

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

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1. Civil Revision No.3610 of 2015 (O&M)
Date of Decision: May 05, 2016
Surender Kumar and another
Versus
...Petitioners

Smt. Manbhari Devi and another
...Respondents

2. Civil Revision No.4193 of 2015 (O&M)
Surender Kumar and another
Versus
...Petitioners

Smt. Manbhari Devi and another
...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ajay Jain, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J.

By this order, I propose to decide two revision petitions which arise out of a common order passed by the Appellate Authority, Rewari, whereby two rent appeals, one by the tenant and the other by the landlord, were decided by judgment dated 03.03.2015.

2. Briefly the facts are that an ejectment petition under Section 13 of The Haryana Urban (Control of Rent and Eviction) Act, 1973, was filed by the respondents-landlords against the petitioners-tenants seeking eviction from the demised premises on various grounds but the ejectment petition was allowed by the Rent Controller, Rewari, by judgment dated 31.01.2013 on the grounds of *bona fide* personal necessity and the building being unfit and unsafe for human habitation. The petitioners-tenants preferred an appeal

so did the respondents-landlords. The landlords by impugning the judgment to the extent that the Rent Controller had declined the grounds of ejectment of non-payment of rent, closure and cease to occupy the demised premises, additional accommodation having become available with the petitioners-tenants, addition and alteration and nuisance.

3. The appeals as preferred by the parties have been decided by the common order dated 03.03.2015 by the Appellate Authority, Rewari, whereby the appeal of the petitioners-tenants has been dismissed and that of the respondents-landlords partly allowed on one more ground of ejectment by holding that they have been able to prove that the petitioners-tenants have cease to occupy the demised premises for a period of more than four months.

4. It is the contention of learned counsel for the petitioners that the impugned orders cannot be sustained as the Courts below have not been able to properly appreciate the pleadings and the evidence brought on record. He contends that for coming to a conclusion that the demised premises have become unfit and unsafe for human habitation, the Courts have primarily relied upon the evidence of the Building Expert AW-20 Satpal and his report A-170 but the same pertains to the ground floor and not to the premises in question. The said report has also been discarded in an earlier litigation by the Appellate Authority. Report of AW-11 Darshan Kumar, Sub Divisional Engineer, PWD, B&R Department, Exhibit A-76 is based upon visual inspection and no site plan has been attached with the same. This Building Expert has relied upon photographs

and in the cross-examination, he had failed to identify the cracks and joints therein. The Courts have erred in coming to a conclusion that the landlords are not having any other commercial building in the urban area concerned which cannot be sustained as in the cross-examination, Manish Kumar AW-24, one of the applicants-landlords, conceded that he is having 12.5% share in M. City Mall which is a commercial building. If that is so, non-disclosure of this fact would amount to suppression of material fact and would be violative of the basic ingredients of the pleadings. In any case, the petitioners made an offer for exchange of tenancy in respect of the premises in dispute with a similar portion in M. City Mall on the first floor but the same was not accepted by the respondents. The respondents have not been able to prove the ground of personal necessity and, therefore, the petition deserved dismissal.

5. As regards ceasing to occupy the demised premises for more than a period of four months without any reasonable cause, the onus was upon the respondents-landlords. What has been pleaded is that the premises in dispute is lying closed since January, 2009 and that is what has been stated by Suresh Kumar AW-21, who appeared for the respondents. His mere statement is not enough, rather the respondents should have examined any other neighbour of the locality, where the premises in dispute is located which would carry more credence, especially when Suresh Kumar in his cross-examination has admitted that he is the friend of the respondents. On the other hand, the petitioners examined Surender Kumar, L.D.C., D.H.B.V.N.L. as RW-2, who proved the account of the electricity

connection and the bills showing electricity being consumed in the premises in dispute. Similarly Ram Sawroop RW-3, a Clerk in the office of D.E.T.C., Rewari, has proved the sale tax report with effect from 01.04.2008 to 31.12.2010 which shows that business is being carried out in and from the premises in dispute. He, therefore, contends that the present revision petition may be allowed by setting aside the impugned judgments and to dismissed the ejectment petition of the respondents-landlords.

6. I have considered the submissions made by learned counsel for the petitioners and with his assistance, have gone through the impugned orders.

