

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 6887 of 2014 (O&M)
Date of Decision: 29.4.2015.**

Rakesh Kumar Gupta and others

.....Petitioners

Versus

Vipin Kumar Chhabra and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Vipin Mahajan, Advocate
for the petitioners.

SABINA, J.

Respondents had filed the petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 seeking ejectment of Joginder Pal Gupta (since deceased) from the shop in question. The learned Rent Controller vide order dated 13.12.2010 allowed the ejectment petition. Aggrieved against the said order, Joginder Pal Gupta (since deceased) preferred an appeal. During the pendency of the said appeal, Joginder Pal Gupta (since deceased) died. The Appellate Authority vide judgment dated 2.7.2014 dismissed the appeal. Hence, the present petition by the petitioners-tenants.

Learned counsel for the petitioners has submitted that the landlord-respondents had earlier sought ejectment of the tenant and the said ejectment petition was dismissed in default.

Therefore, the second ejectment petition on the same cause of

action was not maintainable.

In the present case, landlord had earlier sought ejectment of the tenant from the premises in question on the ground of arrears of rent and that the demised shop was unfit and unsafe for human habitation. The said petition was dismissed in default and, thereafter, the landlord filed the present petition seeking ejectment of the tenant on the ground of arrears of rent and that the shop in question had been rendered unfit and unsafe for human habitation. The learned Rent Controller while deciding issue no. 4 rightly held that so far as the ground of arrears of rent is concerned, the same was again available to the landlord as the tenant had been in arrears of rent after the dismissal of the earlier ejectment petition. Since the earlier petition was dismissed in default, the second petition seeking ejectment of the tenant on the ground that the premises in question was unfit and unsafe for human habitation, could not be said to be not maintainable as with the passage of time, the building would further become unsafe and unfit for human habitation. Moreover, the landlord had also sought ejectment of the tenant on the ground that he had failed to pay the arrears of rent after the dismissal of the earlier petition in default.

In order to establish that the building in question had been rendered unfit and unsafe for human habitation, the Courts below have noticed that the tenant himself had moved an application that the demised shop be got repaired. It has been noticed by the learned Rent Controller that the tenant had admitted in his cross-examination that one of the wooden batten and bricks of ceiling had fallen. In his cross-examination, the tenant further admitted that he was in possession of the shop in

front of the demised shop and the same belonged to his son. He also admitted that he used to work in the shop belonging to his son. The tenant had failed to establish that the shop in question was being used by him on regular basis as he had failed to prove on record any documents i.e. bills etc. in this regard. In these circumstances, the Courts below rightly came to the conclusion that the shop in question was unfit and unsafe for human habitation.

In the facts and circumstances of the present case, the Courts below had, thus, rightly ordered the ejectment of the petitioners from the shop in question.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

April 29, 2015
Gurpreet