

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

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**CR No.278 of 2014 (O&M)
Date of decision: 30.01.2017**

Gurudwara Shri Guru Singh Sabha

....Petitioner

Versus

Santokh Singh & another

...Respondents

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

Present: Mr.K.S.Kang, Advocate, for the petitioner.

Mr.Vijay Kumar, Advocate, for the respondents.

G.S. SANDHAWALIA, J. (Oral)

Petitioner-landlord has challenged the concurrent findings recorded by the Courts below, dismissing the eviction petition which was filed on the ground that respondent No.1 had sublet the premises to respondent No.2 and had made additions and alterations in the premises and changed the use of the same.

The Rent Controller found that no person of the locality was examined to prove the running of the Preet Family Restaurant and Maruti Hira Motors by the respondents, who are father and son. Neither any documentary evidence has been placed on record nor any suggestion had been made that some other person was in possession. It was also held that since there was no parting of the possession, neither there was any consideration of money or otherwise, for parting of the said premises. Regarding the issue of additions and alterations having been made, reliance was placed upon the rent note dated 24.10.2001 (Ex.P19) stating that the respondents were permitted to make change or raise construction upon the premises owned by the petitioner-Gurdwara Shri Guru Singh Sabha. The waste water had to be drained out in the septic tank constructed in the

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ground and nothing has come on record, as such, that the drainage had been done in another septic tank situated at the backside of the premises. No evidence, as such, has been produced as to the prior position of the windows and ventilators of the premises in dispute and therefore, nothing has been recorded that the position of the windows and ventilators have been changed.

Regarding the change of the user, it was held that the rent note did not show that the premises were given for running a specific business. The mere fact that the respondents were running the business of Preet Family Restaurant (Vegetarian and Non-Vegetarian) in the premises and serving non-vegetarian foods, was also rejected on the ground that no evidence was brought on record except the photographs and there was nothing to show that any such persons have been examined that they had been served vegetarian or non-vegetarian food. It was noticed that the photographer-Jaspal Singh had also not developed the photographs himself nor he got it developed from the colour lab and he admitted that no business of restaurant was going on when he took the photographs. Resultantly, vide order dated 03.08.2011, the eviction petition was dismissed.

The Appellate Authority has also noticed that the Rent Controller had mentioned regarding the silence about the names to whom the premises were sublet and not proving the ingredients of subletting by mentioning the names. Resultantly, finding was recorded that once the three ingredients of subletting being the time of subletting, exclusive

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possession of the premises and consideration in terms of money, have neither been pleaded nor proved, eviction cannot be ordered on that ground. The factum of change in the position of windows and ventilators and whether the drainage of the waste water in the septic tank was done later on, had also not been proved as the earlier plans had not been produced. The issue on material additions and alterations was also decided against the landlord. In the absence of any witness, the running of the restaurant and serving of non-vegetarian food, was also rightly rejected, because it was for the petitioner-landlord to plea and prove that non-vegetarian food was served, hurting the religious sentiments, as such. Thus, a perusal of the judgment passed by the Appellate Authority would go on to show that proper regard had been given to the principles which were necessary for ordering eviction.

Resultantly, this Court is of the opinion that there is no illegality or infirmity in the orders passed by the Courts below. It is settled principle that this Court is not sitting as a Court of appeal and the said orders are not liable to be interfered with in revisional jurisdiction, especially, keeping in view the observations of the Apex Court in **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh (2014) 9 SCC 78.** Resultantly, finding no merit in the present revision petition, the same is, hereby, dismissed.

January 30th, 2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No