

(2009) 11 P&H CK 0123

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Joginder Singh

APPELLANT

Vs

Kuldeep Chand

RESPONDENT

Date of Decision: Nov. 5, 2009

Acts Referred:

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

Citation: (2010) 159 PLR 420 : (2009) 2 RCR(Rent) 697

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.

The matrix of the facts culminating in the commencement, relevant for disposal, of the present revision petition and emanating from the record, is that originally Kuldeep Chand son of Devi Dayal-respondent-landlord (hereinafter to be referred as the landlord) filed an ejectment petition invoking the provisions of Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as "the Act") against his tenant-Joginder Singh son of Nanak Singh (hereinafter to be referred as the tenant), inter alia, pleading that the shop was rented out to the tenant at a monthly rent of Rs25/- per month by his father (since deceased) and after his death, he became owner/landlord of the property in dispute. He sought the ejectment of the tenant on the following grounds:

- i) That the tenant has not paid the rent of the premises in dispute from 1st March, 1991 upto now and as such the tenant is in arrear of the rent of the premises in dispute from March, 1991 upto now.
- ii) That the premises in dispute has become totally unfit and unsafe for human habitation.

iii) That the tenant has made material and major structural alteration and changes in the premises in dispute without the consent of the landlord and as a result of which the value and utility of the premises in dispute has been impaired and diminished. The tenant has removed an intervening wall and door between the two rooms of the shop and raised shed on the open space and he has also made so many other alterations and changes which have impaired and diminished the value and utility of the property in dispute.

2. The case set up by the landlord in brief insofar as relevant was that he requested the tenant to make the payment of arrears of rent and also to hand over the vacant possession of the premises, but in vain, which necessitated him (landlord) to file the ejectment petition. On the basis of aforesaid allegations, the landlord filed the ejectment petition against the tenant in the manner indicated hereinabove.

3. The tenant contested the ejectment petition by filing reply, inter alia, admitting the relationship of landlord and tenant between the parties and the rate of rent. According to the tenant, he had not made any minor or major alteration or any change impairing the value and utility nor the demised shop has become totally unfit and unsafe for human habitation. The rent was stated to have already been paid. It will not be out of place to mention here that the tenant has stoutly denied all other allegations contained in the ejectment petition and prayed for its dismissal.

4. Controverting the allegations contained in the reply and reiterating the grounds of ejectment, the landlord filed the replication.

5. In the wake of the pleadings of the parties, the Rent Controller framed the following issues for adjudication of this case:

1) Whether the tender made is valid? OPA

2) Whether the demised premises is unfit and unsafe for human habitation. If so its effect? OPA

3) Whether the respondent has made material alteration and changes in the demised premises? OPA

4) Relief.

6. The parties produced oral as well as the documentary evidence in order to substantiate their respective pleaded cases.

7. The Rent Controller dismissed the ejectment application vide order dated 16.01.1996. However, the appellate authority accepted the appeal of the landlord and directed the tenant to hand over the vacant possession of the demised premises vide impugned order dated 14.11.2000.

8. The tenant did not feel satisfied with the impugned judgment of the appellate authority and filed the present revision petition. That is how I am seized of the

matter.

9. Having heard the Learned Counsel for the parties, having gone through the evidence on record with their valuable help and after bestowal of thoughts over the entire matter, to me, as there is no merit, therefore, the revision petition deserves to be dismissed for the reasons mentioned hereinbelow.

10. As stated earlier, the landlord has sought eviction of the tenant on three grounds as reproduced above. Since the tenant has already tendered the rent before the Rent Controller which was accepted by the landlord so the ground of non-payment of rent became redundant. Only two grounds on which the appellate authority has non-suited the tenant survives for adjudication by this Court which were subject matter under issue Nos. 2 and 3. It means, the present controversy falls within a very narrow compass.

