

CR No.6270 of 2015 (O&M)

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

CR No.6270 of 2015 (O&M)

Date of Decision: September 23, 2015

Bansi Lal

...Petitioner

Versus

Balbir Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Mansur Ali, Advocate
for the petitioner.

Mr. Karan Vir Nanda, Advocate
for the caveator.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this revision petition is to the orders passed by the Rent Controller, Chandigarh, dated 15.09.2014 by which the ejectment of the petitioner has been ordered, who is a tenant in the demised premises, which order has been upheld in an appeal preferred by him, by the Appellate Authority, Chandigarh, on 17.08.2015.

2. It is the contention of the learned counsel for the petitioner that two grounds were taken by the respondent-landlady for evicting the petitioner-tenant from the demised premises, one was the non-payment of rent and the other was the dilapidated condition of the shop which made the premises unsafe and unfit for human

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habitation. The plea with regard to non-payment of rent has been dropped by the respondent-landlady and the only plea which has been pressed into service is that the demised premises is unsafe and unfit for human habitation. He contends that the findings on this plea have been recorded merely on the basis of the statement of the petitioner in his cross-examination which cannot be made the basis for passing such an order especially when there has been no expert evidence produced by the respondent-landlady. Even the landlady has not appeared in the witness box and her Power of Attorney has appeared as a witness and therefore, the petition itself could not be allowed. His further submission is that no specific issue with regard to the condition of the shop has been framed. The only issue No.2 which has been framed by the Court is “whether the respondent is liable to be evicted from the demised premises ?OPA” which would not be sufficient for the purpose of giving such a finding which would require ejectment of the petitioner. He, accordingly, contends that the impugned orders passed by the Rent Controller, Chandigarh, and the Appellate Authority, therefore, cannot be sustained.

3. Counsel for the caveator, on the other hand, states that during the execution proceedings, the shop has already been vacated and the possession has been taken over by the landlady. He supports the orders impugned in the present revision petition.

4. On considering the submissions made by the learned counsel for the petitioner, I am of the view that the same cannot be

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accepted. Non-examination of the expert witness *ipso facto* cannot be a ground for not accepting the findings based on contention which is in the pleading and the evidence in support of which has come on record. An expert witness is only to assist the Court to come to a particular conclusion but if the Court, on the basis of the evidence which has been led by the parties, come to a conclusion that a particular fact has been proved, the same can be relied upon and proceeded with on the basis of said evidence.

5. In the present case, it is not in dispute that the plea with regard to the premises being unsafe and unfit for human habitation, has been taken in the application for eviction. This was in addition to the other plea i.e. non-payment of rent which was dropped. The parties were aware of the issue which was involved in the case as the only ground surviving, on the basis of which eviction could be ordered was the premises being unsafe and unfit for human habitation. It is further apparent from the fact that the petitioner was put questions in the cross-examination specifically on this issue which has been reproduced in para 13 of the order passed by the Rent Controller, Chandigarh, dated 15.09.2014, which reads as follows:-

“it is correct that the shop in question was constructed about 80-90 years back. It is correct that the construction of the said shop is done with mud. The walls can be fallen at any time. The roof was having the wooden blocks and ballas. Some of

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the ballas has fallen and others can fall at any time. The additional support is fixed of wooden stick to save the roof from falling. The roof is lying open and in the rainy season water started falling inside the shop. The roof can fall at any time, as it is temporarily fixed with the temporary wood stick.”

6. The above admission establishes the actual position with regard to the shop in question. The assertion of the counsel for the petitioner that a specific issue has not been framed with regard to the condition of the shop as has been noted above, the parties were aware about the question involved in the present case which was surviving, in the light of the fact that other ground has been dropped i.e. non-payment of rent. When the parties had proceeded on the basis of such an issue involved in the case and led evidence to that effect, the technical plea which has been sought to be raised and put forth by the learned counsel for the petitioner cannot be accepted. Further, the issue was revolving around and was enough to resolve whole of the controversy arising out of pleadings raised by the parties. As such, no fresh issue was required to be framed and thrashed.

7. The contention of the learned counsel for the petitioner that the landlady herself has not put in appearance before the Court to depose and only her Power of Attorney, namely, Didar Singh, her son, has deposed about the facts as have been alleged and asserted in the petition and therefore, the same cannot be relied upon, only

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requires to be referred to and rejected on the ground that it is well-settled by now that the Power of Attorney is competent to depose on the basis of the facts which are based/apparent from the record or to his personal knowledge but cannot assert and depose with regard to the facts which would not be to his personal knowledge or would be in the personal knowledge of the executor of the Power of Attorney. Present is a case where the Power of Attorney of the landlady is none else but her son. He, himself, has been visiting the premises in question and therefore, was well aware of the factual position as it existed in the demised premises. This, therefore, leaves no manner of doubt that he had personal knowledge with regard to the condition and status of the shop. The assertion, thus, as raised by the counsel for the petitioner cannot be accepted.

8. Another plea which has been raised by the counsel for the petitioner is that the petitioner had filed a petition under Section 12 of the Rent Act, wherein, he had sought a direction for restoration of the electricity connection to the shop of the petitioner and for making minor repairs of the roof and side wall of the shop which was asserted to have been damaged because of hitting of the tractor by the son of the landlady. The said petition was allowed on 28.09.2006 by the Rent Controller, Chandigarh. He, therefore, contends that the condition of the shop was not so bad as would require to return a finding that the same shop was in a dilapidated condition or unsafe and unfit for human habitation within such a short span of time.

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9. This contention of the counsel for the petitioner also cannot be accepted as in the said petition as the correct position with regard to the status of the shop has not been established. The petitioner had sought a limited relief to the extent of minor repair in the roof and side wall and for restoration of the electricity connection of the shop which was disconnected which plea was accepted and decree passed. In the present case, the petitioner has himself in his cross-examination admitted that the shop was in a very bad shape as discussed in the earlier part of the order.

10. In view of the above discussion, finding no merit in the present petition, the same stands dismissed.

11. Civil Miscellaneous applications also stand disposed of.

September 23, 2015*Harish***(AUGUSTINE GEORGE MASIH)
JUDGE**