

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

**Civil Revision No.2340 of 2015 (O&M)
Decided on : 19.01.2017**

Padam Sain

... Petitioner

Versus

Meena and others

... Respondents

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

Present : Mr. Vipul Jindal, Advocate
for the petitioner.

Mr. M.L. Sarin, Sr. Advocate with
Ms. Hemani Sarin, Advocate for the respondents.

G.S. Sandhawalia, J. (Oral)

The petitioner-tenant is aggrieved against the eviction order passed by the Appellate Authority, Sirsa dated 15.11.2014 on the grounds of material alternation of the demised premises without the consent of the landladies/respondents.

It is the case of the respondent/landladies that respondent was inducted as a tenant in the one 'khan' of shop by the previous owner and predecessor in interest of the appellants, namely, Om Parkash who had newly constructed the entire building of which the shop is a part comprising eight shops and the residential area. The tenant had executed a rent note dated 15.07.1980 and the period of tenancy was from 14.07.1980 to 13.10.1980 @ ₹500/- per month, which was increased to ₹1,000/- per month. They had become the owners of the shop in question through decree against Om Parkash their father and the tenant's status had become of a statutory tenant under the payment of the said amount and he was continuing in possession.

Resultantly, the eviction petition was filed on 17.05.2002 for arrears of rent from 01.10.1999 alongwith the issue of material impairment and value of the shop in question on account of replacing and raising the front beam of shop upto the height of 3 feet raising level of the floor upto 11/2 and by demolishing the back wall measuring 9x10-1-4 and installing a beam therein. A new shutter had also been put over of different size and, therefore, the tenant had endangered the upper two stories of the shop by breaking the beam, which was very strongly built and had replaced the same by a weak beam. It was further averred that he has demolished the backwall of one 'khan' shop and installed the beam therein and trespassed into the rear portion of the building now owned by the brothers of the landladies and therefore deprived the passage of the rear portion. The premises were also required for the brother of the appellants Hemant Kumar who is stated to be a member of the Sirsa District Bar Association and wanted to start practice.

In reply the rate of rent @ ₹500/- was admitted and that it had been increased to ₹1,000/-, which was reduced into writing on 13.10.1999. The landladies had not submitted any rent note and they should be asked to produce original rent notice. It was further submitted that the respondent is in possession of the area of 10 (1/3) x 27 feet, which was two 'khan' shops and the petitioners had filed the petition for the area 11 (1-4) x 13 (10-1/2) feet. The details of the rent tendered were also given. The premises in question were taken from Om Parkash and the tenant has not replaced any beam of the shop. The Rent Controller

framed the following issues:-

- “1) Whether the respondent is in arrears of the rent? OPP*
- 2) Whether the respondent has materially impaired the value of demise premises? OPP*
- 3) Whether respondent has committed such acts as nuisance to the persons of neighbourhood of the demise premises? OPP*
- 4) Whether petitioners require the demised premises for their personal use? OPP*
- 5) Relief.”*

The issue of bonafide requirement was rejected by the Rent Controller alongwith the ground of material impairment by holding that there is no evidence on the file that the intervening wall had been removed and value of shop in question had been impaired and no building expert has been examined. It was, accordingly, held that on account of shops being transferred in favour of the daughters, it is not necessary that the landowner should be the owner, but the landowner may be landlord of the property in question. Exhibit D-1 was relied upon to hold that there was an agreement as such between Om Parkash that he was owner in possession of the room which had been given to the tenant and it was included in the shop in question. The length of the shop was thus increased and rent was thus to go up. It was, accordingly, held that once Om Parkash had given the consent to include the room in the shop by removing the intervening wall, then the petitioner could not level the allegations. Accordingly, it is held that the landladies have not come to the Court with clean hands and concealed material facts and are not entitled for eviction from the shop in question on that ground. On account of the fact that the petitioners have not appeared in the witness

box and the General Power of Attorney, namely, Hemant Kumar being not conversant with the facts, it was held not sufficient to pass the eviction order and accordingly the eviction petition was dismissed on 09.08.2010.

It is not disputed that thereafter the Appellate Authority had allowed the same on 31.05.2011. The same was subject matter of **Civil Revision No.4765 of 2011**, which on consent remanded the case to the Appellate Authority vide order dated 08.08.2014. The order reads as under:-

“Counsel for both the parties state that since there are multiple infirmities in the impugned order and material as also evidence otherwise available on record has been overlooked, the case may be remanded to the Appellate Authority to decide the same afresh on the evidence available on record. To demonstrate, it has been mentioned that the Appellate Authority has commented that Ex.D1 does not bear signatures of landlord Om Parkash, whereas this document is found to be executed by landlord Om Parkash. It is also averred that personal necessity of daughters of Om Parkash was never pleaded but eviction has been ordered inter-alia on the ground of personal necessity of the daughters as well.

