

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ESA-10-2020 (O&M)
Decided on: 17.03.2020

Vijay Kumar

.... Appellant

Versus

Managing Committee Arya College, Panipat and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Arun Singal, Advocate
for the appellant.

MAHABIR SINGH SINDHU, J.

Present execution second appeal (ESA) has been filed against the impugned orders passed by both the Courts below, whereby third party objections of the appellant were rejected.

It is contended by learned counsel for the appellant that he is continuing as a tenant in the shop in dispute since the year 2005 at the monthly rent of Rs.2000/-, but he was not impleaded as a party in the eviction petition filed by respondent/landlord No.1-Managing Committee, Arya College, Panipat (for short 'College') and thus, the eviction orders are not binding upon him.

Heard learned counsel for the appellant and perused the paper-book.

It transpires that College filed an eviction petition dated 02.04.2011 under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short 'Act of 1973') against respondent No.2-

Subhash Chand (tenant) on the ground of non-payment of rent as well as *bona fide* necessity. After contest, the eviction petition was allowed by learned Rent Controller on the ground of necessity of the College, vide order dated 12.02.2014.

Aggrieved against the order of learned Rent Controller, an appeal was preferred by respondent No.2, but the same was dismissed by learned Appellate Authority, vide judgment dated 07.01.2016. Thereafter, College filed an execution petition on 11.04.2018 and on the basis thereof, warrants of possession were issued for 28.05.2019. In compliance of the order of learned Executing Court, bailiff made a statement that he visited the spot on 16.05.2019 for getting the warrants of possession executed, but the possession could not be delivered to the landlord-College as there was an apprehension of quarrel by the tenant/respondent No.2. He further stated that tenant/respondent No.2 was adamant not to hand over the possession and police help was requested.

Thereafter, on 08.07.2019, present appellant filed objections and in response thereto, a detailed reply was filed by the College. After hearing both sides, the objections were rejected by learned Executing Court and the same were affirmed by Lower Appellate Court. Hence, the present second appeal.

Before both the Courts below, appellant claimed that he is continuing as a tenant since 2005 at a monthly rent of Rs.2000/- and also paying the electricity dues. Further contention was that he has been issued a license by the Department of Food and Drug Administration,

Haryana on 24.04.2012 and was also allotted GST number in addition to a license issued by Inspector, Legal Metrology, Panipat to carry on the business of grocery shop. Both the Courts below have found that there is no relationship of the landlord and tenant between the parties, i.e. appellant and College. It was also observed by learned Lower Appellate Court that objections were filed by the appellant in connivance with respondent No.2-Subhash Chand whose eviction has already attained finality, but just to frustrate the execution of the orders, the third party objections were filed by the appellant.

Learned Appellate Court has also noticed that appellant had already taken recourse to the remedy of civil suit for permanent injunction and thus the objections were abuse of the process of the Court.

Again before this Court, similar pleas have been raised on behalf of the appellant that he is continuing as a tenant in the shop in question since 2005. On repeated asking of the Court, learned counsel for the appellant is not in a position to show any document on record to prove the factum of relationship as landlord and tenant between the parties prior to the date of filing of the eviction petition i.e. 02.04.2011. Alleged license issued by the Department of Food and Drugs Administration, Haryana is of dated 24.04.2012 (Annexure A-4), i.e. subsequent to the eviction petition and the same is stated to be renewed on 11.07.2017, thus, the license cannot be construed to substantiate the relationship of landlord and tenant in any manner. Concededly, appellant has already filed the suit for permanent injunction on 31.05.2019 regarding the shop in question against the College/landlord

which is stated to be pending, Learned counsel for the appellant has failed to point out as to whether any interim injunction was granted by the Civil Court in the matter. Even as per the report of the bailiff, appellant was not found in possession of the shop in question when he visited the spot for execution of the warrants of possession against respondent No.2/judgement debtor on 16.05.2019. Thus, an irresistible conclusion would be that appellant is in league with respondent No.2 to frustrate the execution of the orders passed by the Rent authorities under the Act of 1973. Even otherwise, mere issuance of the licence by the Food and Drugs Administration, Haryana in favour of the appellant would not establish the relationship of landlord and tenant between the parties. Undisputedly, the electricity metre installed in the shop in question is in the name of Principal, Arya College, Panipat regarding which eviction orders have already been passed by both the Courts below, therefore, the contention that appellant is paying the electricity bill is liable to be rejected. Above all, the eviction petition was allowed after contest for three years by respondent No.2/judgment debtor and even an appeal against the eviction order was also preferred, but respondent No.2 remained unsuccessful. Thus, the contention on behalf of the appellant that eviction order was obtained by the College in connivance with respondent No.2 is fallacious and liable to be rejected.

In view of the fact and circumstances, discussed herein, this Court is of the considered opinion that appellant has miserably failed to prove the relationship of landlord and tenant between the parties. There is no hesitation to observe that appellant is pursuing the litigation in

league with respondent No.2/judgment debtor and that can be termed as a “*Champerty*”. Consequently, this Court does not find any ground to interfere with the well reasoned orders passed by both the Courts below. Hence, there is no option except to dismiss the appeal.

Ordered accordingly.

(MAHABIR SINGH SINDHU)
JUDGE

17.03.2020
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No