

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

C.R. No. 1238 of 2017
Date of decision: 30.03.2017

Sandeep Kumar

....Petitioner(s)

Versus

Mrs. Adarsh Mehra

...Respondent(s)

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

Present: Mr. Rakesh K. Kaundal, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges the concurrent findings of the Courts below whereby, the Authorities, under the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act'), have found that the premises are unfit and unsafe and ordered eviction and also on the ground of bona fide requirement of the respondent-landlady. The order was passed by the Rent Controller on 03.04.2015 and has been upheld on 23.12.2016 by the Appellate Authority, Amritsar. The bona fide requirement was for the purpose of making the building fit for own business after getting it vacated by reconstruction of the same apart from the fact that there were arrears of rent also and on account of the non-payment of the same. The allegations of unfit and unsafe were accordingly alleged which were rebutted by the petitioner-tenant. This Court has upheld the eviction orders passed in another application where eviction has been also ordered on non-payment of provisional rent assessed vide order of even date in C.R. No. 1251 of 2017.

In order to shatter the defence, the landlady examined Arvinder

Singh, Civil Engineer, as AW-2, who was appointed as per the orders of the Court dated 15.11.2011 and had given due notice on 13.01.2012 to the petitioner-tenant for inspection. He had taken along Swaraj Singh, the photographer, as AW-3 and he submitted his report Ex. A-3.

In contrast, the tenant examined Civil Engineer, Avtar Singh as RW-3, who inspected the premises on 01.02.2015 and submitted his report Ex.RW-3/1. The landlady appeared through her Power of Attorney, who was none else but her daughter Anjali Mehra as AW-4. The following findings were recorded by the Rent Controller regarding the status of the building keeping in view the report and photographs which were placed on record.

“It is further stated that on inspection, he found that the overall condition of demised premises was worse; that the walls which were made of standard size bricks and laid with Chuna Surkhi mortar were badly cracked and those cracks were patched/repaired/filled by Cement Plaster; that the mortar used in the masonry work has completely lost its adhesive and strength and was continuously falling from the brick joint; that Cement Plaster had also fallen down on various places due to dampness prevailing on the surface of walls; that the roof of demised premises was made of wooden planks supported by iron girders and T-iron and that respondent has made permanent wooden parchati by making wholes in the both side walls. He has deposed as per his observation given in the report. Though, he was cross-examined at length by the learned counsel for respondent but nothing worthwhile came out of it. The entire inspection of the demised shop was done by him in the presence of respondent as he has also tendered on record copy of legal notice dated 13.01.2012 sent by

applicant through her counsel to respondent prior to his visit as Ex.A1 along with postal receipt as Ex. A2. The learned counsel for respondent argued that the report of this witness can not be read into evidence as he has not inspected the entire building, during his cross-examination, he has stated that he had not gone to inspect the upper floor of the building. But is not relevant to main controversy involved in the present case. Moreover, the building expert examined by respondent namely Avtar Singh has also inspected the demised shop, that too in the absence of the applicant. No evidence has been produced on record by respondent that the remaining portion of main building is fit for human habitation. Rather, in her application, the applicant has stated that she has already filed similar ejectment application against the two other tenant in the building as she intends to reconstruct the same in order to make it fit for the business which she intends to start therein. Further, from the report as well as evidence AW2 Arvinder Singh, it was proved on record that the demised shop is in dilapidated condition and is not fit for human habitation. Even from the photographs Ex.A5 to Ex.A14 proved on record by photographer AW3 Swaraj Singh who had accompanied AW2 Arvinder Singh, it has proved in record that the demised shop is in dilapidated condition and is not fit for human habitation. Even from the photographs Ex.A5 to Ex.A14 proved on record by photographer AW3 Swaraj Singh who had accompanied AW2 Arvinder Singh at the time of inspection of demised shop, it is apparent that there are cracks in the walls of the shop. Even the plaster at some portion of walls has fallen down. During his cross-examination, AW2 Arvinder Singh has stated that he had checked the strength of

adhesive material by visual observation. He had not been cross-examined further on this point by the learned counsel for respondent to shake his veracity.”

The report of the tenant's expert was rejected on the ground that it was on the basis of visual observation and he had never inspected the entire premises. A false ceiling had existed on the roof but he had never removed the ceiling to see the roof underneath. He had admitted that unplastered walls were made of Nanakshahi bricks and a major portion of the building was also made up of the said bricks which had been not put in use for the last 70 years. The argument of counsel for the respondent that the landlady had not stepped into the witness box to prove her case also was rejected on the ground that she had approached her daughter as attorney. Reliance was placed upon *M/s Rekha Land Pvt. Ltd. vs. Smt. Sheelawanti @ Sheela Devi, 2011(2) CCC 245 (P & H)* to note that it was a registered Power of Attorney and the Attorney had mentioned that the landlady was 75 years of age and not in a fit shape of health.

The said reasoning is justified in as much as the Apex Court in the case of *Man Kaur (dead) by LRs vs. Hartar Singh Sangha, 2010 (10) SCC 512*, has laid down the principles in cases of close relations and held that the Attorney of a close relative is in a position to depose about the principal and the same should be accepted in such circumstances. The principles in *Man Kaur's case (supra)* read as under:-

“12. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about

the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those

different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."

The matter in appeal was also scrutinized by the Appellate Court who examined the evidence in detail and noticed that the expert of the tenant had never served any notice prior to his visit and the landlady was not present at that time and neither any permission had been taken from the Court. No photograph of any woodwork of the premises was taken and in view of the fact that there was an admission that the premises were made up of Nanakshahi bricks, the preference was, thus, given to the expert of the landlady. It was noticed that nothing had been brought on record by the landlady that she was drawing any pension of her own or of her husband

and, therefore, she had a right to start the business in the premises and merely because she was aged, it would not mean that she was debarred as such to run a business through her servants. It was also noticed that against the other tenant namely Ashok Kapoor, the eviction petition had been allowed on 31.10.2014 (Ex.A-13, wrongly mentioned as Ex.A-17). A perusal of the said order would go on to show that from another portion of the building numbering 2344 and 2345, ejectment had been ordered of Ashok Kapoor and National Woolen Industries on the ground of bona fide requirement. It is, thus, apparent that the landlady was diligently pursuing her remedies to get the possession from the tenants who were occupying the said building so that she can use the same for bona fide requirement.

Keeping in view the above cumulative facts, the findings recorded by the Courts below would not warrant interference by this Court, under revisional jurisdiction, as held by the Apex Court in ***Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh (2014) 9 SCC 78*** that powers of revision are to be exercised only in case of procedural infirmity and this Court is not to sit as a Court of second appeal. The relevant portion reads as under:-

“45. 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 reappreciation 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 reappreciate 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.

The said view is reiterated in ***M/s Boorugu Mahadev & Sons & another Vs. Sirigiri Narasing Rao & others (2016) 3 SCC 343*** wherein interference by the High Court in the factual matrix was not approved off.

The observations read as under:

“21. Like wise, when we peruse the impugned order, we find, as rightly urged by the learned counsel for the appellants, that the High Court did not keep in mind the aforesaid principle of law laid down by the Constitution

Bench in the case of Hindustan Petroleum Corporation Ltd. (supra) while deciding the revision petition and proceeded to decide the revision petition like the first appellate Court. The High Court as is clear from the judgment probed in all the factual aspects of the case, undertook the appreciation of whole evidence and then reversed all the factual findings of the appellate Court and restored the order of the Rent Controller. This, in our view, was a jurisdictional error, which the High Court committed while deciding the revision petition and hence it deserves to be corrected in this appeal. In other words, the High Court should have confined its inquiry to examine as to whether any jurisdictional error was committed by the first appellate Court while deciding the first appeal. It was, however, not done and hence interference in this appeal is called for.”

Accordingly, the present revision petition is dismissed.

30.03.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No