

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

(1)

**Civil Revision No.7203 of 2016 (O&M)
Date of Decision:November 16, 2016.**

Shiv Kumar and another

.....PETITIONER(s).

VERSUS

Shyam Sunder and others

....RESPONDENT(s).

(2)

Civil Revision No.7204 of 2016 (O&M)

Gian Chand

.....PETITIONER(s).

VERSUS

Shyam Sunder and others

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Sihota, Senior Advocate with
Mr. B.R. Rana, Advocate
for the petitioner (s).

SURINDER GUPTA, J.

Both the revision petitions have been taken up together for disposal as these arise from order of ejectment passed by the Rent Controller, Rewari concerning shops situated in same premises of respondents-landlord, who are common in both the petitions.

2. For the sake of convenience, the facts have been taken up from Civil Revision No.7203 of 2016.

3. Revision petitioners are tenant in shop having house tax

No.808/1/2 situated in Kayasthwara, adjacent to Punjabi Market, Rewari.

The ejectment of revision petitioners was sought on the ground as follows:-

“a) That the respondents have not paid or tendered the rent of the disputed shop to the petitioners in spite of the repeated requests and demand and the arrears of rent @ Rs.400/- p.m. is due towards the respondents w.e.f. 01.01.2008 till date. The respondents have not paid the arrears of the rent to the petitioners so far.

b) That the petitioners have no other commercial property to start the business of the petitioners no.2 and 4, except the shop in dispute and its adjoining shop in possession of Sh. Shiv Kumar (*M/s Shiv Churi Bhandar*). The petitioners no.2 and 4 intend to start their business of general store in the above shop, which is most suitable market for the said purpose, thus the petitioners require the disputed shop for their personal bonafide necessity. The petitioners have no other commercial property in Rewari except the property shown in the site plan with brinjal colour. The petitioners have neither vacated nor let out any commercial property since January 1949, except the disputed shop and its adjoining shop in the West. The petitioners no.3 and 5 are running the shop under the name and style of *M/s Subhan Jewellery and Churi Collection* in the shop adjoining to the shop in dispute, as shown in the site plan with brinjal colour. c) That the shop in dispute is more than 100 years old and has become unfit and unsafe for human habitation and business purposes. The walls of the property shown with mark ABCD were constructed with bricks and mud mortar with plaster of cement. There are so many horizontal cracks in the walls and roof of this property. The plaster of the walls has withered away from places and roof has become in shape of pond and. The karries have sagged; ant eaten

and are bent. The battens have fallen from many places. The life of the mortar has come to an end. There are leakage and seepage in the roof. There are pits in the floor and roof. The building is totally unfit and unsafe and in a dangerous and dilapidated condition and can fall at any time and requires denovo construction after demolishing existing building shown with mark ABCD. The petitioners want to reconstruct the building have sufficient means and funds for the same.

d) That the respondents have taken another shop in Punjabi Market, Rewari just near to the shop in dispute and, therefore, they are also liable to be ejected from the shop in dispute. ”

4. Plea mentioned at (d) above, was not taken while seeking ejectment of revision petitioner Gian Chand in Civil Revision No.7304 of 2016.

5. Learned Rent Controller held that plea taken by the respondents-landlord that they required the demised premises for personal bona fide need of respondents No.2 and 4 and the building has become unfit and unsafe for human habitation is duly proved. The ground of ejectment of revision petitioner for non-payment of rent was not pressed.

6. Not satisfied, the revision petitioner(s) filed appeals which were dismissed by Appellate Authority, Rewari.

7. Learned counsel for the revision petitioner(s) has argued that the respondents-landlord projected the bona fide necessity of the demised premises for Ashok Kumar, respondent No.2 and Raja Ram, respondent No.4 but they impleaded all the landlords as party, just to create impression that there are so many landlords. Respondents-landlord are running

business under the name and style of *M/s Subhan Jewellery and Churi Collection* in the adjoining shop and have sufficient property for the business of Ashok Kumar and Raja Ram. There is a property bearing house-tax No.820 situated in Kayasthwara, Rewari in the name of Bimla Devi wife of Prabhu Dayal, mother of respondents-landlord. This property was not disclosed by the respondents and an application moved by the revision-petitioner(s) to prove this fact by leading additional evidence, was not decided by the Appellate Authority. The above property is in possession of Ashok Kumar and Raja Ram.

