

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

CR No.3221 of 2015 (O&M)
Date of Decision : May 13, 2015

Madan Lal Bhim Sen and another

....Petitioners

Versus

Deepak Khanna

....Respondent

CORAM : HON'BLE MR. JUSTICE GURMIT RAM

1. To be referred to the Reports or not? No / Yes
2. Whether the judgment should be reported in the Digest? No / Yes

Present: Mr. Surinder Sharma, Advocate,
for the petitioners.

GURMIT RAM, J.

1. This petition is preferred by petitioners herein who were tenants before the learned Rent Controller against the judgment dated 24.09.2013 vide which the ejectment petition filed under Section 13 of East Punjab Urban Rent Restriction Act (in short "the Act") for the eviction of the tenants from the demised premises having been become unfit and unsafe for human habitation was accepted by the learned Rent Controller Jalandhar and judgment dated 29.01.2015 passed by the learned Appellate Authority, Jalandhar vide which the appeal preferred against the aforesaid judgment of the learned Rent Controller was dismissed.

2. The case of the respondent herein who was the landlord before the learned Rent Controller in brief was that petitioner No.1

herein was a tenant in property in dispute at the rate of Rs.1,000/- per month, whereas petitioner No.2 herein was the proprietor of petitioner No.1 herein. Faquir Chand, Om Parkash and Ram Lubhaya were the earlier owners of the property in dispute, who had since expired. Respondent herein is the son of said Faquir Chand and as such, he was the landlord and hence entitled to receive the rent qua the demised premises from the petitioners herein and other tenants. Ejectment of the petitioner herein from the demised shop was sought on the ground of non-payment of rent w.e.f. July, 2008 upto the date and the property wherein the demised shop is situated had become unsafe and unfit for human habitation. Then reference was also made that earlier the petitioners herein filed a petition under Section 12 of the said Act titled as *D.B. Traders Vs. Deepak Khanna* which was declined by the learned Rent Controller.

3. Upon notice, respondents appeared and filed their reply taking preliminary objections that M/s D.B. Traders is a tenant over the property in dispute and that this petition has been filed against respondent (petitioner No.1 herein) wrongly. This petition was stated to be counter-blast to the earlier petition filed by M/s D.B. Traders against the respondent herein (landlord) under Section 12 of the Rent Act. Then it was also their case that this petition has been filed with a mala fide intention to put pressure upon petitioner No.2 herein to enhance the rent from Rs.1,000/- to Rs.5,000/- per month. It was denied that property wherein the demised shop is situated had become unsafe and unfit for human habitation. Then it was also denied that age of the building in question is more than 100 years old.

Rest of the averments were also denied by the tenants (petitioners herein).

4. The learned Rent Controller after hearing learned counsel for both the parties and going through the record as well held that the shop in dispute had become unfit and unsafe for human habitation and accepted the petition filed for eviction of the tenants from the demised shop vide the impugned judgment dated 24.09.2013. Appeal preferred by the tenants against this judgment was dismissed by the learned Appellate Authority, Jalandhar vide impugned judgment dated 29.01.2015.

5. The tenants (petitioners herein) being not satisfied with the findings recorded by both the Id. Courts below have come up before this Court vide the instant revision petition.

6. Learned counsel for the petitioners was heard and record as available on the file was also perused.

7. Learned counsel for the petitioners has contended that findings of both the Courts below that the demised shop had become unfit and unsafe for human habitation are arbitrary, without jurisdiction as well as without appreciating the evidence produced by both the parties and as such both the impugned judgments are not sustainable in the eyes of law. Then it is further his contention that Er.Raminderjit Singh who was examined as AW-2 by the respondent herein (landlord) has given his opinion regarding the entire building bearing No. W.E. 283. Gur Mandi Chowk, Bansawala Bazar, Jalandhar and has not given specific finding with regard to the demised shop herein. He has also submitted that this witness has not mentioned anywhere in his

report Ex.A4 that the demised shop is unfit and unsafe for human habitation. Then he has also submitted that both the Courts below have utterly failed to consider the report Ex.RW4/A as submitted by RW4 Bhagat Singh after physical inspection of the property in question. Lastly he has contended that demised shop is neither unsafe and unfit for human habitation nor any of its part has fallen down.

8. Here I deem it necessary to discuss the evidence of both the parties in brief as produced by them before the learned Rent Controller during the trial of the case. Respondent herein who was landlord before the learned Rent Controller appeared as AW-1 and tendered in his statement his duly sworn affidavit Ex.AW1/A as a part of his statement whereby he reiterated his stand as taken in the petition. AW2 Er.Raminderjit Singh was the building expert who inspected the property in dispute in order to ascertain actual and factual position existing at the spot. He had tendered in his statement his duly attested affidavit Ex.AW2/A, presence slip Ex.A2, site plan of property signed and stamped by him Ex.A3, his report Ex.A4 and CD Ex.A5 of photographs of property Ex.P1 to Ex.P30.

9. On the other hand, respondent appeared as RW-1 and he also supported his case as put up by him in the reply. RW-2 Vinay Ahuja is running his business nearby the property in dispute. He had tendered in his statement his duly sworn affidavit Ex.RW2/A as a part of his statement, wherein he took the stand that the entire building in dispute is in intact position and same is fit for human habitation. He supported the version of petitioners herein (tenants) to all intents and

purposes. RW-3 Pankaj did not appear to face cross-examination and as such, his affidavit Ex.RW3/A could not be considered for deciding the matter in issue. RW-4 Bhagat Singh is Government Surveyor who also inspected the property in dispute. He submitted his duly sworn affidavit Ex.RW4/C as a part of his statement along with his report Ex.RW4/A and site plan Ex.RW4/B.

10. It has come in the statement of AW1, petitioner (landlord) that construction of the building in dispute is made of Nanak Shahi Bricks and mud mortar used in the construction of the building has lost its strength, cracks have developed in the walls of the shop in dispute as well as the other parts of the building. Shop is consisting of four portions (*Khannas*) and roof of the third and fourth portion (*Khanna*) has fallen down. Even the bricks of the walls and the bricks of the arch have been missing. Age of the entire building in dispute was stated to be more than 100 years old. Then AW2 in his report Ex.A4 had recorded that he visited the site in dispute on 05.03.2012 after giving due notice to respondent-Madan Lal regarding his said visit. The son of the respondent was present at the spot, when he had visited the demised shop for submitting report regarding its physical condition existing at the spot. Then it is also found mentioned in his report that earlier the shop in dispute was consisting of four portions and that now the tenant is using only front two portions due to the demolishing of back side two portions. Then he has also reported that roof of the last portion and roof of the third portion are demolished and the same are depicted in the photographs Ex.P5 and Ex.P6 respectively. Then it was also reported by him that the construction of

demised shop is made of Nanak Shahi bricks which depicts its age to be more than 100 years old. Then it is also in his statement that one *Pipal* tree is grown on the roof of second floor as shown in photo Ex.P7, the roots of which have come up to the ground portion. The entire *balas* of second portion of demised shop are eaten by white ants which are depicted in photo Ex.P8. Then it is also in his statement that same is the condition with regard to shop No.4. Shop Nos.5, 6 and 7 are also in bad condition as shown in photo Ex.P8. The shop in dispute is an integral part of the building and as such the same cannot be constructed individually.

11. On the other hand RW-4 Bhagat Singh Surveyor examined by the tenant did not take any photographs of the demised shop in order to establish the fact that the condition of the shop in dispute is intact. In his report Ex.RW4/A he has rather reported that on checking roof of the shop, he found that *balas* (wooden beams) of third and fourth *Khanas* in decayed condition, but the same can easily be got repaired in order to make the roof in fit condition. Then he has also reported that a big *Pipal* tree has grown on the roof, which has started damaging roof.

12. In the light of the above discussed evidence of both the parties, it is held that both the Courts below have rightly held that the age of the building in dispute wherein the demised shop is situated is more than 100 years old. Then it is also established on the record as per the statement of AW-2 Er.Raminderjit Singh and RW-4 Bhagat Singh that a *Pipal* tree is grown up on the top of the roof, the roots of which have come upto the ground portion. In this connection even

RW4 has also submitted that this *Pipal* tree has started damaging property in dispute. Then it is also well established on the record that shop in dispute is consisting of four *Khanas* (portions) and roof of third and fourth portion has been demolished. Then it was also case of the petitioner (landlord) that earlier the tenants (petitioner herein) filed a petition under Section 12 of the Act before the learned Rent Controller qua the demised shop which was declined. Then it is also established that at present the petitioners herein (tenants) are using only two front portions since the roof of the remaining two backside portions has fallen. Material used for the construction of the building of which the demised shop is integral part is of Nanak Shahi Bricks and mud mortar which have lost their strength as well as loosened. The landlord is not to wait till the actual fall of the demised premises in order to seek ejectment of the tenant on the ground of its being unfit and unsafe for human habitation. If AW-2 has given opinion with regard to the entire building in which the demised shop is situated, then there is nothing wrong in it. If the entire building of which the demised shop is an integral part has become unfit and unsafe for human habitation, then the demised shop cannot be said to be safe and fit for human habitation by any stretch of reasoning.

13. Herein there is latest authority on this point as laid down by a Co-ordinate Bench of this Court titled as ***Rajan Arora vs. Sham sunder Tandon and others, AIR 2015 (NOC) 646 (P&H)***. In this case inspection report stated that rented premises were 50-60 years old and in a very poor condition due to continuous seepage of water, wooden batons and wooden girders lost their power to support

structure. Tenant himself admitting the growth of vegetation on walls and damage caused to roof on account of rain water stored due to damage to rain water pipe. It was held that suit premises is in dilapidated condition and unfit for inhabitation and hence tenant liable to be evicted.

14. There is nothing on the record to say that both the Courts below have failed to consider the pleadings as well as the evidence of both the parties while passing the impugned orders.

15. In the light of the above discussion, this revision petition is held to be merit less and the same stands dismissed and disposed of accordingly.

May 13, 2015

Gaurav Sorot

**(GURMIT RAM)
JUDGE**