

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5571 of 2017 (O&M)
Date of Decision: 21.08.2017

Smt. Champa

... Petitioner

Versus

Ram Niwas

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ishan Gupta, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.(Oral)

CM No.17513-CII of 2017

Since the main petition has been dismissed, orders on the application under Section 5 of the Limitation Act condoning the delay of 48 days in filing the appeal, no orders are required to be passed.

The application stands disposed of.

CR No.5571 of 2017 (O&M)

1. There are concurrent findings against the petitioner tenant by the Rent Controller and the Appellate Authority holding that the demised premises are unfit for human habitation. Apart from the oral and documentary evidence produced by the parties, the authorities have relied upon the report Ex.P-3 made by the Local Commissioner who was a Junior Engineer, in PWD (B&R), Bhiwani deputed by the Controller to inspect the premises and submit his findings. The report affirms the assertion of the landlord.

2. The only complaint raised against the report by the learned counsel for the tenant in this Court is that the Junior Engineer did not see the

premises from the inside and made his report from the facade and the areas which were open to eye. When the tenant was a lady it was the proper thing for the Junior Engineer to have done not to enter the premises although the Court appointed Commissioner was not directed to enter the premises.

3. In any case, I asked learned counsel if he had photographs of the tenanted premises and he handed over to me photocopies of photographs which speak for themselves. The building not only has been certified to be unsafe but looks unsafe for human residence to the naked eye. The building is made of nanakshahi bricks which are exposed to the weather and reveals scant mortar in the interstices of the brick work. One can see the plaster has peeled off from large chunks on the face of the external walls in the small residential building. The wooden beams appear ancient to eyesight in the photographs and much weather-beaten which precariously support the mortar from the main door and the windows.

4. When the Court has returned a positive and firm finding of fact that the building is unsafe and unfit for residential purposes being in a totally damaged condition, I find nothing palpably wrong in the authorities accepting the report and passing judgment thereon together with the other evidence on record. The residential property falls in congested densely populated abadi area in Municipal limits of Bhiwani and the dilapidated building can pose a threat to the adjoining buildings endangering life and property.

5. Learned counsel also contends that the report of the Junior Engineer should not have been accepted as evidence until the Local Commissioner-cum-Junior Engineer was produced in Court for the tenant to

cross-examine the witness. In the case of a Court appointed Commissioner who is a public servant there is no such legal requirement of cross-examination since the Court appointed Commissioner is merely an extension of the eyes of the Court and it is for the Court to believe or disbelieve the statement.

6. In the present case, I feel no amount of cross-examination would have had any effect on the physical condition of the building and help the petitioner whose duty is not in restoring the building to its original state by renovation and then to continue to live in it. The argument is noticed only to be rejected as no prejudice is caused to the tenant in the presence of other oral and documentary evidence as to the state of the premises. Besides, the Local Commissioner is a trained public servant who would know his business.

7. I have no reason to interfere in the impugned orders and would dismiss the petition and grant two months' time to the petitioner from the date of communication of this order, to vacate the premises and deliver peaceful possession of the demised premises to the landlord. The petitioner would file an undertaking before the Rent Controller that she will hand over the vacant possession to the landlord within the period fixed by this Court.

(RAJIV NARAIN RAINA)
JUDGE

21.08.2017
manju

Whether speaking/reasoned *Yes*

Whether reportable *No*