11. At the very outset, Learned Counsel for the tenant has contended with some amount of vehemence that there was no cogent evidence on record either to prove that the demised premises has become totally unfit for human habitation or the alteration/construction made by the tenant has actually impaired the value and utility of the shop. The argument further proceeds that the Rent Controller has rightly dismissed the ejectment petition but the lower appellate court fell in error in accepting the appeal of the landlord and ordering ejectment of the tenant. In this regard, he has placed reliance on the observations of Hon'ble the Apex Court in cases titled as Gurbachan Singh v. Shivalak Rubber Industries (1996-2)113 P.L.R. 694, Om Pal v. Anand Swarup (dead by Dis LRs) (1988-2)94 P.L.R. 699 and of this Court in cases titled as Des Raj Jain v. Bachna Ram 1989(1) R.C.R. 670, Chander Kanta and Ors. v. Ram Chander and Ors. 2004(1) R.C.R. 465 and Pawan Kumar v. Gulzari Lal (1997-3)117 P.L.R. 31.

12. On the contrary, it has been urged on behalf of the landlord that as the appellate authority has correctly appraised oral as well as the documentary evidence, which was omitted by the Rent Controller and came to the conclusion that the demised premises becomes totally unfit for human habitation and the construction/alteration made by the tenant has impaired the value and utility of the building, therefore, no interference by this Court is called for. In this respect, he has placed reliance on the judgments of Hon'ble the Apex Court in [Kanta Udham Jagasia \(Miss\) Vs. C.K.S. Rao](#), and the judgments of this Court in Kasturi Lal v. Muni Lap (1994-1)106 P.L.R. 302 and Ramnath v. Shri Kanth (2000-1)124 P.L.R. 679.

13. I have gone through the aforesaid judgments. The crux of the law laid down in the judgments produced on behalf of the tenant is that construction of Chabutra, almirah, opening of window, closing of a verandah, replacing of leaking roof, placing partition in a room or making minor alterations for convenient use of accommodation would not materially alter the utility and value of the building.

14. On the other side, the judgments relied on behalf of the landlord are to the effect that if wall of a shop developed irreparable cracks and wall bulged out and gone out of plumb, such building will be deemed to be unsafe and unfit, reason rendering the building unfit and unsafe is irrelevant for determination of right of landlord to seek ejectment of the tenant on the ground of building having become unsafe and unfit for human habitation. Impairment of value and utility of the building has to be seen from the angle of the landlord and not that of the tenant and the revisional Court should not interfere with the findings of lower courts unless the same are perverse and without jurisdiction.

15. Possibly, no one can dispute with regard to the aforesaid observations in the judgments but the same are not mutatis-mutandis applicable to the facts of the present case. The judgments were rendered on the peculiar facts and circumstances of their respective cases. Moreover, it is now well-settled proposition of law that each case has to be decided on its peculiar facts, circumstances and evidence brought on record by the parties in order to substantiate their rival stands.

16. Above being the position, now first short and significant question though important arises for consideration in this petition is whether the demised premises is totally unfit and unsafe for human habitation or not.

17. Now advertng to the first argument of the Learned Counsel for the tenant that as there is no cogent material on record to prove that the building is unfit or unsafe for human habitation, therefore, ejectment order is bad in law, is not only devoid of merit but misplaced as well. Because a perusal of the record would reveal that the landlord has produced sufficient oral as well as the documentary evidence in this respect. Reference may be made to the statement of Nakul Dev son of Arjan Dass, AW1, who has stated that the condition of the shop is unfit and unsafe for human habitation as the same is in dilapidated condition. The walls of the shop in dispute are made of old bricks, mud mortar and have bent. The floor was at the lower level about one feet from the road. There was a wall and door in between the premises which have been removed by the tenant without the consent of the landlord. As a result of which, the condition of the premises has weakened. The remaining portion of the building in which the disputed shop is situated had already fallen of its own and the demised portion also can fall at any time. Harbhajan Singh, AW2, who is a building expert, has inspected the spot and prepared his report Exhibit A1 and site plan Exhibit A2. The statement of AW3-Kuldeep Chand-landlord is also to the same effect. Instead of reproducing his statement in its totality and in order to avoid repetition, suffice it to say that he has corroborated his pleaded case on all vital counts and maintained that the demised premises has become unsafe for human habitation and the same can fall at any time. The mud mortar has left the place in between the bricks.

