

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**C.M. No. 11027-CII of 2016 &
Civil Revision No. 3644 of 2016**

Date of decision: August 09, 2016

Madan Lal

...Petitioner

Versus

Ram Kishan Mittal

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. P.S.Khurana, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J.

Challenge in this revision petition is to the order dated 31.08.2013 passed by the Rent Controller, Abohar, whereby a petition under Section 12 of the East Punjab Urban Rent Restriction Act (hereinafter referred to as 'Rent Act') preferred by the petitioner to permit him to repair and raise the level of the roof of the demised shop by replacement to facilitate the easy flow of rain water towards the street side and save the roof from recurring damages, was declined, appeal against which preferred was also dismissed by the Appellate Authority on 16.03.2016.

It is the contention of the learned counsel for the petitioner that the respondent had raised construction towards the eastern and southern side of the shop adjoining to its walls and raised the level of the newly constructed roof higher than the roof of the rented shop resulting in the rain water accumulating over the roof of the shop in question as the passage for

is made of mud and mortar supported by wooden planks. The roof has started leaking, which is causing damage to the articles kept in the shop and is inconvenient to the persons who are working therein. Because of the construction of the new roof, which is higher than the level of the roof of the shop in question, the damage is to the extent that cracks have started coming in between the roof, because of which, the petitioner had moved an application for repair of the roof and for replacing the same by raising the level of the roof of the shop and further allowing the petitioner to raise plaster over the roof walls by deducting the cost from the rent when the repairs, as are being sought to be made by the petitioner, were refused by the respondent-landlord. His further contention is that the Courts below have failed to appreciate that on the basis of the evidence, which has been produced on record, it is apparent that the repair is essential as it would otherwise not only lead to dilapidation of the shop rather it is a ploy on the part of the respondent-landlord to forcibly evict the petitioner from the shop in question. The finding recorded by the Courts below that the repairs, as have been sought to be made by the petitioner, cannot be effected without there being structural alterations, cannot be sustained as the same is not supported by evidence. He asserts that the report of the Local Commissioner could not have been looked into by the Appellate Court as the Local Commissioner has not stepped into the witness box at any stage and, therefore, despite there being objections raised by the petitioner, he could not be cross-examined and thus, the findings based on the same cannot be accepted. His contention is that the purpose for moving the application was to check the leakage of the roof and not to bring about the structural alterations. He placed reliance upon a judgment of this Court in **Smt.**

Shanti Devi vs. Sh. Dass Kumar, 1992 (2) RCR (Rent) 516. He contends that as per the judgment of this Court in **Shri Ved Parkash and another vs. Shri Khushi Ram and another**, 1973 R.C.R. (Rent) 252, this Court has held that replacement of a *kacha* part of a roof by a new *kacha* part is not alteration. Reliance has also been placed upon the judgment of the Supreme Court in **Shadi Singh vs. Rakha**, 1992 (2) R.C.R. (Rent) 7, where it has been held that the ejectment cannot be sought of a tenant for effecting repairs and replacements of the fallen roof as it would not be structural alteration or reconstructing the building. He, on this basis, contends that the present revision petition be allowed by setting aside the orders impugned and allowing the application of the petitioner for repair of the roof of the shop by increasing its height.

I have considered the submissions made by the learned counsel for the petitioner and with his assistance, have gone through the impugned orders as also the judgments relied upon by him.

The evidence, which has come on record, clearly shows that the construction of the shop is very old and is of the *kacha* bricks as is apparent from the evidence of PW-3 Puran Chand, who has admitted in his cross-examination that the construction of the walls is *kacha*. The petitioner and his witnesses have admitted that the roof of the shop in question is broken and damaged, as a result of which, rain water enters in the shop. It has also been admitted by the witness that the construction, which has been made by the respondent-landlord, adjacent to the shop in question is about 7/8 years old and he has also admitted that he has not seen the roof of the shop and, therefore, he does not know whether the water is collected there or not. It has also been admitted that the internal condition of the shop in question is

bad and supports have been affixed in order to prevent falling of the entire roof. Admission has also been made that in case of fall of roof, there can be danger to the life of the occupant. The petitioner has made a bald statement that accumulation of water on the roof of the shop has started after the construction of the building adjacent to the shop in question but no evidence has been brought on record which would establish this fact. The best evidence, which could have been produced by the petitioner, would have been the report of the Structural Engineer or the Civil Engineer pointing out and proving the reason as to whether and why the water is accumulating on the roof of the shop in question.

It is not in dispute that the shop in question is a very old construction and, therefore, it is apparent and proved on record even after ignoring the report of the Local Commissioner that the condition of the disputed shop is very bad and it is for this reason only that the petitioner had not only sought the repair of the shop but had, as a matter of fact, prayed for raising the level of the roof of the demised shop and thereafter, replacement of the roof to facilitate the easy flow of rain water towards the street side. What is being sought by the petitioner, in the garb of repair, is structural change to the building itself by increasing the height of the walls which supports the roof and thereafter, to re-lay the roof thereon, which is not permissible in law as per Section 12 of the Rent Act, which reads as follows:-

“12. Failure by landlord to make necessary repairs-If a landlord fails to make the necessary repairs to a building other than structural alterations, it shall be competent for the Controller to direct on application by the tenant, and after such

inquiry as the Controller may think necessary, that such repairs may be made by the tenant, and that the cost thereof may be deducted from the rent which is payable by him.

As per the above provisions, the repairs of the building are permissible other than the structural alterations. Present is a case where not only the permission is being sought for replacement of the roof but to increase the height of the structure itself and thereafter, to re-lay the roof thereon, which, by any stretch of imagination, cannot be extended to term it as a 'repair'. The findings, therefore, as recorded by the Courts below, in this regard, cannot be faulted with.

Smt. Shanti Devi's case (supra), on which reliance has been placed by the counsel for the petitioner, was a case where the tenant had filed an application seeking permission of the Rent Controller to effect repairs of the roof of the shop to check leakage etc. but present is not such a case where the intention is only to stop the leakage of the roof rather the intention and the purpose is to bring about the structural changes in the building itself by increasing the height of the support walls and to re-lay the roof itself. This is a case where, under the garb of effecting repairs, the tenant intends to make not only major repairs rather structural changes as well to the building, which is not permissible in law.

Reliance upon the judgment of Shri Ved Parkash's case (supra) by the counsel for the petitioner also would not help although in the said judgment, replacement of a *kacha* part of a roof by a new *kacha* part has been held to be not a structural alteration but in the present case, it is not replacement of a part of the roof rather the prayer is for replacement of the complete roof by increasing the height of the same, as has been referred to

above. Therefore, this judgment is distinguishable on facts as also the intention and the purpose, for which the application has been moved.

Reliance has also been placed upon the judgment of the Supreme Court in Shadi Singh's case (supra), where again the tenant had effected repairs by replacing the part of fallen roof, which, the Hon'ble Supreme Court had held, was not structural alteration or reconstruction of the building which, as has been referred to above, is also of no help to the petitioner in the light of the prayer made in the application under Section 12 of the Rent Act, which has been dealt with above and thus, this judgment is distinguishable and not applicable to the case in hand.

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

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In view of the dismissal of the main petition, this application has been rendered infructuous and, therefore, the same stands dismissed as such.

August 09, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes