

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

Civil Revision No.1151 of 2017 (O&M)

Kishori Lal

... Petitioner

Versus

Shri Uttam Chand Jagdish Lal Charity Trust Registered and another

... Respondents

(2)

Civil Revision No.2424 of 2017 (O&M)

Yogesh

... Petitioner

Versus

Shri Uttam Chand Jagdish Lal Charity Trust Registered and another

... Respondents

Decided on : 16.05.2017

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Tara Chand Dhanwal, Advocate
for the petitioner.

G.S. Sandhawalia, J.

CM-3427-CII-2017 in CR-1151-2017

The present application has been filed for condoning the delay of 61 days in refiling the revision petition.

In view of the averments made in the application, duly supported by the affidavit of the clerk of the counsel, delay of 61 days in refiling the revision petition is condoned.

CM stands disposed of.

Main case

The present judgment shall dispose of two revision petitions i.e.

Civil Revision Nos.1151 and 2424 of 2017, which are directed against

eviction orders against father and son, namely Kishori Lal and Yogesh against whom two separate eviction petitions have been filed and eviction had been ordered, on account of material impairment, since a door had been taken out from the common wall and the shops had been connected without the consent of the landlord.

The eviction orders have been passed by the different Rent Controller on 28.04.2015 and 05.11.2015, respectively. The Appellate Authority, Bhiwani vide a common judgment dated 03.08.2016 has upheld the orders passed by the Rent Controller.

The case of the respondent-landlord in Rent Petition No.14 of 2012, which was a Trust was that there was a relationship of landlord and tenant between the parties, which had been rented out @ Rs.320/- in favour of father, who had impaired the value and utility of the premises by breaking the common partition wall which was "2x6" at point C and D and opened the door at point 'X' and destroyed the separateness of the two shops and also weakened strength of the property. The basic structure of the shop had, thus, been stated to have diminished

The shop for which eviction was sought was occupied by the father and alteration had been carried out in November, 2011 without permission from the Trust. It was alleged that the shops had been let out to two separate independent tenants and there was also arrears of rent in the case of Kishori Lal for a period of 25 months amounting to Rs.8,000/-. Similarly, it was also pleaded against Yogesh, the son who occupying the adjoining shop.

The relationship of landlord and tenant was not disputed, but the authority as such of Dr. Satish Khurana, who had filed the petition was challenged. It was denied that there was any material impairment and shops were given on rent simultaneously and there was no change in the basic structure. There was a bathroom in the shop of the son and there was an assurance given to remove the bathroom and install the shutter for enabling the son for the use of the adjoining shop as part of the shop. There was denial that any door had been opened to make the two shops in one unit. The alleged door had been opened at the time of commencement of the tenancy of the demised shop and, accordingly, it was denied that he was not willing to pay the rent.

Similarly, the defence was also taken by the son in the Rent Application No.13.

The issue of non-payment of the rent was not pressed and the issue regarding the material impairment was examined by the Rent Controller by referring to the report of the Local Commissioner Ex.P-4 and the testimony of the Draftsman Amir Chand Taneja and Dr. Satish Khurana. The plea that both the shops were taken on rent simultaneously and the door had been installed was rejected on the ground that one shop was let out in the year 2000 and second in the year 2008 and, therefore, there was contradictory stand taken if there was any intention as such to open the door.

The second shop should have been leased out to the father and it was leased out to a different tenant and it was thus a separate and

distinct unit. The fact that there was neither any writing or intention regarding the dismantling of the wall was also kept into consideration to order ejectment on the ground of material impairment by taking into account the judgments in ***Piara Lal Vs. The Liquidator Cooperative Store, Kapurthala 2004 (2), RCR 214, Ragbir Singh and others Vs. Trust, Sainiyan Mohalla Sainipura, Rohtak and others 2009 (1) RCR 177 and Raj Kumar Vs. Pushpa Devi 2005 (1) LJR 415*** to hold that it would entitle the landlord to seek eviction on that ground as per order dated 28.04.2015.

The Rent Controller in the case of son also came to the conclusion that there was an admission that there was a presence of door and tenancy were of separate dates and the stand taken that both the shops were taken on rent simultaneously. The door had thus been installed which was contrary as to the evidence and accordingly came to the conclusion that the Secretary of the Trust, Dr. Satish Khurana had appeared in the witness-box and there was no suggestion as such that he was not competent to file the petition and he had stated to be duly authorized person and, accordingly, held that he was a competent person to file the petition. Resultantly, the eviction order was passed also by the Rent Controller for the son on 05.11.2015, keeping in view the fact that the Local Commissioner had deposed regarding his earlier appointment in the case of the father and also placed on record certified copy of the order and certified copy of the report.

The said orders have also been upheld by the Appellate

Authority on the same grounds.

The case was argued on 06.04.2017 and counsel for the petitioners had taken time to file an affidavit that they would vacate the premises by 31.03.2018. The matter was adjourned for 01.05.2017 for the said purpose and thereafter, affidavit having not been filed, the matter was again heard on merits. The factual matrix has been thrashed out above. The only issue for consideration is whether the opening of the door *inter se* the two shops regarding two separate tenancies would amount material impairment as such or not, which would lead to an order of eviction under the Rent Act. The law seems to be stacked against the petitioners-tenants and in favour of the landlord.

In ***Piara Lal (supra)***, the order of the Appellate Authority was set aside by holding that once there is an admission regarding the opening of the door from the adjoining shop by breaking the common wall, it would dismantle the value and utility of the shop. The alteration would impair the value and utility of the shop and the shop would lose its identity of being a second shop and eviction ordered on the said ground was restored by allowing the revision petition.

The Apex Court in ***M/s British Motor Car Co. Vs. Madan Lal Saggi (D) Through L.Rs. And another 2005 (1) Civil Court Cases 484*** has held that the material impairment is to be seen from the point of view of the landlord and not from the point of the tenant.

In Dr. Sohan Lal Chawla Vs. Janki Dass Chopra 2005 (3) Civil Court Cases 106, it was held that removal of the two intervening

shops would amount to impairing the value and utility as rent had been paid for two shops separately. In the said case also the adjoining shop had been taken on rent subsequently and it was held that the landlord had removed the wall and the entire shop had been taken on rent at a lump sum rent. Resultantly, the findings recorded by the authorities below were upheld.

Accordingly, keeping in view the above, the factual findings as recorded by the Courts below do not suffer from any infirmity or illegality, which would interference in the revisional jurisdiction by this Court. Accordingly, the present revision petitions are dismissed.

MAY 16, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No