

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

C.R. No.5095 of 2002 (O&M)

Date of Decision : 03.05.2016

M/s Haryana Packaging Industries

..... Petitioner

Versus

M/s Alloy Cast Pvt. Ltd.

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Amit Jain, Advocate
for the petitioner.

Mr. Manoj Bajaj, Advocate,
for the respondent.

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?

AJAY TEWARI, J. (Oral)

This revision petition has been filed against the concurrent findings of both the Courts below dismissing the petition for eviction filed by the landlord on the ground of material impairment.

The case of petitioner-landlord was that he had given one shop measuring 3230 sq. ft. to the respondent-tenant on rent through lease deed dated 28.10.1971 (Annexure P-2). However, the respondent-tenant made unauthorised pacca construction around that shed, which among other things, resulted in blockage of common passage and that unauthorised construction has materially impaired the value of the property.

The case of respondent-tenant was two fold; its first contention was that it had not made any construction and the construction in question was existing at the time of lease deed. Its second contention was based on Clause V of the lease deed which has been incorporated as under :-

“ That the Lessee shall be entitled to make any alterations, additions, constructions, whether Pucca or Kutcha and to carry out partitions and other construction in demised premises to carry on its business in the demised premises.”

Both the Courts below held that Clause V of the lease deed allowed the respondent to undertake construction and hence, dismissed the petition.

Learned counsel for the petitioner-landlord has argued that the plea that construction in dispute was pre-existing, is ex-facie wrongly because if that had been so, the same would have been mentioned in the lease deed. I find weight in this argument.

The lease deed specifically describes the property having been

rented out as one of the two rear sheds measuring 3230 sq ft with common thorough fare out of the said premises. It is not disputed before me that the construction in dispute exists beyond the area of 3230 sq ft.

Learned counsel for the petitioner has further argued that along with constructing the office block, the respondent has constructed some sheds along with the wall and toilets, one generator room and also opened one gate on the side road. He has further contended that these constructions are against the HUDA bye-laws.

A perusal of the site plan Annexure P-1 do reveal the existence of construction on the area of shed.

In these circumstances, the plea that disputed construction was existing at the time of lease deed, cannot be accepted. More so, when it was the case of respondent that open space was part and parcel of the demised construction and the temporary additions and alterations made by the tenant cannot be termed therein as material impairment. As regards the plea that lease deed authorise the respondent to make constructions, the same has also to be rejected. A perusal of Clause V indicates that the respondent had a right to make temporary additions and alterations in the tenanted area which was 3230 sq ft which did not include common passage. Had it been a case where the area outside the shed was in exclusive possession of the respondent, it may have been argued that it was part of demised

premises but once that area has been described as common passage, it can by no stretch of imagination be termed to be part of demised premises. Resultantly, it has to be held that the construction in dispute was not existing at the time of lease deed and Clause V of the lease deed did not allow the respondent to raise such construction.

The next issue which has to be considered is whether the constructions carried out would amount to material impairment or not. A perusal of the site plan Annexure P-1 shows that with the construction of the shed and the oil yard drum, the width of common passage has been reduced by almost 2/3rd. The construction of office and generator room have also obstructed the passage. It is also not disputed that these constructions and the gate opened on the side road are against the sanctioned plan and HUDA regulations.

In these circumstances, it has to be held that the construction was made by the respondent; the same was unauthorised and it amounted to material impairment of the value of demised premises.

In view of the above, the instant revision petition is allowed. The orders passed by both the Courts below are set-aside and the respondent is evicted from the property.

(AJAY TEWARI)
JUDGE

MAY 03, 2016
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