

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 2055 of 2014 (O&M)
Date of Decision : 06.02.2015

Tarsem Lal

....Petitioner

Versus

Shanti Devi

....Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Veneet Sharma, Advocate
for the petitioner.

R.P. Nagrath, J.

The respondent-landlady sought eviction of the petitioner from the demised shop on the grounds *inter alia*:-

- (i) That the tenant is in arrears of rent w.e.f. January, 2005 @ ₹ 300/- per month;
 - (ii) that the landlady requires the demised shop and the adjoining shop in occupation of other tenant, for own use and occupation and her sons, namely; Prem Nath @ Lali, Ashwani Kumar and Charan Dass; and
 - (iii) that the demised premises has become unfit and unsafe for human habitation.
2. An issue was also raised with regard to rate of rent but learned counsel for the petitioner submitted that grounds which

survive for consideration are relating to the personal need and occupation and the premises having become unfit and unsafe for human habitation. It was rather admitted before the Appellate Court that the ground of arrears of rent has since been settled before the Rent Controller and no more subsisting.

3. The petitioner-tenant contested the case and pleaded that the only intention of the landlady is to increase the rent to ₹ 1000/- per month though it was initially ₹ 75/- per month. It was further stated that the rent upto July, 2007 stood paid.

4. On the ground of premises having become unfit and unsafe for human habitation, the petitioner stated that in fact the landlady is guilty of damage to the roof and structure of the demised shop so that it can collapse. The landlady even placed earthen pots on the roof and had been pouring water in those earthen pots with an intention to cause damage to the roof. The respondent-landlady has also placed drums of bichumen on the roof of the demised shop to cause further damage. The ground of personal need and occupation was also denied.

5. Learned Rent Controller framed the following issues from above pleadings of the parties:-

- (1) Whether the respondent is in arrears of rent w.e.f. January, 2005, if so at what rate? OPA
- (2) Whether applicant requires the demised premises for own use and occupation and for use and occupation of her sons, as alleged? OPA

(3) Whether demised premises is unfit and unsafe for human habitation? If so its effect? OPR

3-A Whether respondent is entitled to relief as prayed on the counter claim? OPR

(4) Relief.

6. The grounds of eviction no. 2 and 3 above were held to be proved and, therefore, the eviction order was passed by the Rent Controller which has been affirmed by the Appellate Authority.

7. I have heard learned counsel for the petitioner, perused the impugned orders and the paper-book.

8. There has been proper analysis of the evidence produced by the respondent-landlady in proof of the grounds of eviction and learned counsel for the petitioner has not been able to refer to anything on record to show flaw in those findings or that any material produced before the lower authorities has been misinterpreted or ignored.

9. The precise allegation on the ground of personal need and occupation was that Prem Nath @ Lali son of the landlady was sitting idle and not doing any job. Otherwise, he is a married person and has three children, one of whom is now grown up. Prem Nath has himself passed 10+2 but still not doing any work. The other son of the landlady Ashwani Kumar is doing part time job and earning ₹ 2000/- to ₹ 3000/- per month. Ashwani Kumar, who has a son and a daughter, intends to start new business. The petitioner had pleaded that Prem Nath @ Lali was in a job and his children were also self-

employed. Ashwani Kumar was statedly earning handsome amount. It was further stated that earlier an application was filed against Madan Lal, tenant of the adjoining shop and that was dismissed.

10. Learned Rent Controller observed from the statement of landlady that her son Ashwani Kumar is working in a factory and other son Prem Nath @ Lali is a property dealer. On the other hand, petitioner-Tarsem Lal, while appearing as RW-2 stated that both the above sons of landlady are employed and having handsome earning. It was further observed that apart from the oral version of the tenant, there was nothing on record to say that the landlady has any other commercial property owned by her in the urban area of Amritsar or that she has vacated any such property without any sufficient cause. It was observed, therefore, that the plea set up by the petitioner-tenant to dispute the claim of the landlady cannot be given undue weightage. After discussing the relevant principle of law on the subject, it was held that need of the landlady could not be termed as *malafide*.

11. The matter was re-appreciated by the learned Appellate Authority and it was observed as under:-

“19. In my considered opinion, just because Ashwani Kumar is doing a part time job in a factory it would not automatically imply that he does not require the demised premises for starting business. Similarly, just because Prem Nath is already doing a business of property dealer, then it would not mean that he does not require the demised shop for

doing his business. It has already been admitted by RW-1 Madan Lal that Prem Nath alias Lali does not own the shop in which he is doing business of property dealer. The petitioner Shanti Devi-landlady has led sufficient, cogent and convincing evidence on the record that she requires the shop in dispute for the purpose of starting business by her sons Prem Nath and Ashwani Kumar. The tenant is nobody to dictate any terms to the landlord as regards the utilization of the demised shop.”

12. On the other ground of eviction of the demised shop having become unfit or unsafe for human habitation, there is positive evidence led by the respondent-landlady which is supported by report of the Civil Engineer examined as AW-2. Arvinder Singh, Civil Engineer was cross-examined at length by the respondent-tenant but nothing could be extracted for supporting the tenant's case. It was rather observed that the report of the Civil Engineer could not be discredited. This witness in cross-examination stated that there exist 4/5 cracks in the roof. It was observed by the Appellate Authority as under:-

“24. In the considered opinion of the Court, just because of the fact that AW-2 Arvinder Singh could not tell the exact number of cracks in the roof or their distance in the wall does not mean that the inspection report prepared by him was incorrect. The witness is bound to forget certain minor issues over a period of time. AW-2 Arvinder Singh visited the demised shop and prepared the

inspection report on 05.03.2011, thereafter he came to depose in the Court on 15.11.2012 i.e. after a lapse of more than one and half years. As such, he was bound to forget certain minor details of the inspection conducted by him one and half years back.

25. *No Civil Engineer or expert was examined by the tenant to rebut the inspection report tendered by AW-2 Arvinder Singh. Minor discrepancies in the cross-examination of AW-2 Arvinder Singh do not falsify the report given by Arvinder Singh, Civil Engineer, Ex. A-5 or his testimony given in the court. As such, it is held that the demised shop is unfit and unsafe for human habitation. The findings of the Id. Rent Controller whereby the demised shop has been held to be unfit and unsafe are also upheld.”*

13. Learned counsel for the petitioner, as already observed, has not been able to refer to any circumstance to suggest that the findings reached by the Courts below are either perverse or not based on material available before the Courts below.

14. Five Judges Bench of Hon'ble Supreme Court in **Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh, (2014) 9 SCC 78**, held that the consideration or examination of the evidence by the High Court in revisional jurisdiction under the Rent Control Act 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. 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 re-appreciate or reassess 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.

15. In view of above discussion, I do not find any merit in the instant petition and the same is dismissed.

February 06, 2015
jk

(R.P. NAGRATH)
JUDGE