

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

**C.M. NOS.24022-23 CII OF 2016 &
CIVIL REVISION NO.8008 OF 2016**

DATE OF DECISION: NOVEMBER 29, 2016

M/s Addish Tour & Travels

.....Petitioner

VERSUS

Naresh Kumar Juneja and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Gurpreet Singh, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.24022 CII of 2016

Application is allowed as prayed for subject to all just exceptions.

C.M. No.24023 CII of 2016 & C.R. No.8008 of 2016

Petitioner has approached this Court, impugning the order dated 07.09.2016 passed by the Rent Controller, Chandigarh, whereby an application preferred by the petitioner under Order XIV Rule 2 read with Section 151 C.P.C. praying for preliminary issue to be framed with regard to maintainability of the eviction petition, which has been preferred by the respondent-landlord, stands dismissed.

It is the contention of learned counsel for the petitioner that as per one of the terms of the Rent Agreement dated 31.12.1995 (Annexure P-

1) i.e. No.5, it is the sole prerogative of the tenant to vacate the premises and the landlord can neither ask the tenant to vacate the premises nor there will be increase in the rent. The tenants were authorised to sublet the premises or any part thereof by constructing cabins in the premises and can enter into an agreement of their own with the sublettees. Petitioner, being the sublettee, has asserted that in the light of these provisions and the fact that the tenant has paid an amount of ₹3 lacs for permanent tenancy in the year 1995, the application for treating it as a preliminary issue with regard to the maintainability of the eviction petition should have been framed by the Rent Controller and decided as such. He, thus, contends that the impugned order cannot sustain.

I have considered the submissions made by learned counsel for the petitioner and with his assistance have gone through the impugned order as also the Rent agreement dated 31.12.1995 (Annexure P-1).

A perusal of the Rent Agreement would show that although there is a permanent tenancy created in favour of the tenants authorising to sublet the premises but the grounds which have been taken for eviction are not only limited to the extent of subletting but also with regard to material impairment, apart from personal necessity. Clause 6 of the lease deed specifically deals with this aspect with regard to structural alteration in the premises which would materially impair the building, which is a ground available to the landlord for filing an eviction petition. That being so, the plea, as has been sought to be taken by the petitioner for treating it as a preliminary issue by framing the issue of maintainability of the eviction petition on the grounds of Clauses 3, 4 and 5 of the Rent Deed, would not be available to the petitioner, especially when there are other grounds also

which entitle the landlord to seek eviction of the tenant from the demised premises. The order, as has been passed by the Rent Controller, cannot, therefore, be faulted with especially when it has been held at the very outset that preliminary issue can be framed in respect of a law point only. The matter would be requiring leading of evidence by the parties and, therefore, it cannot be treated as a preliminary issue as it is not point of law.

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

Any observations made herein above in this order, shall have no bearing on the merits of the case.

Since the main revision stands dismissed, C.M. No.24023 CII of 2016 for staying the further proceedings before the trial Court is also dismissed.

November 29, 2016
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No