7. The grounds which have found favour of the Courts below for ejectment of the petitioners have been challenged by the petitioners in the present petitions and, therefore, they have to be dealt with one by one.

8. First ground for ejectment to be dealt with would be cease to occupy the premises for more than four months without any reasonable cause. As per the pleadings, the demised premises, a shop, is lying closed since January, 2009. The ejectment petition was filed on 05.10.2009 and, therefore, as per the pleadings, more than four months had gone by and it was pleaded that the petitioners have shifted their garment business in the shop at the ground floor and petitioner No.1-Surender Kumar has left the business of garments and started his business of property dealing at Court Road, Rewari, which fact was disputed by the petitioners by stating that the garment business was still continuing in the name and style of Surender Garments and the shop has never been closed.

9. At the very initiation of the proceedings, Shri Pawan Kumar Yadav, Advocate, was appointed as a Local Commissioner to inspect the shop by the Court on 06.10.2009, who had submitted his report Exhibit A-166, rough site plan Exhibit A-167 and the memo of presence Exhibit A-168 as also photographs Exhibit A-1 to Exhibit A-11. As per his report, the shop was found closed and there was lot of dust outside the shop and on the lock of the shop. Big cracks on the walls of the shop in dispute were also revealed. This report was in the absence of the petitioners. Another Local Commissioner Shri Bhagirath Yadav, Advocate, was appointed by the Court on 08.10.2009, who inspected the shop in dispute in the presence of both the parties. The Local Commissioner submitted his report Exhibit A-24. He also proved the photographs of the shop in dispute as Exhibit A-28 to Exhibit A-59. A perusal of this report would show that no work was going on in the shop in dispute and the same was closed at the time of inspection. The report revealed the shop in dispute to be in a dilapidated condition. At the time of visit of Local Commission Shri Bhagirath Yadav to the demised premises, Suresh Kumar AW-21 was also present in the shop Khurana Collections, where petitioner No.2- Mahesh Kumar is doing the business. He had accompanied the Local Commissioner at the time of inspection of the demised premises on the first floor and his evidence supports the case of the respondents-landlords to the hilt. The details have been mentioned in para 71 of the order passed by the Appellate Authority. He had gone to the first floor at the time of visit of the Local Commissioner and found it closed. Petitioner No.1-Surender Kumar reached the spot after some time and opened the lock. Thereafter the Local

Commissioner entered the demised premises but no business which was being done found there. The premises was stained with dust and spiderwebs and the bags which were lying there were empty. It being very dusty, difficulty in breathing was felt. Not only his presence has been established on the basis of the evidence of the Handwriting and Fingerprint Expert Shri V.B. Kashyap, who was examined as AW-22, who had proved the fact that the bills which Suresh Kumar AW-21 had received on purchase of the garments of his children from Khurana Collections which was issued by Mahesh Kumar-petitioner No.1 but also proved that he had accompanied Local Commissioner Shri Bhagirath Yadav as he had also signed the memo of presence Exhibit AW-26. He is an independent witness and has specifically stated that the shop is closed since the year 2009 and Mahesh Kumar-petitioner No.1 is doing business in Khurana Collections. It would not be out of way to mention here that no objections have been filed to the reports of the Local Commissioners.

10. Another evidence which supports the assertion that the premises were not being used is that of AW-14 Pawan Kumar Goyal, Process Server, who had served the notice of the present case at Khurana Collections to Mahesh Kumar. Reports on the summons are exhibited as Exhibit A-119 to Exhibit A-121. He also deposed that Surendra Readymade Garments is lying closed on the spot and all notices were delivered at Khurana Collections. The respondents-landlords have produced documents Exhibit A-135, Exhibit A-137 and Exhibit A-182 showing the shifting of the electricity connection from the shop in dispute to staircase with the electricity supply being diverted to Khurana Collections which establishes

that no supply of electricity is available to the disputed shop. RW-2 Surender Kumar, L.D.C., D.H.V.B.N., who had appeared for the petitioners, has admitted that the electricity connection No.EE21/0767 was still working but in cross-examination stated that the supply of electricity is being used by Khurana Collections and not by Surendra Readymade Garments. This further fortifies the fact that the demised premises is lying locked and out of use.

