

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 2383 of 2015 (O&M)
Date of Decision: 05.5.2015.

Ram Singh and anotherPetitioners

Versus

Radhey ShyamRespondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Johan Kumar, Advocate
for the petitioners.

SABINA, J.

Respondent had filed the petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973 seeking ejectment of the petitioners from the premises in question. Learned Rent Controller vide order dated 24.12.2012 dismissed the ejectment petition. Aggrieved against the said order, respondent preferred an appeal and the same was allowed by the Appellate Authority vide judgment dated 22.12.2014. Hence, the present petition by the petitioners-tenant.

Learned counsel for the petitioners has submitted that the landlord had failed to establish that the tenant had materially impaired the value and utility of the rented premises. In fact, the toilet in question was already existing at the spot. Moreover, the structure of the said toilet was a temporary one. In support of his arguments, learned counsel has placed reliance on '**Raj Rani and another versus Krishan Bhatia and others**', 2009 (2) R.C.R. (Rent) 662 wherein it was held as under:-

“The surviving point for consideration would be on the

issue of material alteration that the Appellate Court found against the landlord but which the learned counsel for the respondent urged was wrong. The Appellate Court in its judgment has referred to the fact that the tenant had constructed a shed in the courtyard and replaced an outer door of the disputed house with bigger iron door and these additions such as, construction of shed of the courtyard and the bigger door had not constituted material alteration. The learned Senior counsel would refer to the judgment of the Rent Controller which according to him expresses in better terms of how the action of the tenant had caused a material impairment. The Rent Controller observed that by the very same fact of construction of a big shed in the courtyard as shown in photographs exhibited as A-3 to A-8 and the replacement of the outer door with a big iron door would impair its value and utility. It must be remembered that the the Act itself does not contemplate any alteration without the permission of the landlord as constituting an actionable wrong rendering such act as resulting in eviction. The expression in the Act is that the act of the tenant shall cause material impairment. The term 'impairment' relates to a deterioration or a reduction in value. A value addition such as what a tenant may have done, unless it is shown that structural integrity of the building or the condition of the remaining building is in any way impaired, the mere additions which the tenant had carried out would not

result in impairment. The issues resulting in such type of activity are not any longer res integra. There have been decisions of Hon'ble the Supreme Court and the High Court that every alteration that a tenant makes, even without the consent of the landlord would not be taken as material impairment, in the absence of any scientific evidence, such as report of an expert or the evidence suggesting that the activities of the tenant has brought down or has the scope of bringing down the value and utility of the building in future. It is not possible to take a different view from how the Appellate Court has approached the issue. Under the circumstances, I find in the contention regarding the alleged act of the tenant as resulting in material impairment is not legally well founded.”

Learned counsel has next placed reliance on '**Ram Lal versus Smt. Chandro Devi, 1987 (2) R.C.R. (Rent) 441**', wherein it was held as under:-

“The provisions of Act are meant to protect the tenants against the wrongful eviction at the hands of the landlord on non-existent or illusory grounds. When a landlord claim eviction on a specific ground contained in Section 13 of the Act the onus lies on him to prove existence of that ground to secure an order of ejectment against the tenant. In my view the respondent has miserably failed to discharge this onus, and the perspective of the case did not warrant order of eviction of the tenant passed by the

learned Appellate authority through the judgment under revision.”

In the present case, the landlord had sought ejectment of the petitioner on the ground of arrears of rent and that the petitioners had materially impaired the value and utility of the rented premises by constructing a permanent toilet over the projection without his consent. Undisputedly, the toilet/bathroom is existing on the projection of the rented premises. The question that requires consideration is as to whether the toilet/bathroom in question, was already in existence when the premises in question was rented out to the petitioners or it had been constructed later by the tenant. In this regard, learned Rent Controller has placed reliance on copy of the order dated 23.1.2006 passed by the Rent Controller in earlier rent petition filed by Kasturi Devi against petitioner Ram Singh. In the order dated 23.1.2006 passed by the Rent Controller, the toilet in question was not described as disputed property. Statements of witnesses Sharif, Rahish and Data Ram recorded in the said proceedings were proved on record in the present proceedings as Exhibits P-5 to P-7. As per the affidavits Exhibits P-5 to P-7, it had not been averred that there was a toilet/bathroom constructed over the projection on the northern side of the rented premises. In these circumstances, the learned Rent Controller rightly came to the conclusion that till the passing of the order dated 23.1.2006 by the Rent Controller, the bathroom/toilet was not existing on the projection towards the northern side of the disputed property. The finding of the learned Rent Controller that the bathroom/toilet in question was not part of the tenant premises, was, thus, rightly upheld by the learned

Appellate Authority.

Local Commissioner was appointed by the Court vide order dated 4.3.2009 and as per the report of the Local Commissioner, the toilet/bathroom had been constructed on the projection which was about 3 feet wide on the northern side of the rented premises. The toilet/bathroom was not having any door or permanent roof. It has been noticed by the learned Appellate Authority that as per the photographs placed on record, the building was in a poor condition and some of the stone slabs of the projection had already fallen. It has also been noticed by the learned Appellate Authority that as per the photographs, some of the slabs of the projection, upon which the bathroom was resting, had bent down. Thus, there was every possibility of the bathroom falling down, along with the projection. Since the temporary bathroom had materially impaired the value and utility of the projection in question, the learned Appellate Authority rightly came to the conclusion that the petitioner by constructing the bathroom, had materially impaired the value and utility of the premises in question.

In the facts and circumstances of the present case, the judgments relied upon by the learned counsel for the petitioners fail to advance the case of the petitioners as they are based on different facts.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

May 05, 2015
Gurpreet