

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

**Civil Revision No.603 of 2016 (O&M)
Decided on : 21.02.2017**

Girdhar Lal

... Petitioner

Versus

Raj Pal Sharma and others

... Respondents

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

Present : Mr. Divanshu Jain, Advocate
for the petitioner.

G.S. Sandhawalia, J. (Oral)

The present revision is directed by the landlord against the concurrent findings recorded by the Courts below, whereby the ejectment application has been rejected.

The premises in question is a small portion under the stair-case of ground floor of SCF No.19, Sector 15-C, Chandigarh. The same was taken on rent @ ₹600/- per month by the respondent No.1. The eviction petition was filed on the ground of arrears of rent, since September, 2004, impairment of the utility by breaking the tiles, subletting to the son by the father and change of user.

The stand of the tenant was that the rent had already been paid till July, 2007 and accepted by the landlord. No tiles has been affixed on the floor of the veranda and there was no occasion to break the same. The electricity meter has been installed on the basis of an order passed by the Court and there is no violation. The father and son are members of joint family and he had not shifted the business to Amritsar and he had no

intention to shift the same. It was denied that a cosmetic shop was being run instead of electronic shop in the premises. The following issues were framed including additional issues:-

“1. What is rate of rent? OPP

*2. Whether the tender made by respondent is short and invalid?
OPP*

3. Whether the respondent is liable to be evicted from the tenanted premises on the grounds of impairing value and utility of the tenanted premises? OPP

4. Whether the petitioner has no cause of action to file the present petition? OPR

5. Whether the petition is bad for misjoinder of necessary parties? OPR

5-a. Whether the respondent has changed the user or the demises premises? OPP

5-b. Whether the respondent No.1 has sublet the tenanted premises to respondent No.2 without the written consent of the petitioner ? OPP

5-c. Whether the respondent has without the written consent of the petitioner has installed the electricity meter and obtained the connection? OPP

5-d. Relief.”

The sole witness was the petitioner-landlord, whereas respondent No.1 has stepped into the witness box as DW-1.

In view of the tender of rent and the statement made by the landlord, the issue Nos.1 and 2 were not pressed. On the ground of the impairment of value and utility of the tenanted premises, it was held that no evidence had been led to show that any such act was done by the tenants and no neighbourer had been examined nor any report of the local commissioner/expert witness was there. Regarding the change of user, it was found that the rent agreement has not been exhibited and even, if

there is change of business from electronics to cosmetic, the same would not amount to change of user.

On issue No.5-b pertaining to subletting portion, it was found that there is no evidence to show that the father had parted the possession in favour of his son without the consent of the landlord. A denial had been made that his father had not shifted to Amritsar and both of them were carrying on business. Similarly, on question of electricity installation, it was noticed that an order was passed by the Court and, therefore, there was no illegality as such if the connection been ordered. The petitioner having been no cause of action, issue No.4 was decided in favour of the tenants. Accordingly it was held that nothing could be shown that the petition is bad for misjoinder of necessary parties, while dismissing the rent application by the Rent Controller on 29.10.2014.

The said view has been upheld by the Appellate Authority on 22.09.2015 on the ground that if the son had started assisting his father, it would not amount to subletting as such and there should be parting of possession on for consideration. The electricity connection had been installed after the orders of the Court. Therefore, it was not a ground as such for ordering eviction. Resultantly, it was held that there is no ground to interfere as such.

The said findings do not suffer from any such infirmity. In the absence of any evidence nothing could be recorded regarding the impairment issue and on the issue of value and utility. Similarly in the absence of the rent note, no finding could be recorded regarding change

of user. Similarly, no specific averment as such was made that the possession had been exclusively parted and a consideration had been passed. Even, though the said exercise is always a secretive exercise, but something had to be brought on record that the father was not sitting in the rented premises and had delivered exclusive possession to the son. In the absence of any such evidence from the statutory authorities or from the neighbourers the sole statement of the landlord could not be accepted.

Resultantly, keeping in view the cumulative discussion made above, the findings which have been recorded by the authorities below, would not warrant any interference by this Court.

Dismissed in limine.

FEBRUARY 21, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No