8. Respondents-landlord projected the requirement of the shop in dispute and the adjoining shop in possession of Gian Chand for landlord-respondents No.2 and 4, who wants to start business of general store in these shops. It is alleged that these shops are most suitable market for the said purpose. It was specifically pleaded that respondents-landlord have no other commercial property in Rewari except the property shown in the site plan and they have not vacated any commercial property since January 1949.

9. Learned Rent Controller relying on the testimony of witnesses examined by the respondents-landlords, held that bona fide need of the landlords is duly proved. The observations of learned Rent Controller in para 31 of the order to this effect are reproduced as follows:-

“It is clear from the statement made by the witnesses that the petitioners have a large number of family members. Admittedly, the petitioners are five brothers and three sisters. All the five brothers have their independent family. The petitioners have only one godown shown in the site plan and a shop which is also behind the back of

these shops. Two brothers namely Parmod Kumar, petitioner no.3 and Hari Shankar, petitioner No.5 are running their shop under the name and style *M/s Subhan Jewellery & Churi Collection* in the shop adjoining to the shop in dispute as shown in the site plan with brinjal colour. It is not proved by the respondents that the petitioners have any other shop in District Rewari to start or to run their business. Therefore, the necessity of the petitioners is bonafide. Even if for the sake of arguments, it is presumed that the two brothers, petitioners No.2 and 4 are doing some business on a rented premises even in that case the requirement of petitioners found to be bonafide because landlord seeking eviction of a tenant for his requirement. He is not required to sit idle during the period of litigation. Even if the person, who required the premises is engaged in some business, it does not mean that he should not start his own independent business. Heavy burden lies on the tenant to prove that requirement of the landlord is not genuine. Tenant has to give all necessary facts and particulars supported by documentary evidence, if available to support his plea. In this case, tenant failed to produce detailed particulars and documentary evidence in support of his claim that the petitioners no.2 and 4 were doing business in Moh. Thatheran. Therefore, the requirement of petitioners no.2 and 4 to do independent business is bonafide.”

10. This submission by learned counsel for the revision petitioners in the grounds of revision that the application for additional evidence filed by the revision petitioner before the Appellate authority was not decided, is without merit as the application was considered and dismissed vide judgment dated 02.08.2016 passed by the Appellate Authority. Even

otherwise, if any property is owned by the mother of respondents-landlord,

who is not a party to this petition, the same was not required to be mentioned or disclosed in the ejectment petition filed by the respondents-landlord as per requirement of Section 13 (3)(a)(i) of Haryana Urban (Control of Rent and Eviction) Act, 1973.

11. This fact is not disputed that business in the adjoining shop is being carried on by the brothers of respondents No.2 and 4. The intention of respondent-landlord No.2 and 4 to start their separate business to boost the income of their family, cannot be doubted on the mere ground that in the adjoining shop, brothers of respondents No.2 and 4 are carrying on business. Even if, it is considered as a joint family business, still the plea of respondents-landlord that respondents No.2 and 4 want to start their separate business of general store in the adjoining shop, is justified.

12. While drawing my attention towards the availability of alternate suitable site, learned counsel for the revision petitioners has argued that on the back side of the demised shops, landlords are having the portion of their shop under the name and style of *M/s Subhan Jewellery and Churi Collection* and behind that there is godown which is in fact a shop and can be used by the respondents-landlord to start the business of general store.

13. The above contention is not tenable; firstly because that portion is godown and the opening of that portion is in a very narrow street of six feet width which is not suitable for business purposes. The shops in possession of revision petitioners in both the petitions are on the main chowk and certainly more suitable to carry on any business in these shops as these are having easy approach and are in public view.

Learned Rent Controller and Appellate Authority have rightly

concluded on perusal of the evidence that personal bona fide need for the demised shops projected by the respondents-landlord is justified, I find no reason to interfere with the concurrent findings of the facts recorded by the Courts below.

14. The ejectment of the revision petitioners has also been ordered on the ground that demised premises is unfit and unsafe for human habitation.

15. Learned counsel for the revision petitioners has argued that the Courts below have not taken note of the fact that the landlord renovated the demises premises after seeking permission from the Municipal Council, Rewari in the year 1985. Once the premises has been renovated in the year 1985, it cannot be taken as 100 years old building.

