

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

C.R. No. 4016 of 2017 (O & M)

Date of decision: 01.06.2017

Dinesh Kumar and another

...Petitioner(s)

Versus

Amrish Kumar

...Respondent(s)

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

Present: Mr. G.S. Madaan, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed against the concurrent findings of the Courts below whereby, eviction has been ordered on the ground of the building being unfit and unsafe. The Rent Controller, vide order dated 21.02.2015 (Annexure P-5), from the report of the building expert namely Er. S.K. Malhotra, who was examined as PW-2 and who had tendered his report Ex.PW-2/1, came to the conclusion that the building was unfit and unsafe for human habitation and required demolition from the foundation level. As per the site plan and the photographs of the premises, it came to the notice of the Rent Controller that wooden battens were supporting the roof. In such circumstances, eviction was ordered on the said ground, which has been duly upheld by the Appellate Authority on 11.04.2017 (Annexure P-6).

The Appellate Authority reproduced the concluding part of the report of the building expert, which reads as under:-

“1. The building has been damaged to such an extent that it is difficult to restore the same with any

kind of repairs.

2. *There is unequal settlement of foundations resulting in wide structural cracks and separation of walls at joints.*

3. *The disputed structure has outlived its life and walls have started separating of its own at junctions and presently are danger to the inhabitants.*

4. *The present structure is highly in a dilapidated condition and the same can't be restored to its original form as such.*

5. *The dispute shop is unsafe and unfit for human habitation.*

6. *The same needs to be demolished and requires reconstruction from foundation level which is possible only when the same is handed over to the landlord under vacant possession.”*

A perusal of the same would go on to show that the expert has opined in favour of the respondent and against the present petitioners who chose not to examine any such expert.

Counsel for the petitioner has vehemently submitted that an application for examination of an expert was moved before the Appellate Authority but the same was rejected.

A perusal of the order dated 11.04.2017 (Annexure P-6) would go on to show that the Appellate Authority came to the conclusion that ample opportunity had been given to the tenants to examine such an expert at the time of adducing evidence and, therefore, the said application has been declined. Issue no. 3 was categorically framed regarding whether the shop in dispute had become unfit and unsafe and the onus was upon the respondent-landlord who brought the building expert and who has opined in his favour. It was for the tenant at that stage to lead evidence in rebuttal,

which he failed to do so.

In such circumstances, once the tenant has been negligent as such in the defence of his case, in revisional jurisdiction, there can be no interference since no procedural infirmity or illegality has been done by the authorities below in ordering ejectment on the factual matrix propounded by the parties.

Accordingly, finding no merit in the present revision petition, the same is dismissed in limine.

01.06.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No