Keeping in view the request of Counsel for both the parties, which on the material and circumstances on record is well founded, by setting aside the impugned order, the mater is remitted to the Appellate Authority under the East Punjab Urban Rent Restriction Act, 1949 for decision afresh within a period of three months. Disposed of.

The parties are directed to appear before the Appellate Authority on 10.9.2014.”

It is, thereafter, the impugned judgment has been passed by the Appellate Authority directing the ejectment on the ground of material

alteration.

Counsel for the petitioner has referred to the agreement Ex.D-1, which was executed with the father of the landladies to submit that there was an agreement as such and there was a consent of the landlord, the original owner and, therefore, the eviction on the ground of material alteration was not justified. The agreement as such reads as under:-

“ *AGREEMENT* *Ex.D-1*

I, Om Parkash son of Sh. Megh Raj is resident of Old Committee Street, Sirsa. I am owner of one shop No.119/1 (old) 268/5 (New), whose private number is one and is situated in front of Shop No.2 in market of old Committee and the said Shop is already under tenancy with Padam Jain son of Atma Ram. Now I have agreed to give on rent the backside room towards East of the Shop measuring 10 ¼ ' x 13 ½' of which I am Wahid Walid and I am in possession of the same. This room I will make part of the shop, which is already with Padam Jain and the whole Shop will then be of 10 ¼' x 27 ½'. From today the rent of this whole Shop will be Rs.2,000/- per month. The Shutter, which is in front of the Shop, Padam Jain wants to raise the height of the same by 1-2' of the floor also, he wants to raise the height by 1-2'. I have no objection in the same. Padam Jain will be entitled to raise the shutter and floor by 1-2'. The other conditions of tenancy will be as per old Tenancy Agreement dated 15.07.80 and according to the said conditions only, the new Tenancy Agreement will be written. Padam Jain has given to me Rs.1,25,000/- as security today and will give Rs.1,25,000/- till 10.10.1999. In this way total Rs.2,50,000/- of Padam Jain will remain with me as security. When Padam Jain will vacate the shop, his security amount will be returned. This agreement has been taken by consent of both the parties, so that the same may be referred to at required point of time.

Place: Sirsa

Dated: 01.10.1999

Sd/- Padam Sain Jain

Sd/- Om Parkash.

Padam Jain

Witness:-

Sd/- Suresh Kumar son of Sh. Chiranji Lal Jindal, R/o Sirsa.”

The same has been rightly rejected by the Appellate Authority on the ground that a judgment and decree stood passed between the father and the daughters way-back on 08.04.1986 and, thereafter, the said agreement dated 01.10.1999 Ex.D-1 would not be of any consequence, whereby the permission could be granted for making material alteration. It was also noticed that no such plea has been taken by the tenant in his pleadings and, therefore, in the absence of the same, it could not be taken into consideration that there was consent on the part of the erstwhile owner. It has been rightly noticed that the demised premises had been rented to the petitioner-tenant and he had encroached upon another portion by removing the intervening wall. The said portion had belonged to the brother of the landladies Pawan Kumar and Hemant Kumar, who had filed a suit for possession which was eventually decreed in their favour on 31.05.2011 and at that point of time it had been decided by the Appellate Authorities together at Sirsa.

Before this Court the matter was taken by the petitioner-tenant in ***RSA No.4064 of 2011 titled as 'Padam Sain Vs. Pawan Kumar'***, which was decided on 09.01.2012 and the said judgment was upheld by recording as under:-

“Earlier Om Parkash father of the plaintiffs was owner of the entire building. He suffered consent decree dated 22.01.1985 Exhibit P-8

in favour of his sons and daughters. By way of said decree, Meena etc. daughters of Om Parkash became owners of the front shop, which is admittedly on rent with the defendant, whereas plaintiffs became owners of the suit property lying on back of the rented shop. The plaintiffs have filed suit for possession and mesne profits on the basis of their title. They have proved their title by way of decree dated 22.01.1985. The defendant claims to have taken the suit property on rent from plaintiffs' father Om Parkash vide rent note dated 13.10.1999. However, Om Parkash had no authority to rent out the suit property to defendant at that time being no longer owner thereof. On the other hand, plaintiffs being owners of the suit property are entitled to seek possession thereof from the defendant. Learned counsel for the appellants vehemently referred to observations of the trial Court in paragraphs 12 and 13 of its judgment. The trial Court observed that the Court is not to decide the title. This approach of the trial Court is patently perverse because plaintiffs claimed relief on the basis of their title over the suit property.

