

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

**Civil Revision No.5470 of 2016 (O&M)
Decided on : 20.01.2017**

Sanjay Bhatnagar

... Petitioner

Versus

Subhash Chander

... Respondent

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

Present : Mr. Ravi Malhotra, Advocate
for the petitioner.

G.S. Sandhawalia, J. (Oral)

The present revision petition is directed against the concurrent findings of the Courts below, which have recorded categorically that the premises in question which is shop bearing No.1040, Khana Shumari, Ground Floor, G.T. Road, Putlighar, Amritsar has been lying locked for the more than four months prior to the date of the ejectment application, which was decided on 11.01.2013. Apart from the said ground of eviction, the authorities have also come to the conclusion that the shop is required for the bonafide requirement of the son of the landlord, namely, Tarun Bhargav, who stepped into witness box as AW-6. The following issues were framed by the Rent Controller:-

- “ 1. Whether the tender of rent is short and invalid? OPA*
- 2. Whether the respondent has ceased to occupy the demised premises since February 2012 without any reasonable and sufficient cause? OPA*
- 3. Whether the demised shop is required bonafidely by the applicant for use and occupation of himself and his family as prayed for? OPA*
- 4. Whether the application is not maintainable? OPR*
- 5. Relief.”*

Counsel for the petitioner has argued that the mother of the tenant was in hospital and, therefore, on that account the premises were not being occupied. However, perusal of the pleadings do not show any such specific stance has been taken to show reasonable cause for non occupation. It is for the first time in appeal that the matter was raked up. It is settled principle that the evidence beyond the pleadings cannot be taken into consideration by the Courts. The Rent Controller while appreciating the said issue took into consideration the statement of the official of the Punjab State Power Corporation-AW-4 Nirmal Kumari who deposed that the premises where the electricity connection was installed was lying locked, since 29.08.2012 and there were arrears to the tune of ₹ 22,480/- against the said connection and thus, permanent disconnection had been done.

The argument raised by the petitioner-tenant was rejected that there was no number of the property and, therefore, the electricity connection as referred to by Nirmal Kumari could not be held to be co-related. It was repelled by noting that nothing in response had been placed on record regarding the bill receipts showing the payment of electricity charges pertaining to the demised premises by the tenant and, therefore, it has been correctly held that best evidence has been withheld by the respondent and an adverse inference stands drawn against the petitioner while deciding issue No.2. Similarly, keeping in mind the settled proposition that the building was bonafide required for the son, it was held that the tenant cannot dictate the landlord whether he is in need

of the premises or not and the ejectment has been ordered.

The Appellate Authority has also noticed that Tarun was of marriageable age, who is son of the landlord and has deposed specifically with regard to the bonafide need of the premises. It has been stated by him that he is not having any job and is sitting with his father in his tenanted shop where petty business is being carried out and the neighbour Aroor Chand AW-7 had also corroborated the requirement of the landlord.

Accordingly, keeping in view the findings recorded as such this Court is of the opinion that there is no error or illegality which would warrant interference by this Court. ***The Apex Court in Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh 2014 (9) SCC 78*** has held that this Court is not sitting as a Court of appeal. The relevant observations read as under:-

“45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High

Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

Accordingly, the present revision petition is dismissed as there is no error in the findings recorded by the Courts, which are subject matter of challenge.

JANUARY 20, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No