

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

Date of decision : 10.03.2016

..... Petitioners

..... Respondents

Mr. N.S.Goraya, Advocate
for the caveator/respondent No.1.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

This revision has been filed against the concurrent judgments of the Courts below ordering the eviction of the petitioners from the premises in dispute on the ground that the same have been rendered unfit and unsafe for human habitation.

The admitted facts are that the premises in dispute were constructed about 60-70 years ago and the walls were made of bricks with mud mortar and lime and the roof was of wooden battens. As per case of the respondents-landlord the petitioners had also installed machinery

consisting of engine and pullies in the shop. The case of the respondents-landlord was that with the passage of time huge cracks had appeared in the walls and the roof of the mezzanine, which was in the shop had fallen. Some of the wooden battens had been eaten by white ants and a portion of the roof had also fallen. The respondents-landlord had produced his expert and who had testified to these facts alongwith photographs while the petitioners had produced his own expert. Both the Courts below noticed that the expert produced by the petitioners had not taken photographs of that portion of the building which was damaged and after appreciating the testimony of all the witnesses ordered the ejectment.

The main argument of learned counsel for the petitioners is that the expert produced by the petitioners had given his report 28 years ago and if the building has not fallen in the last 28 years that ex-facie shows that the report of that expert was wrong and as per him the damage caused to the building is repairable. He has relied upon *Piara Lal Vs. Kewal Krishan Chopra, 1988 AIR (SC) 1432*. In the first place that was a case where both the Courts below had held that the building was not unfit and unsafe and it was the High Court which had reversed the findings of both the Courts. The Hon'ble Supreme Court of India found that the conclusion of the High Court that apart from the roof one of the walls had also crumbled was not supported by any evidence on the record. The sum and substance is that that judgment was decided on the facts of that particular case.

He has also relied upon *Sohan Lal (Died) through his L.R.s and others Vs. Amar Nath and others, 1992 (1) RCR (Rent) 543*.

A reading of that judgment shows that in that case also this Court came to the conclusion that the findings of the Courts below were based on conjectures and surmises; in short another judgment on the facts and circumstances of the case. He has also relied upon *Smt. Phoolan Rani vs. Smt. Pushpa Wati, 1992 (2) PLR 495* where this Court found that during the pendency of the proceedings the roof of the adjoining shop had been relaid and therefore, came to the conclusion that the roof of the shop in question could also be relaid; another judgment on the facts of the case. He has further relied upon *Des Raj Jain Vs. Bachna Ram, 1989 (1) PLR 628* there this Court found that by keeping the upper storey locked the landlord had accelerated the process of making the building unfit and unsafe and thus held him disentitled; yet another case decided on the facts thereof.

Coming to the facts of the present case and the arguments raised therein, the mere fact that the building has not fallen down during the pendency of the case can never lead to the conclusion that the expert who testified was a false prophet of doom. It has to be noticed that even an unfit and unsafe building can last out for decades but that would not alter the fact that it is unfit and unsafe. The question is not whether the building has fallen but whether the building may fall, and at best any expert can only give an educated guess about the risks involved. In this view of the matter, the omission of the expert produced by the petitioners to try and show only that part of the shop which was not dilapidated also has to go against the petitioners. Learned counsel have shown me the photographs produced by both the experts and having gone through the same I regret my inability to

come to the conclusion that the judgments of the Courts below are vitiated or perverse.

The petition is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 10, 2016

Pooja sharma-I

**(AJAY TEWARI)
JUDGE**