

(1999) 05 P&H CK 0025

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Revision No. 33 of 1997

Joginder Singh

APPELLANT

Vs

Jasbir Singh

RESPONDENT

Date of Decision: May 13, 1999**Acts Referred:**

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

Citation: (1999) 123 PLR 429 : (2000) 1 RCR(Rent) 430**Hon'ble Judges:** V.S. Aggarwal, J**Bench:** Single Bench**Advocate:** M.L. Sarin and Hemani Sarin, for the Appellant; Shashi Ghuman, for the Respondent**Final Decision:** Allowed

Judgement

V.S. Aggarwal, J.

The present revision petition has been filed by Joginder Singh (hereinafter described as "the petitioner") directed against the judgment of the learned Appellate Authority, Jalandhar dated 14.11.1996. By virtue of the same, the learned Appellate Authority had allowed the appeal filed by the respondent and set aside the order passed by the learned Rent Controller, Nawanshahr. An ejectment order was passed against the petitioner with respect to the property in question.

2. The relevant facts are that respondent had filed an eviction petition against the petitioner with respect to the property in dispute. The petitioner is a tenant therein. It had been asserted by the respondent that the petitioner has changed the user of the property. He has demolished the pillars and constructed the same from 9" to 4-1/2" in breadth, as a result of which the walls were weakened. In this process the petitioner has materially impaired the value and utility of the shop.

3. The petition for eviction was contested. It was denied that the tenant-petitioner had demolished the pillars and reduced the width thereto. As per the petitioner, the

pillars of the shop are in the same condition as at the time it was let out.

4. The learned Rent Controller framed the issues and recorded the evidence. The petition for eviction was dismissed by the learned Rent Controller holding that no date or time for alteration purported to have been effected was given by the respondent. The learned Rent Controller further noted that eviction petition was filed alleging that the width of the pillars had been reduced while the evidence was led contrary to the same. On dismissal of the petition for eviction the respondent preferred an appeal. The learned Appellate Authority, set aside the findings holding that the pillars were demolished. They were load bearing pillars and, therefore, the value and utility of the building has been materially impaired. Aggrieved by the order allowing the appeal, the present revision petition has been filed.

5. The sole argument advanced on behalf of the petitioner was that there was no evidence on the record which could be considered that the petitioner had demolished the pillars from the ground level, because this was not the contention of the respondent while the petition for eviction was filed. The said contention indeed is meritorious and cannot be ignored. In the petition for eviction that was filed, pertaining to the said ground the respondent had pleaded:-

"That there was pillars in the eastern and western wall of the shop. The pillars were constructed in such a manner that the roof of shop resting on those pillars shown by word X and Y in the site plan attached. The breadth of the pillar was 9". These pillars were constructed from the floor till roof level. The respondent had demolished those pillars to the extent of 4-1/2" in breadth. By reducing the size of pillars from 8 inch to 4-1/2". The walls of the shop on its East and West has weakened. The demolition of the breadth of pillars has materially diminished the utility and value of the shop, from the point of view of the petitioner."

Thus, it is abundantly clear that the respondent came to the Court alleging that the petitioner has reduced the size of the pillars from 9" to 4-1/2". It was this controversy which became the subject matter of the litigation. The evidence led on the contrary was that in fact the petitioner had demolished the pillars from the ground level and that the same are hanging in the air. The well settled principle is that no amount can be looked into regarding which there is no basis or regarding which there is no plea. A person or litigant cannot be taken by surprise. Once, there is no such plea, the learned Rent Controller rightly ignored the said evidence.

6. This contention had been considered by the Appellate Authority and it was recorded:-

"It was next contended by the counsel for the respondent, that the case set up by the appellant, in the application, is that the breadth of the pillars was reduced to 4-1/2" each from 9" by the tenant but his evidence is that he demolished the pillars to the extent of 4" from the ground level which is totally contradictory to the pleadings. In the first instance, it may be stated here, that the provisions of the Code

of Civil Procedure, are not strictly applicable to the proceedings under the East Punjab Rent Restriction Act, 1949. Not only this, even the proceedings, under the said Act, are summary, in nature. It has also to be kept in view, that the pleadings, in Moufassils, are loosely drafted and it is the intention of the parties, which is required to be gathered from the pleadings. The Court cannot take too pedantic a view of the pleadings, so as to defeat the ends of justice. Keeping in view the aforesaid guidelines, the Court, in this case, is required to decide, what was the case of the appellant, in actuality. The appellant, being a rustic ruralite, imparted instructions, to his lawyer, in his own manner. From the overall view of the pleadings, evidence, facts and circumstances of the case, it is clear that the case of the appellant, was that the respondent had demolished the pillars to the extent of 4" each, from the ground level, upwards. This is also proved from the evidence produced by the parties."

7. Indeed this is not the correct position in law. The Appellate Authority fell into a grave error in this regard. This is for the reason that the pleadings have to be read as a whole and it is not that in Moufassil pleadings are loosely drafted. There is no escape from the findings that the Appellate Authority misread the pleadings in law and went astray while making such observations. When the respondent had come to the Court of the learned Rent Controller with a specific plea that width of the pillars had been reduced, the order of eviction could not be passed on any other contention as is now being raised before the Appellate Authority. The legality of the order and propriety cannot be sustained.

8. For these reasons, the revision is allowed and the impugned judgment of the learned Appellate Authority is set aside. Instead petition for eviction is dismissed.