

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

C.R. No. 3026 of 2016 (O & M)

Date of decision: 24.03.2017

Inderjit

....Petitioner(s)

Versus

Deepak Khanna and others

...Respondent(s)

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

Present: Mr. M.S. Sachdev, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 13077-CII of 2016

Application seeking exemption from filing certified copies of
Annexures P-11 to P-21 is allowed, subject to all just exceptions.

C.M. No. 13078-CII of 2016

Application for placing on record Annexures P-11 to P-21 is
allowed, subject to all just exceptions.

The same are taken on record.

C.M. No. 8927-CII of 2016

In view of the reasons mentioned in the application, delay of
163 days in filing the present revision petition is condoned.

Application stands disposed of.

C.R. No. 3026 of 2016 (O & M)

The present revision petition filed by the tenant is directed
against the order dated 21.02.2015 whereby, the Rent Controller, Jalandhar
has directed ejectment on the ground that the building is unsafe and unfit
which has been upheld in appeal on 18.08.2015. The finding was recorded

on the basis of the statement of the landlord, who appeared as PW-1 and also on the basis of the report dated 30.06.2014 (Ex.P-4) of the building expert namely Rana Partap Mittu, who appeared as PW-2 from the office of the PWD (B&R), Jalandhar Cantt. The expert had visited the spot as per the Court orders and also issued notice to both the parties and inspected the building in question. It was noticed that the roof of the ground floor had collapsed at many places, structural cracks were there in the first floor and there was sag beyond the permissible limits on the first floor. There was a huge growth of vegetation and the tree trunks had developed in the building. The wood work of the building had been damaged by weather and eaten by the white ants etc. Parapets were broken and the roots of the trees had spread in the entire building right from the top of the building and movement on the first floor was very risky. The relevant part of the report reads as under:-

“It is a three storey building. The overall present position of the building is explained here, with the help of photographs. It is found that the first floor (Roof of Ground Floor) has been collapsed at many places, structural cracks are there in the First Floor, and sag beyond the permissible limits in the first floor is there. There is a huge growth of vegetation. The tree trucks have been developed in the building (refer Photo Number 12, 14, & 18). The roots of the tree have been spread in the entire building right from the top of the building, buried in the walls, floor and even up to ground floor also. The wood work of the building has been damaged by weather and eaten by the white ants etc. at several places. Parapets have been broken. Effect of moisture is there. The movement at first floor is very risky as the first floor has been collapsed at many

places as clearly shown in the several photographs attached with this report. The title terracing of Ground Floor is intact but bottom of the roof has already been fallen (refer Photo No: 21). It has been seen from the photographs that the first floor has been fallen at so many places (refer Photo number 7, 8, 10, 11, 14, 21, 24, 25 & 28). The roots of the tree have been spread in the entire building right from the top of the building to bottom of the Ground floor. The walls of shop are in the dilapidated condition. A few cracks are there in the stairs also. However detail of the inspection made by me explained with the help of photographs is as under.”

On the other hand, no expert was examined by the tenant and the justification which Mr. Sachdev has now given is that the evidence was closed by order and the process had also been deposited for the expert as such but he had not been summoned. It is further submitted that the order was passed on 19.02.2015 closing the evidence of the tenant and the case was thereafter decided on 21.02.2015 and, therefore, no reasonable time was as such given to the tenant to rebut the report.

A perusal of the zimini orders would go on to show that the evidence of the landlord was closed on 10.11.2014. No witness was present on behalf of the tenant on 29.11.2014, 12.12.2014, 24.12.2014, 08.01.2015, 17.01.2015, 29.01.2015, 09.02.2015, 16.02.2015, 18.02.2015, resultantly leading to the passing of the order whereby evidence was closed. Thus, the argument which is raised now that effective opportunity was not given to produce the expert is without any basis. The fall back that there was some medical problem in such circumstances, keeping in view the period which the petitioner had been given to bring on record other evidence, cannot be a good ground.

The reasoning, thus, given by the Rent Controller while ordering eviction on the ground that the building has become unfit and unsafe is well justified. The ground of sub-letting has been held against the landlord though an averment had been made that the original tenant had himself shifted to Rajasthan. The issue was also examined by the Appellate Court which also noticed that 5 effective opportunities were given and thereafter 5 more adjournments were granted and, therefore, the argument which has now again been highlighted was rightly repelled in view of the uncontroverted report and the evidence of PW-2. The relevant part of the cross examination of the expert read thus:-

“However, Pipal tree and moisture in wall is there. I do not know since when the building was white wash. It is incorrect to suggest that in case the building is white wash the moisture will finish. It is incorrect to suggest that the roof of the shop can be repaired. Volunteered roof has already fallen down. It is mentioned in the photograph no. 12, 25 and 28. Even the roof can not be changed. There is no habitation in the first floor. It is incorrect to suggest that the roof can be repaired. The roof is made of wooden batons, wooden plank and covered with mud plaster. It is incorrect to suggest that wooden batons and wooden planks of the roof can be changed. The floor of the shop is made of ordinary bricks. I cannot tell which type of bricks floor is made up of. It is incorrect to suggest that the shop is not in a dilapidated condition. Pipal trees generally grow on buildings with the passage of time. It is correct that these trees grow in case there is not maintenance properly. It is incorrect to suggest that I have given the report in order to help the petitioner. It is incorrect to suggest that I have deposed falsely.”

The photographs marked as Exs. A-1 to A-34 also placed on record have been examined by this Court also. The same would go on to show that the findings which have been recorded are well justified.

Keeping in view the above cumulative aspects and the fact that this Court is sitting in revisional jurisdiction, no ground is made out to interfere in the well reasoned orders passed by the Courts below and accordingly, the present revision petition is dismissed.

24.03.2017 shivani	(G.S. SANDHAWALIA) JUDGE
Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No