

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

(1) CR No.4098 of 2013 (O&M)

Hans Raj & othersPetitioners
Versus
Sukhdev Raj & others ...Respondents

(2) CR No.4967 of 2013 (O&M)

Sohan LalPetitioner
Versus
Sukhdev Raj & others ...Respondents

Date of decision: 18.01.2017

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

Present: Mr.B.D.Sharma, Advocate, for the petitioners
(in CR-4098-2013).

Mr.Sandeep Arora, Advocate, for the petitioners
(in CR-4967-2013).

Mr.Krishan Sehajpal, Advocate, for the respondent No.1.

G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 2 revision petitions, filed by 2 different tenants and their LRs, bearing CR-4098 & 4967-2013, since a common judgment has been passed by the Appellate Authority, Jalandhar and the same is under challenge. However, to dictate judgment, facts have been taken from CR-4098-2013 titled *Hans Raj & others Vs. Sukhdev Raj & others*.

The present revision petition is directed against the judgment dated 26.04.2013, whereby the appeal of the respondent-landlord was allowed on the ground that the building was unfit and unsafe for human habitation and the value and utility had been materially altered, under issues No.5 and 7. Accordingly, the petitioner was directed to vacate the possession of the demised premises within a period of 2 months. The

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connected appeal of the tenants on the ground of ejectment on account of personal requirement, as held by the Rent Controller, was allowed, in favour of the petitioner-tenants, as such. Thus, the sole issue which would arise for consideration is whether the finding which has been recorded by the Appellate Authority on the issue of the building being declared unfit and unsafe on the basis of the impairment in value and utility, is liable to be upheld.

The ejectment application was filed against the 3 tenants, regarding the 2 shops in question which were adjoining each other, as described in the headnote of the petition, on the ground that the rent had not been paid w.e.f. 01.03.1993 @ Rs.500/- and that petitioner No.1-Hans Raj had sublet the shop to the LR of petitioner-Des Raj and Sohan Lal, petitioner in CR-4967-2013, without permission. The ground of cease to occupy for the last 4 months was also taken, apart from the issue of impairing the value and utility of the premises and the shops being unsafe and unfit for human habitation. In the pleadings, it was mentioned that the premises were sought to be vacated on the strength of the inspection done on 26.05.1994 from the Building Expert, Chadha & Company. It is pertinent to mention that the shops, as such, are bounded on the East and South sides, by the property of the landlord. It was specific allegation that after the inspection, notice was served upon the petitioner-tenants to vacate the shops but to no effect.

In the joint written statement filed, the respondents took the plea that the petitioner-landlord had no *locus standi* to file the ejectment application as there was no relationship *inter se* the parties. The site-plan

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was disputed and the description of the property etc. The fact that cease to occupy was also denied and it was averred that the respondents were running ice candies business and during the winter season, there was no business and that the business was carried out only in the summer season. The allegations of *bona fide* requirement was also, accordingly, disputed. The factum of impairing the value and utility of the shops in question was denied and that ice and salt and other chemicals had led to huge cracks in the walls, ceiling, roof etc. and that the ceiling of the shop had fallen down and there was too much dampness in the shops etc. The factum of the wooden fixtures in the shops having been eaten by the white ants and that the property was inspected in the year 1994 were also denied. The service of the notice was also, accordingly, denied that the same had not been supplied to the tenants and the plea taken was that the petitioner-landlord was himself occupying the first floor of the shop in question. Thereafter, the amended written statement was filed on behalf of Sohan Lal.

The Rent Controller framed the following issues *inter se* the parties:

1. Whether there is relationship of landlord and tenant between the parties as alleged, if so, its effects? OPP
2. If issue No.1 is proved, whether the respondent has made short and invalid tender? OPP
3. Whether the respondent No.1 has sublet the demised premises to respondents No.2 & 3 as alleged? OPP
4. Whether the respondent has ceased to occupy the demised premises? OPP
5. Whether the respondents have impaired the value and utility of the demised premises? OPP

6. Whether the petitioner requires the demised premises for personal use and occupation? OPP
7. Whether the demised premises are unfit and unsafe for human dwelling? OPP
8. Whether the description made by the petitioner is wrong, if so, its effects? OPR
9. Whether the present petition is liable to be dismissed for want of serving notice u/s 106 of the Transfer of the Properties Act? OPR
10. Whether no cause of action has accrued to the petitioner to file the present petition? OPR
11. Whether the petitioner has got no locus standi to file the present petition? OPR
12. Relief.

Sukhdev Raj, stepped into the witness-box himself as PW1 and exhibited Exs.P-1 to P-7 and the site-plan as Ex. P-28 along with photographs and negatives as Ex. P-8 to Ex. P27. The building expert was examined as PW-8, Parmod Bhardwaj, who deposed that he was Bachelor in Engineering (Civil) and he proved on record his report dated 06.01.2005 regarding the shops in question as Ex.PX and the site plan as Ex.PY.

On the basis of the evidence on record, issue regarding the relationship of landlord and tenant was decided in favour of the landlord. That on the issue whether the respondent had made short and invalid tender, was decided in favour of the tenants and the issues No.3 & 4, regarding subletting and cease to occupy, were also decided in favour of the tenants. The material issues on which the eviction has been ordered, i.e. issues No.5 & 7, were also decided in favour of the tenants by the Rent Controller on the ground that the life of the building was 30-35

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years old and the normal life is about 50 years. It was noted that the building expert had stated that he could not say if the roof of the shop had fallen and neither could he judge regarding the same. In his evidence, he had stated that by making minor repairs, the building could be made stable and load bearing. It was further admitted that he had not mentioned the length of any cracks or nature of the same. The Rent Controller also noted that the wires were broken though it had not been mentioned in his report as to from which place the wires were broken. The photographer was also not examined, who had clicked the photographs. Resultantly, the eviction was ordered only on the ground of *bona fide* requirement, as such.

Counsel for the petitioners have vehemently submitted that there were infirmities in as much as the building expert had not given any notice, as such, to the fact of the visit and the report was prepared at their back and they were prejudiced.

A perusal of the report, namely, Ex.PX would go on to show that the expert had noticed that the shops were in front of the building of the owner and the roofing of the shop on the right side had fallen down and the saria (iron rods) were visible hanging along the centre wall of the two shops and malba was lying within the shop at the time of his visit. The walls were having several cracks of ½ inch to 2 inches thickness and also the corners of the walls were separated. The wooden frames and panels were in a damaged condition and were only standing due to the supporting at the floor and the hinges of the doors had been separated. Similarly, both the shops were also stated to be in a bad condition. The

RBC slabs and tiles terracing were visible from site and other portion of the shop 'B' was also in a precarious condition as the roof of shop 'A' had fallen. The report Ex. PX reads as under:

“Two shops in question are under the tenancy of the respondent. The age of the shops seems to be 30-35 years as per its materials used and condition of the walls and the roofing.

The roofing of right hand shop in question marked 'A' in the plan has since fallen. The iron steel rounds (Saria) is visible hanging along the centre wall of two shops. The malba is lying within the shop at the time of my visit to the site. The walls are having several cracks of ½” to 2” upto full ht. of the wall at east-south corner of shop 'A'. Also the shop in question has separated junction on the south east corner and front wall over the wooden door has several irreparable cracks. The wooden frames and panells are in fully damaged condition only standing due to the supporting at the floor.

The hinges of the doors are separated and the Panells are eaten out due to white ant and due to the effects of whether and damaged due to dampness.

The shop 'B' is also on the bad condition. The bending at the terracing and also the bend is visible through the gaps in doors of that shop (B). The middle wall between the two shops is having color eaten bricks. Also the bricks of walls of the shop 'A' are badly color damaged and cannot be repairable.

The condition of both the shops are of same time and the RBC slab is laid jointly at the same time. The roof of portion 'A' has already fallen and the portion of 'B' is also in precarious condition.

The load bearing walls of both the shops are not capable of taking above loads of put on the walls. The both the shops are unfit and unsafe for human habitation and these can fall any moment.

CERTIFICATE

ON THE ABOVE CONSIDERATIONS, I certify that the shops of Sh. Sukhdev Raj marked 'A' & 'B' on the plan under the tenancy of Sh.Hans Raj & others at Nakodar Road, Jalandhar, are unfit and unsafe for human habitation. The walls, roofing, flooring, joinery,

electricity is fully damaged, color, eaten and dampness and weather effects. There are cracks and separation of junction on both the shops. It is not at all repairable.”

Accordingly, the conclusion was arrived at the the building was unfit and unsafe for human habitation and it was not at all repairable.

As noticed, the expert was examined as PW8 and duly cross-examined. In the cross-examination, it has come that none of the respondents were present when he visited the shop and some other persons were present. In the statement recorded of the building expert, it was denied that a false statement was given that the electric connection was still there and that he had visited the spot. Categorically, it was volunteered that the electricity was not working as the wires thereof had been broken, though he had not gone at the spot and he did not know that the electricity bills were paid regularly.

It is not disputed that apart from the report of the expert, nothing has been brought on record by the respondent-tenants to show to the contrary, by examining any building expert, as such. Before filing of the ejectment petition, notice Ex.P4 was also served upon the tenants that the building had become unfit and unsafe for human habitation and could fall down at any time and it was their responsibility but nothing had been shown that the said notice had been responded to. Shri Hukumat Rai, Advocate had also been examined along with the postal receipts Ex.PS to prove the notice.

The Appellate Authority has, accordingly, in detail, examined the report and relied upon the same. It is also noticed that RW6-Rajan Kumar had taken the photographs Ex.D4 & D5, to rely upon

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the factum that the plaster had completely peeled off the wall and the doors were in broken condition. The Appellate Authority also examined the photographs Ex.P8 to P17 to come to the said conclusion as they lend due corroboration to the statement made by the building expert who had opined that it was unfit and unsafe. Resultantly, issues No.5 & 7 were, thus, decided in favour of the landlord by recording the findings.

No contrary evidence was ever produced that the report prepared was against the record and that there was a contrary opinion of another expert. Once the expert had appeared in Court and given statement and stood by his report, specifically that out of the 2 shops, roof of one shop had completely fallen down and the roofing slab was common having been laid jointly at the same time, the Appellate Authority was well justified in reversing the findings of the Rent Controller. This Court has also examined the photographs which are part of the Lower Court record and the findings which have been recorded by the Appellate Authority do not suffer from any infirmity, as such, which would warrant interference by this Court. Accordingly, the present revision petitions stand dismissed.

January 18th, 2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes