

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5730 of 2019(O&M)
Date of decision: 13.07.2022

Narender Kumar and another

...Petitioners

Versus

Surender Kumar Arora (since deceased) through LRs

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Aggarwal, Sr. Advocate, with
Mr. Vaibhav Mittal, Advocate
for the petitioners.

Mr. Ajay Jain, Advocate,
for the respondent.

ANIL KSHETARPAL, J (Oral)

While questioning the correctness of the concurrent orders of eviction passed against the petitioners (tenants), this revision petition under Section 15(6) of the Haryana Urban (control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the 1973 Act') has been filed.

The premises in dispute is a shop. Dr. S.K.Arora filed a petition claiming that the tenanted premises are required for his son, who wants to run a clinic after completing his Diploma in Radio Diagnosis. It has come on record that Dr. Moksh Arora was previously working in Sir Ganga Ram Hospital, New Delhi, as Sr. Resident Doctor.

The tenants, while contesting the petition, claim that another property belonging to the landlord is lying vacant. In order to prove his case, the landlord appeared as PW9, whereas Dr. Moksh Arora, appeared as

PW1. It has come in evidence that Dr. S.K.Arora, his wife, Dr. Moksh Arora and his wife, all are doctors.

As noticed before, both the courts have ordered eviction after observing that the requirement of landlord is bonafide.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

The learned senior counsel representing the petitioners while drawing the attention of the Court to the petition filed under Section 13 of the 1973 Act, submits that the petition was not maintainable as the necessary conditions i.e. not occupying any other similarly located premises and not having vacated any similar premises without sufficient cause were not pleaded. He submits that in the absence of the pleadings to that effect, the petition was not maintainable.

Per contra, the learned counsel representing the landlord has read the statement of Dr. S.K.Arora, who appeared as PW9. He submits that both these assertions were made in the affidavit filed in evidence but there was no cross-examination by the learned counsel representing the tenants on these aspects of the matter. He submits that the deposition of Dr. S.K.Arora on these two conditions has remained unchallenged.

Section 13 of the 1973 Act only provides that the landlord is required to prove that he is not occupying another building in the urban area concerned and has not vacated any such building without sufficient cause after the commencement of the East Punjab Urban Rent Restriction Act, 1949, in the said urban area. Section 13(3)(a)(i) is extracted as under:-

“13. Eviction of tenants

(3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession -

*(a) in the case of a residential building, if, -
(i) he requires it for his own occupation, is not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area”*

Undoubtedly, the landlord while filing the petition had failed to plead the aforesaid facts, however, the aforesaid inadvertent mistake was rectified while leading the evidence.

At this stage, the learned counsel representing the petitioners has submitted that another property bearing No.248-L is available with the landlord. On reading of the complete statement, it is evident that the aforesaid property is located in a residential area and in fact, the nature of property is residential. Both the courts have also observed the same fact.

The next argument of the learned senior counsel is with regard to the failure of Dr. Moksh Arora to depose about the aforesaid two conditions. He submits that it is Dr. Moksh Arora, who was required to prove that he does not occupy similar premises or has not vacated similar premises without sufficient cause.

In the view of this Court, the contention of the learned senior counsel does not have any substance. In the present case, the landlord is Dr. S.K.Arora. He has deposed about the aforesaid two conditions. When Dr. Moksh Arora appeared in evidence, the learned counsel representing the tenants cross-examined him at length, however, he failed to impeach his credibility. There is no material to prove that Dr. Moksh Arora owns any other premises or has vacated similar premises without sufficient cause after the commencement of the 1949 Act.

In view thereof, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

July 13, 2022
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(ANIL KSHETARPAL)
JUDGE

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