

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.2053 of 2014(O&M)

Date of decision:13.01.2015

Rajan Arora

....Petitioner

Versus

Sham Sunder Tandon & others

.....Respondents

CR No.2572 of 2014

Rajan Arora

....Petitioner

Versus

Sham Sunder Tandon & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Amit Jain, Advocate, for the petitioner.

G.S.Sandhawalia J.

Present judgment shall dispose of CR No.2053 & 2572 of 2014, filed by the tenant, who is aggrieved against the order of eviction dated 27.03.2012, passed by the Rent Controller and the dismissal of the application under Section 12 of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act'), for plugging the hole made in the roof of the tenanted premises. The tenant has also been unsuccessful before the Appellate Authority, who dismissed the appeals on 04.01.2014. Since common judgment has been passed, dealing with both the disputes, the two present cases have been dealt with vide this common judgment.

The premises in question, bearing No.22, situated at Mandi Fentonganj, Jalandhar were let out to the petitioner-tenant at ₹3500/- per month, vide rent note dated 06.10.1994, since there was a 6% increase clause after every 3 years, ejectment was sought by the original landlady, Roop Rani Tandon, on the

ground of arrears of rent from 01.07.2002 to upto date, and on account of sub-letting to respondent No.4. Additions and alterations were also subject matter of the eviction petition and it was alleged that flooring had been changed from brick work to cement plaster and cement thara in front of the shop had been made by installing batons in the walls of the shop, which had made the property unfit and unsafe for human habitation and it was in a dilapidated condition. The personal use and occupation of respondent No.1 being the son of the landlady, who was occupying one room in the 1st floor, for running his business of rice, was also pressed into action on the ground that it was not sufficient for running his business.

Respondent No.4 did not contest and the present petitioner opposed the petition on various grounds, mainly, that the petitioner was a counter-blast to the petition filed under Section 12 of the Act and also to the suit filed. The relationship of landlord-tenant was admitted and the arrears of rent were denied, including the allegation of sub-letting. No additions and alterations had been made in the property in question and neither any damage had been caused and that the property was in dilapidated condition. On account of threat of forcible dispossession by the original landlady and her son in August, 2002, the suit had been filed, which was decreed on 21.01.2004. It was alleged that respondent No.1 and the landlady had caused a hole in the roof so that rain water can enter into the shop, thereby, damaging the property and the goods of the petitioner, lying therein. A Local Commissioner was appointed to plug the said hole, illegally made in the corner of the roof, which had been done. The matter had also been reported to the police and an entry had been made and the police had visited the site. It was, accordingly, submitted that the tenant-petitioner was being harassed. Following issues were framed by the Rent Controller:

OPA

2. Whether respondent No.1 has sublet the demised premises to respondent No.2 without the consent of the petitioner? OPA

3. Whether respondents have made additions and alterations in the demised premises which has diminished the value and utility of the same? OPA

4. Whether the respondents have damaged the property by mis-using by installing of wood batons? OPA

5. Whether property in dispute is in dilapidated condition and unfit and unsafe for human habitation? OPA

6. Whether the demised premises is required to the petitioner for personal use and occupation to the petitioner as well as her son? OPA

7. Whether petition is not maintainable in the present form? OPR

8. Whether petitioner is barred by her own act and conduct from filing the present petition? OPR

9. Relief.”

The landlady examined her son, Sham Sunder Tandon as PW1 and one Keshav Soni as PW2 whereas the petitioner examined himself as RW2 and one R.K.Verma as RW1 and placed on record copy of the police report also.

The issues regarding sub-letting, additions and alterations, diminishing the value and the utility and damaging the property by installation of wooden batons was not pressed by the respondent and in the absence of the evidence, decided in favour of the petitioner. Similarly, issue No.6, regarding the requirement for personal use of the premises in question, the Rent Controller recorded that the petitioner had not averred regarding vacating any shop in the territorial jurisdiction of Jalandhar and not renting out the same to anybody and accordingly, rejected the ground of eviction on that issue. The petition was held to be maintainable and the tender of rent was having made on 09.02.2004, was held to be valid.

On the factum of the dilapidated condition of the building, being unsafe and unfit and whether it was on account of the landlady's action, issues

No.5 & 8 were clubbed together. Report of the building expert, Keshav Soni was taken into consideration, which was exhibited as Exhibit P3 and it was noticed that there were cracks visible in the walls and due to excessive dampness, insects such as cockroaches were found. The wooden batons and girders had been eaten by the termites and they had lost the power to support the load. The roof was in a very bad condition and there was a hole measuring 1'6" x 1'6", visible from the top. The rotten batons could be seen and the planks were visible and they could not be repaired. The photographs of the property and the report were taken into consideration. The report of R.K.Verma, RW1, the building expert of the petitioner-tenant was rejected since there were no photographs available. The DDR No.45 dated 10.07.2003, Exhibit RX was also taken into consideration that there was a hole in the roof which was a very old one and the roof was deteriorating with the passage of time. The submission that the dampness in the premises were due to running of water of the tap by the petitioner on the roof of the shop was rejected. A finding was recorded that the building was completely unfit and unsafe for human habitation and required major repairs after demolition. Accordingly, the ejectment order was passed.

