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(1984) 12 P&H CK 0006

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2116 of 1984

Daram Pal		APPELLANT
	Vs	
Janki Nath Sharma		RESPONDENT

Date of Decision: Dec. 6, 1984

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 12, 13

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: R.L. Sarin, for the Appellant; D.V. Sehgal, Sh. Atul Lakkanpal and Sh. Ranjan Lakhanpal, for the Respondent

Final Decision: Dismissed

Judgement

J.V. Gupta, J.
This judgment will dispose of Civil Revision Nos. 2116 and 2117 of 1984 as the questions involved therein are common.

2. Dharam Pal is the landlord of the demised premises which consists of a shop, whereas Janki Nath Sharma is the tenant under him. Janki Nath Sharma tenant filed an application u/s 12 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act") for getting the necessary repairs made by the landlord, on 23rd October, 1979, whereas the landlord (Dharam Pal) filed an ejectment application u/s 13 of the Act for ejectment of his tenant on 20th december, 1979. Both the authorities below have allowed the application filed on behalf of the tenant u/s 12 of the Act, while the application for ejectment u/s 13 of the Act filed on behalf of the landlord has been dismissed. Civil Revision No. 2116 of 1984 arises out of the application u/s 12 of the Act and Civil Revision No. 2117 of 1984 has arisen out of the ejectment application filed by the landlord.

3. It is the common case of the parties that earlier the landlord filed an application for the ejectment of his tenant on 4th November, 1970 (copy Exhibit R-3), whereas

the tenant also moved an application under lection 12 of the Act on 27th October, 1970 (copy Exhibit R-6) in Civil Revision No. 2117 of 1984. The ground for ejectment pleaded in the application u/s 13 of the Act was that the building had become unsafe and unit for human habitation. Both the applications were compromised by the parties. By virtue of the said compromsic, the rent of the premises was enhanced from Rs. 20/- to Rs. 100/- per mensem. Consequently, both the applications were dismissed.

4. Now in the ejectment application, it has been found as a fact by both the authorities below that the roof has not fallen down. It is very much there but is leaking That is why only repairs have been allowed and not replacement. Similarly, in the application u/s 12 of the Act, the learned Rent Controller has found that the roof in question needs repairs as the same leaks during the rainy season and the landlord has failed to do the needful. In view of these findings, as observed earlier, the application filed on behalf of the tenant was allowed, whereas the application filed on behalf of the landlord was dismissed. Dissatisfied with the same, the landlord has filed these two petitions in this Court.

5. The Learned Counsel for the Petitioner-landlord contended that the tenant himself in his application u/s 12 of the Act admitted that the roofs of the tenanted premises being old and having been ignored by the landlord to carry out the necessary repairs, needed immediate necessary repairs and that the floors of the roofs are kucha ones. It was also pointed out that in the prayer also, it has been stated that the landlord be directed to re-roof the roofs of the tenanted premises and make necessary repairs therof. According to the Learned Counsel these averments show that the building has become unsafe and unfit far human habitation. Thus, argued the Learned Counsel, the findings of the authorities below are wrong and illegal. In support of his contention, reference was made to Jagdish Chand etc. v. Mst. Bachni Devi 1980 C. L J. (Civil) 490, Gurdeep Singh v. Smt Harjeet Kaur and Anr. 1982 (1) R. C. R. 407 , and Bhagwanti v. Yashodha Devi 1980 (1) R.L.R. 573. On the other hand, the Learned Counsel for the tenant relied upon a Division Bench judgment of this Court reported in Balbir Singh Vs. Hari Ram, to contend that it was a case of repairs and not that the building had become unsafe and unfit for human habitation. According to the Learned Counsel, both the provisions are independent of each other It further contended that it has been concurrently found by both the authorities below that it was a case of repairs and not that the building had become unsafe and unfit for human habitation, and, therefore, it being a finding of fact, could not be interfered within revisional jurisdiction.

6. I have heard the Learned Counsel for the parties and also gone through the case law cited at the bar.

7. In the earlir application Sled on behalf of landlord for ejectment of his tenant the Rent Controller himself made an inspection of the spot. Copy of his inspection note is Exhibit R-1/1 dated 27th July, 1972 The operative part of his inspection note reads

as under:

The beams as well as the wooden planks of the roof are in good condition There is no question of falling down of any portion of the shop. It is quite fit for human dealing.

Admittedly, in that application the parties had compromised and the landlord agreed to enhance the rent from Rs 20/- to Rs 100/- permensem and taus his ejectment application was dismissed Now, or the evidence on record in both the petitions, it has been found as fact and as observed by the Appellate Authority in Civil Revision No 2117 of 1984 , that "There is no evidence in this case that the roo requires replacement All that is proved is that the roof leaks during the rainy season because the landlord and his family members had raised the level of the adjoining buildings thereby diverting the flow of the water of their roofs to the roof of the shop in question. The landlord cannot be permitted to take benefit of his own wrongs " It had also been observed by the Appellate Authority that the application filed on behalf of the landlord is not bonafide In any case, the finding is that the roof has not fallen down but is only leaking Thus, the sole question to be decided in this case is whether the building can be said to have become unfit and unsafe for human habitation, simply because the roof is found to be leaking in the rainy season. Both the authorities below have found that under the circumstances it was a case of repairs only and under no circumstances it could be held that the building has become unsafe and unfit for human habitation on that account alone. This being a finding of fact, could not be interfered with in revisional jurisdiction. As a matter of fact, it will be a question of fact in each case to be determined on the evidence on record as to whether it is a case of repairs or the building has become unfit and unsafe for human habitation. Ho precedent as such can decide those questions of fact. Moreover, the scope of Section 12 as well as Section 13 of the Act is quite separate and distinct. Simply because the tenant has moved an application u/s 12 of the Act for making necessary repairs does not mean that the building has become unsafe and unfit for human habitation and the tenant is liable to be ejected u/s 13 of the Act on that acconnt. Even if the necessary repairs as claimed by the tenant are allowed by the authorities below, even then the landlord has to prove independently that the building has become unsafe and unfit for human habitation. Thus, as regards the facts of the present case, both the findings are against the landlord and in favour of the tenant. The authorities relied upon by the Learned Counsel for the Petitioner have no applicability to the facts of the present case. Consequently, both the petitions fail and are dismissed with costs.