

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 4523 of 2004
Date of Decision : 05.01.2015

Madan Lal

....Petitioner

Versus

Dr. Anoop Bhandari and another

...Respondents

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: None.

R.P. Nagrath, J.

The instant revision is listed for arguments today but there is no representation from the petitioner. When the matter was listed on 06.11.2013, learned counsel for the petitioner made a prayer for three weeks time to bring on record legal representatives of deceased-respondent no. 1. It was directed that on doing so service of LRs of respondent no.1 be completed. None appeared for the petitioner on any of the subsequent adjournments.

On 17.11.2014, it was noticed that compliance of the previous order has not been made. Consequently, Registry was directed to list the main revision for arguments. This revision was originally admitted on 04.07.2005.

The instant revision is filed against the concurrent findings of the Rent Controller and the Appellate Authority, both of

whom dismissed the ejectment application filed by the petitioner against respondents in respect of the premises in question comprising two shops.

The case of petitioner was that he rented out two shops marked as Y and Y1 having shutters at point X and X1 alongwith Verandah marked as ABEF shown in red colour in the site plan to the respondents in the year 1990 @ ₹ 1310/- p.m. apart from house tax and other charges. The rent stood paid upto January 1995.

The eviction petition was filed in November, 1996 on the grounds *inter alia* (i) that the respondents are in arrears of rent; and (ii) that the respondents have committed such acts which have materially impaired the value and utility of the property in dispute. The respondents are stated to have removed shutters from point X and X1 and affixed the same at points X-2 and X-3 and also included verandah marked as ABEF into the shops without the consent of Petitioner. Similarly, they have constructed a WEC by raising permanent construction and opened two ventilators marked Y-2 and Y-3. All these alterations are of permanent nature and made without consent of the petitioner. It was also stated that visual outlook of the property has been completely changed and it has adversely affected the light and air to the property in dispute.

These allegations were denied by the respondents in his written reply.

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

(1) Whether ground of non-payment of rent remains

subsisting, after tender of rent? OPA

(2) Whether respondents made material alteration in the demised building and thereby materially impaired the value and utility of demised property? OPA

(3) Whether respondents are liable to be ejected from demised premises? OPA

(4) Relief.

The only ground that survived before Appellate Authority for consideration was issue no. 2, the rent controller having held that the arrears of rent were duly tendered on the first date of hearing.

I have perused the impugned orders passed by the Rent Controller and the Appellate Authority and also the paper-book. I find that there is no scope of interference in the concurrent findings of the courts below. Learned appellate court observed as under:-

“13.....In our case only the shutters already affixed at point X and X-1 have been shifted to the points X-2 and X-3. There has been no alteration in the structure of the roof and the walls. It cannot be said that by merely affixing the shutters in the pillars of the verandah, there has occurred a new and different shape and complexion of the shops so as to say that it has materially impaired the premises affecting its

fitness for running a clinic and rather by the installation of the WEC at point X-4, the value and utility of the shops for being used as clinic can be said to have been increased because as admitted by the landlord Madan Lal AW-3 the use of the bath room and a toilet for the patients and the doctors is a necessity of the clinic.

14.....No doubt, the landlord Madan Lal AW-3 has denied his signatures on the site plan mark A, which later on was got proved by RW-1 Dewan Chand as Ex. R-4 there is no reason to disbelieve the statement made by RW-1 Dewan Chand draftsman that he had prepared the site plan on 13.03.1993 as per the position prevailing at the spot under the instructions of Madan Lal. May that as it be, one cannot, by any stretch of imagination accept the plea of the landlord that the shutters were removed by the tenants from points X and X-1 to X-2 and X-3 after having got the shops on rent, later on because the tenants could not make a best use of the shops as a clinic without there being a provision for the bath room and the toilet and therefore, the landlord would have definitely got the bath room/toilet constructed before letting out the shops and in order to make out the bath room/toilet, the rolling shutters had got to be shifted from point X

and X-1 to X-2 and X-3 and similarly it can be said without any hesitation that it is the landlord, who got the ventilator Y-2 and Y3 installed in the rear wall of the shops and similarly it is the landlord who got the door at point D-2 installed the partition wall. In any manner, the said additions and alternations even if attributed to the tenants cannot be taken to have, if anyway, materially impaired the value and utility of the demised premises. Therefore, no fault can be found in recording of the findings by the learned Rent Controller on issues no. 2 and 3 in favour of the tenants and against the landlord. I, therefore, affirm the findings of the learned Rent Controller on the two issues.”

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 reappreciate or re-assess 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.

In the instant case also there is firm finding of fact on the material issue by properly analyzing the evidence meticulously by the courts below and there is no scope of interference in the concurrent findings in exercise of revisional jurisdiction.

Dismissed.

January 05, 2015
jk

(R.P. NAGRATH)
JUDGE