(1999) 09 P&H CK 0018

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1593 of 1997

Roshan Lal		APPELLANT
	Vs	
Hari Dass		RESPONDENT

Date of Decision: Sept. 15, 1999

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13(3), 15(5)

Citation: (1999) 123 PLR 681 : (1999) 2 RCR(Rent) 593

Hon'ble Judges: V.S. Aggarwal, J

Bench: Single Bench

Advocate: M.L. Sarin and Hemani Sarin, for the Appellant; P.K. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

V.S. Aggarwal, J.

The present revision petition has been filed by Roshan Lal, hereinafter described as "the petitioner" directed against the order of eviction passed by the learned Rent Controller, Jagraon dated 23.12.1991 and of the learned Appellate Authority, Ludhiana, dated 28.1.1997. The order of eviction passed by the learned Rent Controller was upheld by the learned Appellate Authority.

2. The relevant facts are that the respondent had filed an eviction petition against the petitioners with respect to the property in question. It had been asserted that the petitioner is a tenant in the suit premises at a monthly rent of Rs. 225/- per month. It had been agreed that the rent would be paid in advance. Rent note was executed on 11.12.1985. The grounds of eviction pressed at the time when the petition for eviction was filed were that arrears of rent have not been paid and due from 9.7.1988 and that the suit property has outlived its life. The roof of the second room of the rented premises had fallen. The other portion of the tenanted premises is also in dilapidated condition. Walls have developed dangerous cracks. The floors has depressed. The wooden joinery has become white ant eaten and the roof of the

second room is also on verge of collapse. It requires reconstruction after demolition. It was further pleaded that the petitioner has used the premises in a reckless manner and the value and utility of the suit premises has been impaired.

3. The petitioner contested the petition for eviction. There was no dispute raised pertaining to the relationship of landlord and tenant between the parties. It was asserted that it was the respondent who is not accepting the rent in order to create a ground for eviction. The ground floor of the property comprises of three rooms. In the first room the main business is being carried. There is a ''Chobara'' on the front room which is in possession of one tenant Des Raj. It was denied that the suit property has become unsafe and unfit for human habitation. The roof of the second room has been damaged. As per petitioner, it is the respondent-landlord who had damaged it to create a ground for eviction. It was denied that there was a defect in the floor, wooden joinery and assertion was made that part of the roof can be replaced without the tenant being evicted.

4. The learned Rent Controller on appraisal of evidence concluded that the property in question has become unsafe and unfit for human habitation. On the said ground, an order of eviction was passed against the petitioner. The petitioner preferred an appeal. As pointed above, the same was dismissed by the learned Appellate Authority, Ludhiana. The contention of the petitioner that it is respondent who has damaged the said portion of the building was rejected. On the contrary, it was reiterated that the roof of the one room had fallen and otherwise also the property has become unsafe and unfit for human habitation.

5. Aggrieved by the said judgment of the learned Appellate Authority and the order of eviction passed by the learned Rent Controller, present revision petition has been filed.

6. Learned counsel for the petitioner assailed the findings of the authorities under the East Punjab Urban Rent Restriction Act, 1949 (for short "the Act") asserting that the suit property by itself has not become unsafe and unfit for human habitation. According to him, it is the respondent-landlord who had demolished the roof of the second room and not the petitioner. This was done only to create a ground for eviction. The respondent''s plea, on the contrary, was that this is a finding of fact which cannot be disturbed unless it is found that the same is erroneous or not based on evidence.

7. In the case of Dev Kumar (died) through L.Rs. v. Smt. Swaran Lata and Ors. (1996)115 P.L.R. 391, Supreme Court was construing the provisions of Sub-section (5) of Section 15 of the Act. In paragraph 9 of the judgment, Supreme Court held as under: -

"In our considered opinion having regard to the afore-mentioned decisions of this Court laying down the parameters of the High Court''s jurisdiction u/s 15(5) of the Act it is neither possible to accept the narrow construction put by the learned

counsel appearing for the appellants. The jurisdiction of the High Court under Sub-section (5) of Section 15 of the Act, therefore, would entitle the Court to examine the legality and propriety of a conclusion of the Appellate Authority and is thus much wider that the revisional jurisdiction u/s 115 of the Code of Civil Procedure. But it has to be exercised subject to the well known limitations inherent in all revisional jurisdiction and cannot be equated with an Appellate jurisdiction. This being the position, unless there is a perversity in the matter of appreciation of evidence by the Appellate Authority or unless the Appellate Authority has arrived at a conclusion which on the materials, no reasonable man can come, the High Court will not interfere with the same."

8. It is abundantly clear from the aforesaid that this Court would only interfere in the findings recorded by the authorities under the Rent Act if there is perversity in the appreciation of evidence or finding has been recorded which no reasonable person would arrive at.

9. In the present case, the said findings arrived at, which are concurrent findings of fact, indeed, cannot be termed to be without evidence and perverse. Admittedly, it is an old building The photographs Exhibits A-5 to A-15 clearly show that the condition of the building is not very good. The contention of the petitioner that it is the respondent who had demolished the roof of the second room with a ''sabal'' had been appreciated and rightly rejected. Beams could not be broken with ''sabal''. The defence seemingly has been set up and floated only to save eviction, if possible. Once the matter in question has been appreciated in proper perspective, the said finding, indeed, keeping in view the ratio of the decision of the Supreme Court in Dev Kumar''s case (supra), requires no further probing.

