the same to be used for starting business of Textile and Garments by her son, who was a Graduate.

3. Her original case appears to be that she was in possession

of only two Shops, one of which was under occupation of present Respondent whereas the other one located contiguous to the same and was occupied by the another Tenant namely, Devanand, against whom a separate proceeding for eviction was initiated.

4. The Ld. Rent Controller, however, after going through the evidence recorded before him, came to the conclusion that it could not be said that the Petitioner had no other vacant Shop in her possession which is necessary for ejecting the Tenant from demised Shop. The relevant observations of the Ld. Rent Controller, in this regard, are set out as below :-

“13. I have heard learned counsel for both the parties and perused the case file very carefully. It was argued by learned counsel for petitioner, petitioner has only two shops one is in possession of respondent and other is in possession of some other tenant. But in the petition while describing the boundary of shop it is described that in north there is one shop of landlady and in south there is shop of landlady, means disputed shop is in between the two shops of landlady/petitioner. Means she has three shops. But learned counsel for petitioner argued that petitioner has only two shops, one is disputed shop and another is in south of disputed shop. He argued that there was mistake while describing the shop in question. This argument of learned counsel for petitioner can not be accepted because if there was mistake then he should not be accepted because if there was mistake then he should have applied for amendment

of pleading but he did not do so. There is a settled law that court can not look beyond pleading. Reliance is placed upon improvement Trust Patiala Vs. Jaswinder Kaur (2010) 4 Civil Court Cases 534 (P & H).

Moreover, when PW5 Sanjay Kumar appeared from the side of petitioner he admitted in his cross examination that in the property of petitioner's mother there are three shops and he cannot tell whether these shops are vacant or on rent. He further stated that on these shops petitioner and her sister are landlady's. Means petitioner has other shops also, which she has not disclosed before the Court. Petitioner led the evidence that she has only two shops and on one shop respondent is tenant and on another some Devender is tenant. But when PW4 Bajrang Lal appeared before the Court he deposed that he has brought house tax assessment Register and as per this register Unit No.287 and 288 belongs to Krishna Devi but in his cross examination he deposed that it is correct that as per their record there is no tenant on property No.288. Ex.P2 assessment register also shows that Unit No.287 belongs to petitioner Krishna Devi but same is occupied by respondent and Unit No.288 belongs to Krishna Devi but there is no tenant on its as nobody is shown as occupier on it. So on the basis of above discussion it can not be said that petitioner has no other vacant shop in her possession which is necessary for ejecting the tenant from the shop. So this issue is decided against petitioner."

5. Thereafter, the Ld. Appellate Authority affirmed the actual decision in substance but nevertheless differed on the finding of the Ld.

Rent Controller regarding existence of any other Shop in possession of the Petitioner. In addition, the Ld. Appellate Authority was of the view that there was a serious discrepancy regarding the nature of work/business, which the Petitioner intended to be started by her son inasmuch as on one hand, it was claimed that the Shop, in question, was needed for the purpose of Garments manufacturing, elsewhere the Petitioner deposed that she wanted to get the work of “*likha padhi*” (Accounting) of Textiles, which was apparently contradictory to the requirement purposes as mentioned earlier. Besides, the Ld. Appellate Authority was also of the view that the Eviction Application was not *bona fide* because, “*Now it is not understandable that why the petitioner-landlady Smt. Krishna Devi is not starting the business of manufacturing of garments in the area lying behind the shop in dispute having measurement..... Now this goes on to show that need to occupy the demised premises is not real and bona fide and is a mere pretext for evicting the tenant on the part of landlady falsely claiming to occupy the premises for her son*”.

6. The Ld. Appellate Authority went on to further record its observations as follows :-

“20. *Now there is another aspect of the matter also. No doubt, in the petition in the north of the demised premises shop of petitioner-landlady Smt. Krishna Devi has been shown, yet as deposed by Krishna Devi that in*

the north of the demised premises the shop of the petitioner has been wrongly shown. Now this fact that there is no shop of the landlady in the north of the demised premises is proved on the file by copy of sale deed No.473 dated 1.6.2004 Ex.P1 in which towards north of the demised premises shop sold by Savitri Devi has been shown.

21. Further perusal of assessment register for the year 2007-08 Ex.P2 shows that shop No.287 has been shown as belonging to Krishna Devi occupied by Shiv Kumar and another shop bearing No.288 has been shown to be owned by Krishna Devi. Now this fact that shop No.288 which is adjoining to the demised premises is in occupation of one Devanand tenant is proved on the file by the statement of PW1 Krishna Devi, when she stated that the other shop is on rent with Devanand and by the statement of Sumit Kumar who has also deposed that another shop has been given on rent to Devanand, which was let out after letting out the demised shop to Shiv Kumar and by the statement of PW5 Sanjay Kumar who has also deposed that on one shop Shiv Kumar is in possession as tenant and in the adjacent shop Devanand Yadav is a tenant. Now, none of the witnesses was suggested that adjacent shop, bearing No.288 in Municipal record as per assessment register Ex.P2 is not in possession of Devanand. Thus, the entry in assessment register Ex.P2 regarding shop No.288 is not complete and it cannot be said that Krishna Devi is in vacant possession of adjoining shop bearing No.288 as per record of Municipal Committee”

7. It, therefore, becomes clear that as per the observation of

the Ld. Rent Controller, the evidence led on behalf of the Petitioner, was in contradiction of her original Eviction Petition and if there had been any mistake in drafting, it ought to have been corrected by way of seeking an amendment but was not considered by the Appellate Authority in its analysis. On the other hand, dismissal of the Eviction Petition was upheld on the basis of what appears to be a vague reasoning inasmuch as there is no discussion whatsoever of the properties depicted in Site Map (Exhibit P-1), which is on Page No.141 of the Lower Court Record.

8. It would appear that such Site Map was not originally annexed to the Eviction Petition which in a way deprived the Respondent/Tenant from disputing its correctness and as a corollary, the description of the disputed building itself, in which the demised Shop and other Shops allegedly belonging to the Landlady, were described.

9. This Court is also not in agreement with the reasoning of the Ld. Appellate Authority that it was not understandable why the Petitioner/Landlady could not start the business of manufacturing of Garments in the area located behind the Shop, in dispute, when according to the Site Map, such area happens to be vacant land. To expect a person to start business on an uncovered area in preference to an existing covered building/premises, in the opinion of this Court, is

not logical or reasonable.

10. The appropriate course to be adopted in the given circumstances and which would appear to best sub-serve the ends of justice would be to set aside both the impugned Judgments and remand the matter back to the Ld. Rent Controller for a fresh decision after granting an opportunity to the Petitioner to amend her original Eviction Application as had been observed by the Ld. Rent Controller herself in Para No.13 of its impugned Judgment. Such amendment on the basis of an Application, to be filed on behalf of the Petitioner within two weeks from the date of the parties' putting in appearance before the Ld. Rent Controller, would be limited to describing the exact premises available in her possession and a statement whether or not she or her son, at any time vacated any similar premises after coming into force of the legislation. Needless to add, the Respondent/Tenant would be at liberty to file his additional Written Statement/Reply to such proposed amendment along with map, which would be an authenticated Site Plan of the locale to depict the existence of her own properties including the demised premises as of now, and the Respondent would also be at similar liberty to deny the same by filing his own Site Plan in which he may show where all the Shops of the Petitioner are located.

11. Parties are directed to appear before the Court of Ld. Rent Controller on 15th January, 2020.

12. In view of the aforesaid observations, the present Revision
Petition, stands disposed off accordingly.

December 05, 2019
Dpr

(SUDIP AHLUWALIA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No