

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

CR No.5967 of 2015.

Date of Decision: 11.09.2015.

Samanvay Bhutani

....Petitioner.

VERSUS

Azad Singh Kataria

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Gagandeep Goel, Advocate for the petitioner.

SNEH PRASHAR, J.

This is a petition under Article 227 of Constitution of India for setting aside the order dated 24.08.2015 passed by learned Rent Controller, Gurgaon dismissing the application of the petitioner for ascertaining the fact whether the actual area of the rented shop is 1275 square feet or 1800 square feet.

The relevant facts, as garnered from the pleadings of the petitioner and the documents filed by him are that petitioner had taken a shop on rent from the respondent vide rent deed dated 16.07.2011 which became effective on 22.07.2011. An eviction petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 was filed by

the respondent against the petitioner which was allowed and order of eviction dated 03.12.2013 was passed against him. The appeal filed by him against the ejectment order was dismissed vide order dated 23.01.2014 by the Appellate Authority, Gurgaon. During the execution proceedings, the petitioner filed an application praying the Court to ascertain the actual area of the rented property. The application was dismissed by learned Rent Controller vide order dated 24.08.2015. Feeling aggrieved by the said order, the instant revision has been filed.

The submissions of learned counsel representing the petitioner have been heard.

Learned counsel for the petitioner argued that in the rent agreement the area of the shop was mentioned as 1800 square feet and the rental value of the same was fixed as Rs.23,000/- per month. The respondent malafidely concealed the actual and correct dimension of the rented shop and when the petitioner took the possession of the shop, he came to know that instead of 1800 square feet, the actual area of the shop was 1275 square feet. During the eviction proceedings, provisional rent of the shop was assessed by the Rent Controller vide order dated 29.10.2013. The petitioner filed a Civil Revision assailing that order wherein he stated that the actual area of the shop was 1275 square feet instead of 1800 square feet. Subsequently also when the appeal filed by the petitioner against the order of eviction was dismissed by the Appellate Authority, he filed an application under Section 151 of the Code of Civil Procedure for recalling of the order raising the same issue but his application was dismissed on

11.08.2014. Against the said order, he filed a revision petition before this court which was also dismissed but it was observed by this Court in the order dated 14.10.2014 that the fact as to whether the area of the shop in question is 1800 square feet or 1275 square feet will be a point in issue when the possession of the shop will be delivered. The keys of the shop were handed over by the petitioner to the bailiff of the Court on 04.11.2014. The petitioner moved an application before the Rent Controller for ascertaining the area of the rented shop but that was dismissed vide the impugned order dated 24.08.2015. Learned counsel contended that it was necessary to ascertain the area of the shop in order to determine the appropriate rent of the shop as a civil suit for recovery of arrears of rent has been filed by the respondent.

There appears no force in the argument of learned counsel for the petitioner. The findings of learned trial Court dismissing the application filed by the petitioner are as under:-

“By virtue of present application applicant is seeking the court inquiry to ascertain the actual area of the shop in question. From perusal of the present application it is apparent that name of the applicant has not been mentioned on the application and same is not supported by any affidavit. Applicant has failed to state as to in what capacity he has moved the present application as he is neither JD nor his attorney. Applicant has submitted that by virtue of present application he wants conducting of an inquiry by this court so as to ascertain the actual area of the erstwhile rented accommodation, however, he has failed to state under which provision his application is maintainable. As per averments

made by applicant, he had filed a revision against the order dated 11.08.2014, passed by this court dismissing the objections taken by JD in execution petition, which was dismissed by the Hon'ble High Court VOD 14.10.2014. However, Hon'ble High Court while dismissing the said revision had made an observation to the effect that "the fact as to whether the area of the shop in question is 1800 sq. ft. or 1275 sq. ft. will be a point in issue when the possession of the shop will be delivered". With due regard to the observation made by Hon'ble High Court, it is pertinent to mention that perusal of said order makes it apparent that no direction has been given to this court for measuring the actual area of the shop in question and whatever has been mentioned in the said order is merely an observation. Moreover, from perusal of the case file it is apparent that JD has failed to take aforesaid objection at the time of assessment of provisional rent by Id. Predecessor Court and said objection was also not taken before the Hon'ble High Court in a revision filed against the said order. More so, JD failed to raise said objection before the Appellate Court and even in the execution proceedings. It is well settled that no fact finding can be ventured into by the executing court regarding any right or title of the property in execution, if there be any. The only difference between a suit and execution of a decree is that in a suit, rights and liabilities of the parties are determined and in execution, the decree passed after determining said right and liabilities, is executed/materialized. Since applicant failed to take above stated ground in the ejectment petition, this court is of the considered opinion that same is merely a farce and an afterthought to wriggle out the precarious situation that JD found himself in. Also, JD could have taken above stated objections at various stages, but he chose not to do so and said fact strongly goes

against the JD. More so, the fact that similar application filed by JD in a suit for recovery, was dismissed by the court of Ms. Aparna Bhardwaj, Ld. Civil Judge, Junior Division, Gurgaon, VOD 06.08.2015, shows that by virtue of present application, applicant wants to indirectly achieve the object which he could not directly achieve before above stated court. In view of the discussion made above, this court is of the considered opinion that application filed by applicant is devoid of merit and accordingly same is hereby dismissed.”

Learned counsel for the petitioner failed to demonstrate any legal or factual error in the order of learned Rent Controller. Every objection raised by the petitioner relating to the tenancy as well as the rate of rent of the demised shop was determined during trial of the eviction petition. No objection with regard to area was raised by the petitioner when the provisional rent was determined by the Rent Controller and against that order when an appeal was filed before the Appellate Authority. Even at the time of handing over possession of the rented shop, no issue was raised with regard to its area. Apparently, the issue now being raised is only an after thought. After the possession of the demised shop has been handed over by the petitioner, there is certainly no occasion for the executing court to go into the fact finding issues and the objections relating to rights and liabilities of the parties.

Thus, finding no illegality or perversity in the order of learned Rent Controller, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

11.09.2015.
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