10. However, the learned counsel for the petitioner, in that event, urged that at best only a part of the building could be taken to be unfit and unsafe for human habitation. If one room out of three rooms had fallen that would not imply that an order of eviction is liable to be passed.

11. Under the provisions of the Act, the ground of eviction would be available if the property in question had become unsafe and unfit for human habitation. The learned counsel for the petitioner relied upon the decision of this Court in the case of Dr. Jagmohan Singh v. Smt. Bimla Devi (1975)77 P.L.R. 643. In the cited case, an application was filed u/s 12 of the Act against the landlord for a direction that as the roof of one of the rooms had cracked in consequence of the rain, the same should be got replaced by the landlord. The learned Rent Controller found that Rs. 1,000/- would be required for the replacement of the roof. A direction u/s 12 of the Act was issued. It has further been directed that in default, the tenant would be at liberty to get the roof replaced and recover the expenses from the landlord in accordance with law. The question in controversy before this Court in revision petition was that replacement of the roof of the building does not fall within the ambit of Section 12 of the Act. The said argument was repelled. Indeed, the ratio decidenti of the cited

decision will not apply to the facts of the present case. Presently, the Court is concerned whether the property has become unsafe and unfit for human habitation or not. The present petition is an eviction petition and the scope is not the same as u/s 12 of the Act. Therefore, the cited decision necessarily will not come to the rescue of the petitioner.

12. In that event, reliance was placed on the decision of this Court in the case of Smt. Phoolan Rani Vs. Smt. Pushpa Wati and Others, . The ground of eviction in the cited case was that the property has become unsafe and unfit for human habitation. The building was 70 years old. There were few cracks in the building. The building expert opinion was that the cracks could be repaired. It was held that it cannot be termed that the building has become unfit and unsafe for human habitation.

13. Further, strong reliance was placed on the decision of the Supreme Court in the case of Piara Lal Vs. Kewal Krishan Chopra, . Herein, the leased portion comprised of four rooms on the ground floor. Roof of one room had fallen. The tenant had replaced the roof only at a cost of about Rs. 200/-. Eviction petition was filed on the ground that the property in question has become unsafe and unfit for human habitation. Needless to emphasis, herein also the tenant has applied u/s 12 of the Act. Permission had been granted to replace the roof. Supreme Court held as under-

"On a careful consideration of the matter with reference to the contention put-forth by the learned counsel for the parties, we are clearly of opinion that the High Court was not justified in allowing the revision and directing the eviction of the appellant u/s 13(3)(a)(iii). It is true that a root or one of the rooms on the rear side had fallen down and required replacement but there was no evidence whatever that the entire building or a substantial portion of it was in a damaged condition and consequently the building as a whole had become unfit and unsafe for human habitation. Unless the evidence warranted an inference that the falling down of the roof in one room was fully indicative of the damaged and weak condition of the entire building and that the collapse of the roof was not a localised event, we fail to see how the High Court could have concluded that the entire building had become unsafe and unfit for human habitation....."

14. It is abundantly clear from the fact enumerated above and the findings that had been arrived at that it was recorded as of fact that roof of one room had fallen which could be repaired at the meagre cost of Rs. 200/-. There is no evidence that the entire building or substantial portion of it was in a damaged condition. Supreme Court, therefore, held that it cannot be termed that whole building had become unsafe and unfit for human habitation. Therefore, the cited decision cannot be taken advantage of by asserting that whenever a part of the building has fallen it is not a ground of eviction. The cited decision was confined to its peculiar facts. It cannot be taken as a precedent keeping in view the facts of the said case. This is because in the case of The State of Orissa Vs. Sudhansu Sekhar Misra and Others, , the Apex Court considering earlier Privy Counsel decision and other decisions

regarding law of precedents said:

"A decision is only an authority for what it actually decides. Which is of the essence in a decision is its ratio and not every observation found therein, not what logically follows from various observations made in it. It is not a profitable task to extract a sentence here and there from a judgment and to build upon it."

15. Similarly, in the case of Municipal Corporation of Delhi Vs. Gurnam Kaur, , it was held as under:-

"Quotability as law applies to the principle of a case, it''s ratio decidendi. The only thing in a judge''s decision binding as an authority upon a subsequent judge is the principle on which the case was decided.....The task of finding the principle is frought with difficulty, because without an investigation into the facts, it could not be assumed, whether a similar direction must and ought to be made....."

16. The position in the present case can well be reappreciated. It has already been pointed out above that the roof of one room had fallen. The building, admittedly, is old. The malba of the roof was still lying there. Even the building expert of the respondent admitted that the beam of the second room was lying in a slanting condition. Even the roof of the adjoining shop of the landlord had also fallen." From that fact inference was rightly drawn that the building has outlived its age. When the roof by itself had fallen, it cannot be termed that it would be a minor repair. A finding of fact had been arrived at by the authorities that substantial part of the integrated building has become unfit and unsafe for human habitation. Water from the second room has materially impaired the value and utility of the premises in question. Therefore, the authorities rightly held that ground of eviction was available. In the peculiar facts, the plea raised that the property, merely because one room has fallen, cannot be termed to be unfit and unsafe for human habitation cannot be accepted.

17. As a result of the reasons given above, the revision petition being without merit must fail and is consequently dismissed.

18. The petitioner is granted three months time to vacate the suit premises.