

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7692-2018
Reserved on: 16.11.2023
Date of decision: 17.11.2023

GAJANAND JOSHI

..Petitioner

Versus

RAKESH MALHOTRA AND ANR.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Puneet Bali, Sr. Advocate
with Mr. Surjeet Bhadu, Advocate
Ms. Niharika Mittal, Advocate
Ms. Sanya Thakur, Advocate
& Ms. Srishti Verma, Advocate
for the petitioner.

Mr. Amit Jain, Sr. Advocate
with Mr. Chetan Salathia, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. The petitioner herein is a tenant, who has been ordered to be evicted by the Court of the Rent Controller, which in appeal has been affirmed by the Appellate Authority. The eviction of the petitioner has been ordered by the courts on the ground that the premise is bonafidely required by Sh. Dalip Malhotra's wife (respondent No.2).

2. This Bench has heard the learned Senior counsel representing the parties at length and with their able assistance perused the paperbook along with the photocopy of the relevant record of the Courts below.

3. The learned Senior counsel representing the appellant submits that the respondents have failed to disclose the ownership of Industrial Plot No.161, Phase I, Panchkula, in the petition and therefore, the respondents

are guilty of concealment of the facts. Smt. Suhani @ Sahani Malhotra wife of Sh. Dalip Malhotra has not appeared in evidence, therefore, the orders passed by the Courts below are wrong. The landlords have failed to prove the policy, that enables them to join booth No.9 with booth No.32 by removing the rear wall.

4. On the other hand, the learned counsel representing the respondent submits that in this case, the landlords while filing the petition have categorically asserted that they required the premises as a bonafide necessity for Smt. Sahani Malhotra, who wishes to start her own business. He submits that industrial plot is for running a industry located in industrial area. Hence, it was not required to be disclosed. He further submits that as per Section 120 of the Indian Evidence Act, 1872 (hereinafter referred to as the '1872 Act'), the husband or the wife can represent each other and appear in evidence on behalf of each other. He submits that Sh. Dalip Malhotra has appeared as PW-1 and answered all the questions posed to him by the learned counsel representing the petitioner. He further submits that as per the policy dated 29.12.2005, it is permissible to remove the rear wall and club two adjoining booths with the permission of the competent authority.

5. As per Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (hereinafter referred to as the '1973 Act'), the landlord is required to plead and prove that he has not vacated such building without a sufficient cause after the commencement of the Haryana Urban (Control of Rent & Eviction) Act, 1976, in the said urban area and he is not occupying any other similar building in the urban area concerned. In para 8 of the petition filed under Section 13 of the 1973 Act, it has been pleaded that the

petitioners and the wife of petitioner No.2 are not occupying such property in the urban area of Panchkula and they have not vacated the same without a sufficient cause after the commencement of Act. The learned Senior counsel representing the petitioner failed to draw the attention of the Court to any requirement for the landlord to disclose all the immovable properties owned by the family. As already noticed, the requirement is to plead and prove the aforesaid two conditions, which in this case have been incorporated in para 8. Moreover, Panchkula is a planned city. The commercial area is distinct from an industrial area. The requirement of the landlord is to carry out business. Hence, the industrial plot was not required to be pleaded.

6. With respect to the next argument, it may be noticed that Sh. Dalip Malhotra has stepped into the witness box as PW-1. He is one of the co-owner's of the property and husband of Smt. Suhani @ Sahani Malhotra. The learned Senior counsel representing the petitioner has not drawn the attention of the Court to any question which Sh. Dalip Malhotra failed to answer. Section 120 of the 1872 Act, enables Sh. Dalip Malhotra to appear on behalf of his wife. As per the 1872 Act, the Court is entitled to draw an adverse inference if the best evidence is not produced. In this case, it is Sh. Dalip Malhotra, who wants his wife to start a business because their children have grown up now. In these circumstances, it will not be appropriate to draw an adverse inference. Reliance in this regard can be placed on **Pandurang Jivaji Apte Vs. Ram Chandra Gangadhar Ashtekar (dead) by LRs and others, (1981) 4 SCC 569.**

7. The last argument of the learned Senior counsel also has no substance because the First Appellate Court has noticed that as per the policy

instructions issued by the Chief Administrator, Haryana Urban Development Authority (HUDA) on 29.10.2005, merging of the booths by removal of intervening wall is permissible with the prior permission of the competent authority. In such circumstances, the respondent would apply as and when the property comes into their possession. It may be noted here that a similar petition with respect to booth No.32 was also filed, which has been allowed in favour of the landlords.

8. Keeping in view the aforesaid facts, no ground to interfere is made out.
9. Dismissed accordingly.
10. All the pending miscellaneous applications, if any, are also disposed of.

November 17th, 2023

(ANIL KSHETARPAL)
JUDGE

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