

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

**Civil Revision No.558 of 2005
Date of Decision:09.09.2015**

Dhanpat Rai

....petitioner

Versus

Manjit Singh

.....respondent

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

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

Present: Mr.Amit Jain, Advocate
for the petitioner

Mr.Abhishek Bhateja, Advocate and
Mr.R.K.Girdhar, Advocate
for the respondent

ARUN PALLI, J.(ORAL):-

Vide order being assailed, dated 19.10.2002, rendered by the Rent Controller, Bathinda, eviction of the petitioner-tenant has been ordered from the demised premises, under Section 13 of the East Punjab Urban Rent Restriction, Act, 1949 (for short 'the Rent Act'). Appeal preferred against the said order failed and was dismissed on 15.12.2004. That is how, the petitioner-tenant is before this Court.

In short, ejectment of the petitioner was sought on the ground that the premises in question, which is a shop, and forms part of a building bearing No.MC 4704-A, has become unfit and unsafe for human habitation. It was maintained that the building, as a whole,

was in a dilapidated condition. So much so, the ceiling of upper portion of the roof was given support by constructing a pillar underneath. Walls and projection had developed cracks.

In defence, it was pleaded, inter alia, that the shop in question was an independent unit. No portion of the shop and even the first floor of the building was in a dilapidated condition. It was denied that the ceiling of the upper portion of the roof had given in. There were no cracks in any portion of the building including the demised premises. The building as a whole, as also the shop in question was, thus, fit for human habitation.

On a due and thoughtful consideration of the matter in issue and the evidence on record, the Rent Controller as also the Appellate Authority concurrently concluded that clearly the outer portion of the building had developed cracks. The parapet had also broken down. Iron rods were seen coming out of the building, after the plaster had left its place and there was moisture in the roof as well as in the walls. Further, the building in question was extremely old as it was constructed about 70 years ago, and, thus, the only conclusion that could be arrived at, was that it had indeed become unfit and unsafe for human habitation.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration.

All what he has urged is that the evidence on record shows that the

landlord himself had been extremely negligent in maintaining the upper portion of the demised premises. And thus, he could not ask for eviction on the ground that the premises was no longer fit for human habitation.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the revision petition is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter.

To prove his claim, landlord examined Kuldeep Singh (AW1) photographer, who proved on record the photographs of the demised premises i.e. Ex.A1 to Ex.A20. Amar Chand Goel (AW3), Civil Engineer, who happened to be a pass out from Institute of Engineers (India), in the year 1972 and served at Birla Institute of Technology and Science, Pilani (Rajasthan), testified in his statement that he had inspected the premises on 10.07.1997 and submitted his report Ex.AW3/A and a site plan Ex.AW3/B. Photographs on record, read with the report submitted by Amar Chand Goel (AW3), proved that the ceiling as also the walls of the building on the first floor were damp. Something that was incurable by plastering the walls as the dampness had seeped into the walls itself. Further, the walls as also the roof were in a damaged condition. Not only that, cracks had developed in the walls and a portion of the plaster of the roof had also come off and the bricks could be seen. So much so, even the testimony of RW2-Varinder Kumar Gupta, virtually corroborated this position. He admitted the dampness in the walls as also in the building as a whole, was visible in the photographs Ex.A1 to Ex.A5

and Ex.A9 to Ex.A18. Engineer Manikant (RW7) examined by the petitioner conceded that iron rods that were visible in the ceiling of the first floor were rusted and a portion of parapet had fallen. Evidence on record proved that demised premises was an integral part of the building i.e.MC No.4704-A, situated at The Mall, Bathinda. Photographs Ex.R1 to R12, relied upon by the petitioner himself showed that the wall of the demised premises was totally covered with the clothes, that was being sold by the petitioner. Side walls were covered with racks, in which petitioner had stacked clothes. Concededly, the petitioner had done a fall ceiling in the premises, and, thus, the real condition of the roof of the demised premises was invisible. Whereas, photographs proved by the landlord showed that wherever the walls were visible, their condition was not good. Concededly, though, the first floor of the demised premises was in possession of the landlord, but the same was lying vacant being unfit and unsafe for human habitation. Indisputably, the demised premises was situated in the heart of Bathinda city. And as observed by the Courts below, if at all, the building in question was fit for habitation, the landlord would have certainly explored the option of letting out even the said portion to earn rent. Varinder Kumar Gupta (RW2), expert examined by the petitioner, conceded in his cross examination that there was a horizontal crack in front portion of the shop which was above the roof of the room. The argument that the landlord himself has indeed been negligent in maintaining the upper portion of the demised premises and the building as a whole, and thus, cannot seek eviction pleading that the premises had become

unsafe for human habitation, also cannot be countenanced. As, the case set out by the petitioner in his written statement was absolutely to the contrary. It was maintained that the building as a whole including the demised premises was in a perfect condition. Neither any portion of the demised premises nor even of the first floor of the building was in a damaged condition, thus the premises was safe for human habitation. As observed by the First Appellate Court, nothing was brought on record by the petitioner to show that he ever gave any notice to the landlord to carry out repairs either in the shop in question or in the building as a whole. And, even if it is assumed that the landlord was remiss in maintaining the building, that could not be construed to say that building had become unfit and unsafe for human habitation for that reason alone. Rather, evidence on record shows that it was with time and natural process of decay, the building had become unsafe for human habitation.

Learned counsel for the petitioner could not point out as to how the conclusions arrived at by the Courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law, to interfere in exercise of revisional jurisdiction under Section 15(5) of the Rent Act. The petition being devoid of merit is accordingly, dismissed.

09.09.2015

(ARUN PALLI)
JUDGE