16. An application was moved before the Appellate Authority to bring on record the bills of electricity, copy of house-tax assessment register from the year 2007-08 to 2009-10 and photographs of the property in additional evidence to prove that there is one property bearing house tax No.820 situated in Kayasthwara, Rewari in the name of Smt. Bimla Devi wife of Prabhu Dayal i.e. mother of the respondents-landlord. The application was considered by the Appellate Authority and was declined while passing the judgment on 02.08.2016. Similar application has again been filed by the revision petitioners in these revision petitions whereby they want to place on record bills of electric connection in the name of Jhaman Lal (Annexure P-3), copy of house tax assessment register ending year 2007-08; 2008-09; 2009-10 (Annexure P-4) to show that property No.820 is in the name of Smt. Bimla, mother of respondents-landlord and

one photograph of the demised premises (Annexure P-5). The bill of electric connection Annexure P-3 cannot be connected with any premises as no address of premises where it is installed, find mention in this bill. The copy of house tax assessment register Annexure P-4 relate to the property of Smt. Bimla, who is not a party to this petition and there is nothing on record that this premises has any shop where the business can be started by Ashok Kumar and Raja Ram, respondents No.2 and 4. The photograph of the demised premises only show shutter and few poster affixed on wall and on the basis of this photograph, no conclusion can be drawn about the condition of the building. These documents are neither relevant nor required to be produced for the just decision of the case and there is no explanation as to why these documents were not produced before the Rent Controller. The application filed by the revision petitioners is declined.

17. The first Appellate Authority, while looking into the evidence regarding condition of the demised premises produced by the parties, has observed as follows:-

“16. In order to show that premises in dispute has become unfit and unsafe for human habitation; requires reconstruction after complete demolition, the petitioners have examined Sh. PR Gupta PW3, the building expert who has proved his report as Ex.P30. It can be ascertained from the said report that he has opined that “both the shops have outlived their life; became unfit and unsafe for human habitation and use. These two shops were constructed at the same time i.e. 100 years ago and for both denovo construction is required.” To rebut the evidence led by the petitioners, the learned counsel for the appellants has drawn attention of this court to the

testimony of Nand Kumar Nagpal RW3, their building expert who has proved his report as Ex.RW3/B to show that the building in question is structurally safe and fit for human habitation. Learned counsel for the appellants has further drawn attention of this court to the testimony of Dinesh Kumar RW1, the Junior Engineer, MC Rewari, to show that opinion of Sh. PR Gupta PW3 regarding 100 years old construction of the demised premises cannot be believed as the site plan concerned was sanctioned only in the year 1986 by Municipal Committee, Rewari; however it can be ascertained from the perusal of layout of the said sanctioned map as Ex.RW1/1 that the same was not sanctioned for denovo construction; rather regarding alterations only as the portion shown in blue is an old one and the portion shown in pink only is new one; therefore, it cannot be said that the whole of the demised premises was constructed in the year 1986. Further in the report as Ex.RW3/B it is mentioned that ply from racks (cupboards/almirah) was removed from three places for carrying out inspection of the walls, whereas Shiv Kumar RW6 has deposed that ply was removed only from place marked A in the photograph as Ex.RW4/37. Even the photographs relied upon by the petitioners go to show that the premises in dispute is in dilapidated condition and has outlived its utility as has also been rightly held by learned Rent Controller.”

18. Similar observations were also made by the Rent Controller. Mere fact that some renovation was carried out of which the Appellate Authority has also taken note in the above observation, do not point out that the condition of the building is safe. The renovation was carried out in the year 1985 i.e. more than 30 years back and a building constructed using

mud mortar losses strength during such a long period.

19. In revision, the scope of interference in the concurrent findings of fact record by the courts below is very limited as observed by Hon'ble Apex Court in case of *Hindustan Petroleum Corporation Ltd Vs. Dilbahar Singh* 2014(9) SCC 78:-

“We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding

on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

20. On perusal of the order of Rent Controller and judgment of Appellate Authority, I find no legal or factual infirmity therein calling for any interference.

21. Both the revision petitions have no merits.

Dismissed.

November 16, 2016.

Sachin M.

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No