18. No doubt, RW1-Parmod Bhardwaj has submitted his report R1, site plan R2 and the evidence of RW2-T.D.Chawla, RW3-Raghubir Singh and RW4-Joginder

Singh-tenant is to the effect that the building is fit and safe for human habitation, but to me, no implicit reliance can be placed on their statements in view of the cogent and reliable evidence, as discussed hereinabove, produced on record by the landlord in this respect. Moreover, RW1 has admitted that he inspected the spot in the absence of the landlord and only the tenant was present. Furthermore, RW4-tenant has admitted that the roof of the chaubara had fallen, one and a half years ago and the adjoining portion has been dismantled by the landlord but he unsuccessfully tried to explain that the same was the mala fide act of the landlord. However, he admitted that there was a chaubara on the roof of the shop which had fallen.

19. Be that as it may, the fact remain is that it stands proved on record by overwhelming evidence that the shop in dispute is made of old bricks and its walls had been bent. The intervening wall has been removed by the tenant without the consent of the landlord, due to which the condition of the shop has weakened. The remaining portion of the building in which the disputed shop is situated already fallen of its own and the demised shop can also fall at any time. The broken patches on the surface of the floor were visible. The building is about 60 years old. The common wall has tilted vertically and the structure could not bear the weight of the roof. The top was wavy and vibrated when walked over. There are vertical cracks and another crack over the door. It is also established that the tenant has removed the intervening wall and converted the tenanted portion into one shop.

20. Not only that the landlord has produced report of the building expert, Exhibit A1 and site plan Exhibit A2 showing the existing construction of the shop, he has also produced the site plans Exhibits AW-3 and AW3/1. The relative comparison of these site plans would depict that the tenant has made construction and alteration without the consent of the landlord.

21. Faced with the situation, the other argument of the Learned Counsel for the tenant that assuming the construction/alteration made by the tenant is proved on record but it is not sufficient to infer that such alteration made by the tenant has actually impaired the value and utility of the building, therefore, he cannot be ejected in this respect, again has no force. Because as discussed hereinabove, it has come into evidence that the tenant has made construction and alteration and there is composite evidence on record that the same has materially impaired the value and utility of the building. Above all, the impairment of the value and utility of the building has not to be seen from the view point of the tenant but from the angle of the landlord who has so stated in an unequivocal terms.

22. Moreover, in the wake of appraisal and appreciation of oral as well as the documentary evidence brought on record by the parties, the appellate authority has recorded a finding of fact based on evidence that alteration and construction made by the tenant in fact have materially impaired the value and utility and the building has become unfit and unsafe for human habitation, such finding cannot possibly be

set aside in exercise of the revisional jurisdiction of this Court. Because, the scope of the revisional jurisdiction of this Court is very limited and is confined only to testing the legality or propriety of the order under revision. It is now well settled proposition of law that this Court cannot legally appreciate or re-appreciate the evidence to take a different view of the facts. It is not the province of this Court to dislodge the finding recorded by the appellate authority unless the same is perverse, arbitrary and without jurisdiction. No such irregularity or patent illegality has been pointed out by the Learned Counsel for the tenant in the impugned order of the appellate authority.

23. No other point worth consideration has been urged or pressed by the Learned Counsel for the parties.

24. In the light of the aforesaid reasons, the findings of the appellate authority are hereby affirmed. Consequently, as there is no merit, therefore, the present revision petition is dismissed with no order as to costs in the obtaining circumstances of the case.