Trial Court also observed that the decree dated 22.01.1985 has not been acted upon. This approach of the trial Court is also unsustainable because decree dated 22.01.1985 declared the plaintiffs to be owners of the suit property. Consequently even if entry regarding ownership of plaintiffs was not made in municipal record, it would not divest the plaintiffs of their ownership over the suit property.

Learned counsel for the appellants also contended that the suit was filed on 07.05.2003 i.e. three and half years after the defendant had allegedly occupied the suit property illegally. However, merely because the suit was filed after three and half years of illegal occupation of the defendant over the suit property, the plaintiffs cannot be non-suited.

For the reasons aforesaid, I find no merit in the instant second appeal. Suit of the plaintiffs has been rightly decreed by the lower appellate Court. No question of law, much less substantial question of law, arises for adjudication in this appeal. The appeal is accordingly dismissed in limine.”

In such circumstances, the findings which have been recorded as such that the Rent Controller was not justified to place reliance upon the Ex.D-1 is liable to be upheld, as it is settled principle that the Courts are not to go beyond the pleadings and evidence beyond the same cannot be looked into. The said proposition of law is based on the ground that neither of the parties can take the other by surprise and other side should be given opportunity to rebut the case and explain, if such a plea is taken. On the pleadings, accordingly, evidence has to be produced to substantiate the submissions and in the absence of the same, the Court cannot examine the said evidence.

As noticed in the present case the stand of the tenant was not that the alteration as such had been done with the consent of the landlord and a categorical averment had been made that he had not replaced any beam of the shop. The Apex Court in '**Rajasthan State Transport Corporation and another Vs. Bajrang Lal'** 2014 (3) SCR 782 held on the said issue as under:-

11. The aforesaid findings recorded by the trial court is based only on the allegations made by the respondent in the plaint and on failure of the Corporation/defendant to rebut the same, though the trial court had proceeded with the case clearly observing that the burden of proving this issue was on the respondent/plaintiff and not on the Corporation/defendant. In such a fact situation, no reasoning whatsoever has been given by the trial court in support of its conclusion. Neither there is any specific pleading as to what document had not been supplied to him which has been relied upon by the enquiry officer or which witness was not permitted to be cross-examined by him. The trial court did not make any reference to enquiry report or contents thereof. The entire case is

based on ipsi dixit.

12. *It is settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the plaint and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. (Vide: M/s. Larsen & Toubro Ltd. & Ors. v. State of Gujarat & Ors., AIR 1998 SC 1608; National Building Construction Corporation v. S. Raghunathan & Ors., 1998(4) S.C.T 165 : AIR 1998 SC 2779; Ram Narain Arora v. Asha Rani & Ors., JT 1998 (6) SC 181 : 1999(1) SCC 141; Smt. Chitra Kumari v. Union of India & Ors., 2001(2) R.C.R.(Civil) 133 : AIR 2001 SC 1237; and State of U.P. v. Chandra Prakash Pandey, JT 2001(4) SC 145 : AIR 2001 SC 1298.)*

13. *In M/s. Atul Castings Ltd. v. Bawa Gurvachan Singh, 2001 (1) R.C.R.(Rent) 532 : AIR 2001 SC 1684, this Court observed as under:-*

"The findings in the absence of necessary pleadings and supporting evidence cannot be sustained in law."

(See also: Vithal N. Shetti & Anr. v. Prakash N. Rudrakar & Ors., 2002(2) R.C.R.(Rent) 708 : 2003(1) SCC 18; Devasahayam (Dead) by L.Rs. v. P. Savithramma & Ors., 2005(4) R.C.R.(Civil) 306 : 2005(2) R.C.R.(Rent) 369 : 2005(7) SCC 653; Sait Nagjee Purushotam & Co. Ltd. v. Vimalabai Prabhulal & Ors., 2005(2) R.C.R.(Rent) 436 : 2005(8) SCC 252, Rajasthan Pradesh V.S. Sardarshahar & Anr. v. Union of India & Ors., 2010(3) S.C.T. 300 : AIR 2010 SC 2221; Ritesh Tiwari & Anr. v. State of U.P. & Ors., AIR 2010 SC 3823; and Union of India v. Ibrahim Uddin & Anr., 2012 (4) R.C.R.(Civil) 727 : 2012(8) SCC 148).

14. *Therefore, once the trial court has held that the burden of proof was on the respondent/plaintiff, it could not have come to the aforesaid findings as there is nothing on record to show how the averments/allegations made by the respondent stood proved.*

Once the specific stand of the petitioner-tenant was not that

of the fact that the consent had been given, he could not rely upon the

said agreement *inter se* with the Om Parkash and thus there is a admission that material alteration was there.

Resultantly, this Court is of the opinion that the findings which have been recorded by the Appellate Authority do not require any interference in revisional jurisdiction. Accordingly, the present revision petition is dismissed.

JANUARY 19, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No