11. Petitioners produced RW-3 Ram Sawroop, Clerk in the office of D.E.T.C. to show that the business was being carried out from the demised premises but the said witness in cross-examination admitted that the site is not visited by any official for verification purposes and only oral statement is taken to be correct of the tax payer, so the said evidence cannot be relied upon. RW-20 Subhash Jain, who appeared to prove the sale tax ledger, purchase bills and copy of the ledger but in cross-examination, he admitted that the register was prepared by him by single pen and same ink in the year 2008-09 and 2009-10. All these evidences go a long way to prove that the demised premises remained closed continuously for a period of more than four months prior to the filing of the petition and no business activity was going on from there. Thus, the findings as recorded by the Appellate Authority on this issue, are fully justified.

12. Now moving on to the second ground i.e. that the shop in dispute has become unfit and unsafe for human habitation. In support of this ground, respondent No.2-Manish Kumar stepped into the witness box to depose as AW-2 and stated that the disputed shop is more than 130 years old and the same has become unfit and unsafe for human habitation.

AW-11 Darshan Kumar, Sub Divisional Engineer, PWD B&R, Rewari, has appeared as a witness and proved his report Exhibit A-76 and photographs Exhibit A-78 to Exhibit A-113. Apart from him, AW-20 Satpal, Building Expert has also appeared and proved and testified his report Exhibit A-170 and the site plan A-171 with photographs taken by him Exhibit A-172 to Exhibit A-176. All these prove that the shop has become unfit and unsafe for human habitation, especially when no expert witness has been examined by the petitioners-tenants. That apart, AW-3 Shri Bhagirath Yadav, Advocate and AW-18 Shri Pawan Kumar, Advocate, who were appointed as Local Commissioners by the Court, submitted their reports Exhibit A-24 and Exhibit A-166 respectively, which also depict that there are big cracks in the wall of the building and the building is in dilapidated condition and out of use. Certain other photographs have also been produced on record as Exhibits A-1 to A-11 which have been proved by AW-2 Sunil Kumar, Photographer and Exhibits A-26 to A-56 by AW-17 Rattan Lal, Photographer. The Courts below have gone through the photographs and on going through the same, have come to a conclusion that the condition of the building is unfit and unsafe for human dwelling. The findings, thus, recorded by the Courts below on this ground, are correct.

13. Now moving on to the ground of ejectment on *bona fide* and personal necessity of respondent No.1 of the demised premises to run and establish the business of her son Mukesh Kumar, who has no other shop or commercial premises to run his business. Apart from deposing that he has no other commercial building or shop to run his business, Mukesh Kumar

himself appeared as AW-23. It has been proved on record that neither the petitioners nor Mukesh Kumar are having any shop or commercial building in the market or within the municipal limits of Rewari. A stand was taken by the petitioners that Mukesh Kumar has an independent business and in support thereof, his income tax returns have been brought on record but the said income tax returns when seen, show that the source of income is salary, which he is getting from Vicky Exclusive Menswear which he is looking after for the last many years and has experience in the field of garment business which would be handy an asset for him and would come to settle in the said business which was intended to be started by the respondent for him which would be a *bona fide* requirement and personal necessity of respondent No.1 to settle her son.

14. A plea has been taken by the petitioners-tenants that Mukesh Kumar-respondent No.2-landlord was having 12.5% share in M. City Mall which is a commercial building, where he could adjust his brother Mukesh Kumar but the said plea cannot be accepted in the light of the evidence brought on record in the form of photographs which clearly show that the said building i.e. M. City Mall is under construction. Therefore, the pleas as taken by the petitioners-tenants, have rightly been rejected by the Courts below.

15. The findings, thus, recorded with regard to the *bona fide* personal necessity of the respondents-landlords, cannot be said to without any basis or unjustified.

16. None of the grounds, as have been projected by the counsel for the petitioners, therefore, make out a case for interference by this Court in

the present revision petitions.

17. No other point has been argued by the counsel for the petitioners.

18. The Courts below have returned findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same do not require to be interfered with as there is no perversity or illegality in the same.

19. There being no merit in the revision petitions, the same stand dismissed.

20. In the light of the dismissal of the revision petitions, the applications for stay i.e. CM No.11245-CII of 2015 in CR No.3610 of 2015 and CM No.12847-CII of 2015 in CR No.4193 of 2015, stand disposed of as infructuous.

May 05, 2016
Puneet

(AUGUSTINE GORGE MASIH)
JUDGE