

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 4091 of 2001 (O&M)
Date of decision: April 29, 2015

Avinash Chander Sood

...Petitioner

Versus

Vijay Kumar and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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

Present: Mr. Narinder Sharma, Advocate, for
Mr. CL Sharma, Advocate,
for the petitioner.

Mr. Aditya Jain, Advocate,
for the respondent.

K. KANNAN, J. (Oral)

1. The petition for eviction was filed by the landlord on the ground that the building has become unfit and unsafe for human habitation. His contention was that the roof has completely fallen down and the building was more than 90 years old. At the trial, the Local Commissioner, while inspecting the premises in dispute, gave a report to the effect that the roof of the portion towards eastern side towards bazar had completely fallen down. The contention, however, was that subsequent to the event, the tenant himself had relaid the roof. The court reasoned making reference to two decisions of the Supreme Court that if a fallen roof has been repaired, the condition cannot still said to be bad for a landlord to urge for eviction.

The appellate court reiterated the findings of the Rent

Controller and held that there was no scope for intervention. The appellate court had made the observations about the emphasis of the evidence of the building expert examined by the landlord that on account of pressure on the foundation on the property in dispute, the walls had gone out of plumb and the walls could no more stand the load of the building. The appellate court held that the tenant's expert did not give any such assessment of the depression of the foundation. It was also a case where there were minor variations in the respective reports of the experts. While the expert examined by the landlord had given opinion that rafters had been changed, the tenant's expert made no such observations. The court held that the repairs effected during the pendency of the ejectment petition by the tenant had brought the condition of the building fit enough and the building could not be said to be unfit and unsafe to sustain the plea for ejectment. The lower appellate court also observed that the landlord had taken action for ejectment of yet another tenant, he had failed in his action in respect of another tenant and, therefore, the landlord cannot succeed in this petition also.

2. I find the entire approach to be rather strange in understanding the manner of proof that is required to be adduced by the landlord. Five decades and more since the Act was brought to the statute book and we are still groping to elicit what is “unfit and unsafe” for human habitation. It is just not natural calamity like earthquake that can bring a building down. If the building roof collapses, one understands that the safety and integrity of the building is seriously at peril. It ought not to be a situation where the tenant must report he had suffered very serious injuries by falling of some portion of the building before the landlord should have a right of action.

4. We may pose different type of question to existing facts to arrive at a proper answer. Admittedly, the roof had fallen in this case. If the tenant had got caught in debris, would he be alive in a court to say that since he had survived the building was still safe? It is an absurd approach to understanding normal expression like a building being unfit for human habitation. It was a case where the roof had actually fallen and by the providence, the tenant did not get caught under it. If he was resourceful enough to restore the roof, for, he had a business to carry, it cannot lead to a situation of the landlord losing an opportunity to an ejectment to restore the building. Old and decrepit buildings are eyesores. They are the very antithesis of development and progress. The old giving place to new shall be the order of the day. We have our own festivals, such as 'Bhogi' or 'Lohri', where we celebrate discarding the old and pushing for the new. All this would come to no meaning if we must keep tinkering with the old and feel satisfied that all is OK. Wearing patched clothes or restoring a dilapidated construction could be options where poverty prevails to inhibit a new raiment or a whole new building. That ought not to be taken as the only option. If a landlord cannot decide for his own building on whether he will completely go for a new construction, when the roof has fallen, who else could? A tenant has fortunately survived a major catastrophe and, therefore, the construction shall be allowed to continue the way the tenant feels himself convenient is a whole wrong understanding of landlord-tenant jurisprudence.

5. All the tenancy legislation came about the time when there was pressure on property and the availability of buildings post world war was scarce. Things cannot any longer be understood in the same light. Tenancy

legislation cannot be interpreted either as a legislation empowering only landlord or the legislation that could be used only by the tenants to their benefits. There is some balance of interest that courts will look to and appropriate evidence which ought to follow a normal understanding that obtains in real life situations. If a roof falls from the building and the landlord says that he wants ejectment because the building has become old and decrepit, his right ought to be upheld. It will be straining the law, if we must allow for a situation that if the tenant has after all repaired it and hence the landlord ought not to have a cause for eviction. The decisions of the Supreme Court that have been cited by the courts below are misplaced. In Piara Lal Versus Kewal Krishan Chopra, AIR 1988 Supreme Court 1432, a tenant had applied to the court for effecting repairs of the roof. The court had ordered restoration of the roof. On its restoration, the landlord filed a petition for eviction. The court held that that if the building had been made ship-shape, the ground for eviction did not any longer survive. In Shadi Singh Versus Rakha 1992 (2) Rent Control Reporter 7, the Court held that under the relevant provision of the Rent Act there was an obligation on a landlord to restore the tenant in possession, after carrying out restoration. By the token of same logic, if a tenant himself had carried out the repairs such as restoration of ceiling etc., there ought not be a further order of eviction. If the roof was the only issue and the building was otherwise in order, the reasoning as adopted by the Supreme Court could be followed. We have evidence in this case of an expert that the walls of the building had gone out of plumb by surface of the wall dithering and the consequent demolition of the roof. In Kusum Devi Versus Mohan Lal 2009 (11) SCC 594, there was a finding that when the premises is in dilapidated condition,

where there were cracks on the wall and the building being old and having become weak, the situation was sufficient to order eviction. This was so while considering the landlord requirement under the MP Control Act 1961. The languages is the same in both the enactments that the building was unsafe and unfit for human habitation, as a ground of eviction.

6. Normally, the extent of interference in revision ought to be confine only to errors which are patent and where there is nothing seriously amiss in the line of reasoning adopted by the courts below, there ought not be a scope for interference. If the courts below take a view that ceiling may fall during the pendency of the proceeding, but if the tenant restores it, the landlord will lose the right, then we have serious issue of mis-judgment in our hand. I cannot look for any proposition of law as universally applicable at all times that a building restored by a tenant would require no assistance to a landlord to secure an eviction. On the other hand, we need to apply common sense principle of understanding what is necessary for a landlord to prove to obtain ejectment. In my view, the facts brought on record were sufficient to uphold the claim and denial of the relief by the two courts below was unjustified.

7. I set aside the orders passed by the courts below and ejectment to follow. The tenant is granted two months' time to vacate the premises.

April 29, 2015
prem

(K.KANNAN)
JUDGE