The petitioner and respondent No.4 filed two appeals before the Appellate Authority and taking into consideration the evidence of both the building experts and the statements of the parties, the report Exhibit RW1/D of the building expert of the petitioner, was taken into consideration to notice that the area of the fallen portion of the roof had not been mentioned and that there was growth of wild vegetation in the shop in question. The floor of the shop was getting wet due to dampness and even as per the report (Exhibit P3), building was more than 70-80 years old as per its existing condition and the building was made of Nanakshahi bricks with mud mortar. Keeping in view the report given by the

rainy season and causing dampness, the finding that the building was unfit and unsafe, was upheld.

Counsel for the petitioner has vehemently submitted that for the illegal acts of the landlady, tenant cannot be penalised and due to the running of the tap water, the damage had been caused. The Civil Suit had been filed for injunction but inspite of that, the landlady had continued to damage the roof of the shop and even there was an inspection by the police.

A perusal of the order passed by the Addl.Civil Judge (Sr.Divn.), Jalandhar would go on to show that the Court had restrained the landlady and her son from interfering in the physical possession of the applicants and the repair which was to be effected could be done by filing a petition under the Rent Act, while disposing of the interim injunction application. It was noticed that the Civil Court, without leading any evidence, could not come to the conclusion whether the shop in question was in dilapidated condition and whether the respondents had made an opening on the southern corner of the roof of the shop. The building expert of the land-owner has come to the following conclusion:

“Upon the basis of above factors in my opinion the property belonging to Smt. Roop Rani Tandon E.F.-22, Mandi Fanton Ganj, Jalandhar City, has out lived their life. The various cracks in roof, walls indicate that the structure is standing in a risky condition and may collapse of its own at any time and may cause some serious accidents with the inmates. Roof is in the poor condition. It leaks during rainy season which causes dampness effects the health of living being. Due to the dampness various insects found their shelter in to the building and made the atmosphere unhygienic for the inhabitants. Plaster of the walls sound at various places. It peeled from the surface of wall from many places. So in consideration of all the facts it is concluded that the above said building is not in a habitable condition and is unsafe, unfit for habitats.”

The conclusion is based on the inspection report on 15.04.2005 and

it was mentioned that the building was 50-60 years old and was in a very poor condition. The roof of the ground floor was divided into 6 parts-'A' to 'E' and it was noticed that there was continuous seepage of water and the wooden batons and wooden girders were losing their power to support the load and the usage of Nanakshahi bricks with mud mortar was also noticed and taken into account along with the photographs. The site plan also depicted that the office of respondent No.1 was on the Eastern end of the roof and there was an open terrace on both the sides.

The argument that has been raised that the tap which has been kept open and was leading to the leakage of the roof, cannot be accepted since the water tap is on the terrace on the eastern side and the shop is in the form of long rectangle and the roof is divided by the office on the first floor. The water, therefore, from the tap can go to the terrace on the other side and the argument raised that the damage to the roofs is being raised by the running of the tap, cannot be, thus, held to be an argument that would require consideration since. Admittedly, the experts had divided the roof into 6 portions as noticed and all the said roofs are in bad condition, on account of being supported by wooden batons and planks and by Nanakshahi bricks. It is in the report of the tenant itself that there is growth of vegetation on the walls and that damage is also caused to the roof on account of storage of rain water for long time on account of damage to the rain water pipe.

In such circumstances, concurrent findings which have been recorded by the Courts below do not warrant any interference as admittedly, this Court is not sitting as a Court of appeal and it has been held by the Apex Court in **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh 2014 (9) SCC 78.**

Relevant observation reads as under:

Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on reappreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

This Court in **Bal Kishan Vs. Raj Kumar 1997 (2) PLR 613** has held that where a building is over 60 years old, the findings being based on appreciation of evidence, were not liable to be interfered with. Similarly, in **Darshan Kumar Vs. Manjeet Kaur 2003 (2) RCR (Rent) 513** also, it was held to the same effect that where the building was an old one and made from Nanakshahi bricks and there were holes and cracks in the walls, interference should not be there in a revision petition. In **Ashok Kumar Vs. Madan Kumar Commercial Trust 2009 (9) RCR (Rent) 545**, the revisional power was not exercised in similar circumstances.

The judgments which have been relied upon by counsel for the petitioner in *Amin Chand Vs. Mohan Lal 1989 (1) RCR 356*, *M/s Labh Chand Om Parkash Vs. Krishan Lal & others 1990 (1) RCR 214*, *Laxmi Devi Vs. Kishan Lal 2003 (1) RCR 398* and *Satinder Kumar Gupta Vs. The Regional Manager, Himachal Road Transport Corporation, Pathankot, District Gurdaspur 2013 (1) RCR (Rent) 651* are, thus, not applicable in the facts and circumstances of the present case, in view of the design of the building, as such and the location of the tap which was the bone of contention between the parties.

Accordingly, finding no merit in both the present revision petitions, the same are dismissed. The petitioner-tenant is granted 4 months time from today, to vacate the premises.

13.01.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE