

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

CR No.3091 of 2014

Date of decision : March 26, 2015

Avtar Singh

..... Petitioner

Versus

Gurjit Singh

..... Respondent

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

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

Present : Mr. A.S. Manaise, Advocate,
for the petitioner.

GURMIT RAM, J.

1. This revision petition is preferred by the petitioner (tenant) against the judgment dated 04.05.2012 passed by the learned Rent Controller, Gurdaspur vide which the ejectment application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short "the Act) filed for ejectment of tenant from the demised premises was accepted and the judgment dated 31.01.2014 passed by the learned Appellate Authority, Gurdaspur vide which the appeal preferred by the present petitioner (tenant) against the abovesaid judgment of the learned Rent Controller was dismissed.

2. The case of the respondent herein (landlord) before the learned Rent Controller was that he is the owner-cum-landlord of the room in

dispute (herein to be referred as “demised premises”). The present petitioner (tenant) is in occupation of the demised premises as a tenant at the rate of ₹200/- per month, hence there exists relationship of landlord and tenant between the parties qua the demised premises. Previously mother of the tenant namely Piari was in occupation of the demised premises as a tenant who died about 14 years back. Now after her death, the present petitioner (tenant) is in occupation of the same as a tenant. The ejectment of the tenant from the demised premises was sought on the ground of non-payment of rent since the last 11 years and that the demised premises are unfit and unsafe for human habitation being in a dilapidated condition. Hence was the instant petition.

3. On notice respondent-tenant (petitioner herein) appeared taking preliminary objections that this petition is barred under Order 2 Rule 2 CPC, under Section 11 CPC and concealment of the material facts from the Court on the part of the landlord (respondent herein). But anyhow it is admitted that he is a tenant in the demised premises under the respondent (landlord) and his mother Pritpal Kaur. Then it is denied that he is in arrears of rent since last 11 years as alleged in the petition. It is also denied that demised premises are unfit and unsafe for human habitation.

4. The learned Rent Controller after hearing learned counsel for both the parties and going through the record as well recorded the findings of issue Nos.2 and 3 in favour of the landlord (respondent-herein) and accepted the ejectment petition and ordered the eviction of the tenant from the demised premises vide the impugned judgment dated 04.05.2012.

5. The petitioner (tenant) feeling aggrieved from the judgment of

learned Rent Controller preferred an appeal before the learned Appellate Authority Gurdaspur, which was dismissed vide the impugned judgment dated 31.01.2014 whereby affirming the judgment of the learned Rent Controller.

6. Feeling aggrieved from the findings recorded by both the Courts below the petitioner (tenant) has come up before this Court by way of instant revision petition.

7. I have heard the learned counsel for the petitioner and have also gone through the record with his able assistance as available on the file.

8. The learned counsel for the petitioner has contended that the findings recorded by both the Courts below are totally wrong, illegal as well as perverse and hence not sustainable in the eyes of law. It is also his contention that local commissioner in this case was appointed who submitted his report on the record. Herein he has also submitted that report submitted by the local commissioner has wrongly been relied upon by both the Courts below for the reason that it was not duly proved on the file since the local commissioner who had submitted this report was not examined as a witness to prove the same. Then it is also his submission that since the local commissioner was not examined as a witness, so a serious prejudice had been caused to the petitioner (tenant) since due to that reason he was deprived of his opportunity to cross-examine him. Then it is also contended that the photographs have also been wrongly relied upon by both the Courts below for the reasons that these are neither per se admissible nor the person who took the same was examined as a witness. Then he also submitted that no building expert in this case was examined by the respondent (landlord) in

order to ascertain the actual and factual position of the demised premises existing at the spot. For want of report of the building expert, it is difficult to hold as to whether the demised premises are unfit and unsafe for human habitation or not.

9. Now let me see as to how the above facts have been appreciated by both the Courts below while passing the impugned judgments. The learned Rent Controller in para No.10 of its judgment has observed that it is established on the record that one side of the roof of the demised premises has fallen down which fact is also admitted by respondent-Avtar Singh, RW-1 (petitioner herein) in his cross-examination, wherein he has stated that he has put plastic sheet on the roof in order to protect it from rain. Then it is also recorded in this para that respondent-Avtar Singh (petitioner herein) as RW-1 has also admitted that photographs Ex.A4 to A8 are pertaining to the demised premises. The learned Appellate Authority in Para No.8 of its judgment has also observed that respondent-Avtar Singh as RW-1 has admitted in his cross-examination that some part of the demised premises has been covered by him with a '*Tripal*' (sheet). Then it is also his admission that a big Oak tree has grown up in the wall of the house which has caused a considerable damage to the said wall/house. This fact is further corroborated by the report of the local commissioner Ex.R2 wherein it has been recorded that the house is old one and the roof of the demised premises has fallen from one side which was covered with wooden beams and tarpaulin. Then the learned Appellate Authority in para No.10 of its judgment has also recorded that respondent has admitted as RW-1 that tarpaulin has been put on the roof of the said premises since there was a

leakage. Then RW-2 Kulwant Singh has also admitted that outer part of the said premises has fallen down.

10. In the light of the above discussion it is concluded that respondent (tenant) as RW-1 has admitted certain material facts which are found to be enough to hold that demised premises are unfit and unsafe for human habitation being in a dilapidated condition. Landlord was not to wait for the ejectment of the petitioner (tenant) from demised premises till the demised premises had actually been fallen down or till any tragedy had been occurred to fall of its roof. Since the tenant in this case has admitted that the photographs Ex.A4 to A8 are of the demised premises, so these could be used as a piece of evidence in order to determine the point in controversy. Then there is no need to examine any building expert in each and every case in order to adjudicate the fact as to whether the premises in question are unfit and unsafe for human habitation or otherwise. The concerned party can lead other evidence to prove the same than to examine the building expert to do the needful. Then the learned Appellate Authority has rightly relied upon the case law as laid down in ***Dalip Singh and another vs. Smt. Gurdayal Kaur 2011(4) CCC 233*** of Punjab and Haryana High Court while dealing with the report submitted by the local commissioner. In this case law it has been held in nutshell that if any local commissioner is appointed under the provisions of Order 26 Rule 9 CPC, then there is no impediment to rely upon his report, even if he is not examined as witness to prove the same. Moreover in the case in hand it is admitted by respondent-Avtar Singh (petitioner herein) as RW-1 that local commissioner was appointed in this case who visited the demised premises. Even no objection

of any kind had been filed by the petitioner (tenant) against this report.

11. Copy of the judgment Ex.R1 vide which the previous ejectment petition filed by the respondent (landlord) was dismissed reveals that it was filed on the ground of non-payment of rent. So this judgment has no bearing on the present ejectment petition since the ejectment in the case in hand has been sought on the ground that demised premises are unfit and unsafe for human habitation. So as far as the judgment and decree Ex.R2 & Ex.R3 respectively are concerned, these are pertaining to previous civil suit for permanent injunction. So these are also having no bearing on the instant petition.

12. In the light of the above discussion, it is held that there is nothing on the record to show that findings recorded by both the Courts below on the issue Nos. 2 and 3 are either perverse or are based on no evidence. So, keeping in view the aforesaid observations the instant revision petition being devoid of any substance stands dismissed and disposed of accordingly.

March 26, 2015
Gaurav Sorot

(GURMIT RAM)
JUDGE