

In the High Court of Punjab and Haryana at Chandigarh

CR-5155 of 2014(O&M)
Date of Decision:20.5.2019

M/s Dwarka Dass and sons

---Petitioners

vs.

Chiman Lal and others

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Abhilaksh Grover, Advocate
for the petitioner

Mr. Pawan Kumar, Senior Advocate
with Ms. Rajni Gupta, Advocate
for the respondents

Rekha Mittal, J.

Challenge in the present petition has been directed against concurrent findings of fact recorded by the courts whereby petitioner has been ordered to be evicted from tenancy premises i.e. shop bearing House Tax Unit No. 342-A/11, situated inside Barsi Gate, Hansi on the ground of bona fide personal necessity of Vikas son of Chiman Lal, one of the respondents-co-landlords of the demised shop. The Rent Controller allowed the eviction application vide order dated 17.1.2011 that came to be affirmed in appeal by the appellate authority on 24.5.2014.

The respondents-applicants sought eviction on the ground of personal necessity of Vikas with the following allegations:-

“Vikas son of Chiman Lal who is doing cloth business in Delhi

and is living alone in Delhi wants to start his business in Hansi as it is not safe for him to live alone in Delhi. The shop in question is required for starting a show room of cloth for son Vikas.”

To substantiate their case, Vikas for whose necessity the shop was sought to be vacated appeared in the witness box and one of the respondents Ved Parkash examined himself. To counter case of the respondents, Dwarka Dass through whom petitioner M/s Dwarka Dass and sons has been sued, appeared in the witness box besides examining other witnesses.

Counsel for the petitioner has challenged consistent findings recorded by the courts primarily on two counts. It is argued that it has been brought in cross examination of Ved Parkash that there are two shops in grain market Hansi which are in occupation of the respondents-applicants. They have a factory on Jind Road and the same is lying closed for the past 10-12 years. It is argued with vehemence that the respondents-eviction petitioners are guilty of concealing material facts as they failed to disclose possession of two shops in grain market, Hansi and a factory on Jind bye pass, situated in the same urban area.

Another submission made by counsel is that the respondents are real brothers being sons of Sh. Prabhu Dayal. Ved Parkash admitted that all the three brothers have joint business and owned joint properties. Respondents filed eviction application in respect of another shop situated in the same area seeking eviction of Naresh Kumar on the premise that the shop was required for opening cloth show room for Vivek son of Ved

Parkash. The eviction application filed against Naresh Kumar for personal necessity of Vivek was allowed by the Rent Controller vide order date 17.1.2011 in rent case No. 3-2 dated 14.1.2009 but during pendency of appeal filed by Naresh Kumar, the respondents compromised the matter with said Naresh Kumar and sold that shop to said Naresh Kumar vide sale deed No. 6620 dated 16.11.2011 and for that reason Naresh Kumar withdrew the appeal vide order dated 1.2.2012. According to counsel, had it been true that there was bona fide need of use and occupation of shop under tenancy of Naresh Kumar for business of Vivek son of Ved Parkash, there was no reason for the respondents to sell that shop despite the respondents being successful in seeking eviction from the court of Rent Controller, Hansi. It is argued that subsequent events in respect of eviction of Naresh Kumar and thereafter sale of that shop to Naresh Kumar create a doubt in the need projected by the respondents-landlords.

Counsel for the respondents, on the contrary, has supported the concurrent findings recorded by the courts with the submission that there is no concealment of material facts on the part of the respondents/eviction petitioners.

With regard to sale of shop to Naresh Kumar in respect whereof eviction was sought for need of Vivek son of Ved Parkash, it is argued that though the eviction order was passed against Naresh Kumar but possession of said shop was never delivered to the respondents and the matter was sub judice before the appellate authority. It is further argued that since Naresh Kumar agreed to purchase the shop at a rate much higher than market value of the property, the respondents took a decision to sell the shop and use the

money for settlement of Vivek in some alternative accommodation. It is further argued that sale of shop to Naresh Kumar can not militate against need of Vikas son of Chiman Lal qua the shop in question. Counsel would also urge that Dwarka Dass in his cross examination has virtually admitted bona fide necessity of the shop in question for business of Vikas, as has been noticed by the appellate authority.

The respondents, in para 8 of the eviction application, have averred that neither the first party nor his children has a suitable shop in the area in question for the cloth business of Vikas. The two shops in grain market are being used by the respondents for the purpose of commission agency business. It has been proved on record that there is no shop of cloth business in the grain market. As the shops in grain market are already under use and occupation of the respondents for doing business of commission agent and no business of sale of cloth is being carried in the said market when examined in the light of averments raised in para 8 of the eviction application, it is difficult to accept contention of the petitioner that the respondents are guilty of concealing the material facts with regard to their possession of two shops in grain market, Hansi. Similarly, factory premises on Jind bye pass which is stated to be lying closed cannot be said to be a building suitable for doing cloth business by Vikas son of Chiman Lal and as such non-mention of factory premises would neither be taken as concealment of material fact nor can enure to benefit of the petitioner to seek reversal of consistent findings recorded by the courts.

This brings the court to sale of shop to Naresh Kumar, a tenant in the said shop. The eviction application filed against Naresh Kumar was

allowed by the Rent Controller on 17.1.2011, the date on which eviction petition in the present case was allowed. The respondents did not recover possession of the said shop as appeal preferred by Naresh Kumar was pending before the appellate authority that came to be decided on 1.2.2012. The shop in possession of Naresh Kumar was sold vide sale deed dated 16.11.2011. The petitioner cannot derive advantage of sale of shop to Naresh kumar as the said shop never came in possession of the respondents because the matter became sub judice between the parties due to pendency of appeal before the appellate authority. Counsel for the petitioner has not made any submissions to counter the arguments raised by counsel for the respondents that the said shop was sold at a price much higher than the market rate. The sale of said shop, at best, may create bar in seeking eviction of another tenant on the ground of personal necessity of Vivek but that would not militate need of Vikas qua the shop in question for business of cloth in the area in which cloth business is done in various other buildings. As has been rightly argued by counsel for the respondents, Dwarka Dass, petitioner in his cross examination has virtually admitted need of the premises in question for business of Vikas son of Chiman Lal. A relevant extract from his cross examination in Hindi but translated in English, reads as follows:-

“The first party does not tell a lie in any respect. A person may have one or four sons but he wants his sons to be with him. It is correct that the first party has filed an application for making a show room of cloth business for his son Vikas which is based upon correct facts but a big show room cannot be made there

but the show room will be of small size as width of the shop is 7 feet. I always increased the rent according to wish of first party. The first party has never misbehaved with me.

As an upshot of aforesaid discussion, it is difficult to accept contention of the petitioner that consistent findings recorded by the courts suffer from material irregularity much less illegality, warranting intervention.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

20.5.2019
paramjit

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