

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.8057 of 2016 (O&M)

Reserved on: 12.05.2017

Date of decision:05.07.2017

Sham Lal (since deceased) through his LRsPetitioners

Versus

Vinod Kapoor & others ...Respondents

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

Present: Mr.Kanwaljit Singh, Sr.Advocate
with Mr.Vaibhav Sehgal, Advocate, for the petitioners.

Mr.Deepak Thapar, Advocate, for the respondents.

G.S. SANDHAWALIA, J.

The tenants are aggrieved against the order of the Appellate Authority, Ludhiana dated 03.10.2016 whereby, eviction has been ordered on the ground of materially impairing the value and utility of the tenanted premises. Resultantly, the findings recorded by the Trial Court on 12.09.2013 were held to be patently illegal and there being misreading of evidence, issue no. 3 has accordingly been reversed and ejectment has been ordered on the said ground.

Senior counsel for the petitioner, Mr.Kanwaljit Singh has vehemently argued that the Appellate Authority was not justified in passing the order in as much as the landlord was residing in the same premises and, therefore, was aware of the alleged material impairments and it was with his consent. On an earlier occasion, one Mela Ram had filed one petition in the year 1996 which was dismissed in default on 4.11.2000 and which was never restored. Thus, there was a constructive res judicata inter se the parties as the same plan which had been exhibited in the earlier petition had been relied upon and the reliance was placed upon the earlier petition dated

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3.05.1996 filed by the said person and the said factum was admitted inter the the parties. Resultantly, the argument raised was that the subsequent petition filed on 30.09.2003 on the same cause of action was not maintainable.

Mr. Deepak Thapar, Advocate, appearing on behalf of the respondents, on the other hand, submitted that 4 separate shops had been taken on rent at a different points of time and the open court yard in front of the shops had been closed and converted into a shed and the entrance to them been shifted from the other side. A shutter had been put in shop no. 2 on the western side and the wall removed between shop nos. 1 and 2 which would be clear from the site plan (Ex.P-1). It was accordingly submitted that the material impairment is to be seen from the point of view of the landlord and in the present case on account of the impairment having been done, the value and utility of the building had been altered to a substantial extent and, therefore, the eviction was well justified. It was further submitted that there was a family dispute going on at an earlier point of time and a receiver had been appointed who had filed the petition and on account of his lapse, there was a dismissed in default. The matter thereafter having been settled inter se the family members, the said dismissal could not be held against them. Reference was also made to the civil suit filed on 29.09.2003 for permanent injunction restraining the present petitioners from making additions and alterations in the shops to contend that there was no consent as such.

The Appellate Authority came to the conclusion that the 4

shops in question had been tenanted at different points of time, between 1962 to 1976, which was also the case of the tenants and there was a separate identity of the 4 shops and there were different boundaries. He, accordingly, held that as per the evidence which has come on record and even as per the site-plan prepared by the tenant, there was only one opening on one side. It was, accordingly, held that the varandah in front had never been covered when the shops were rented out and therefore, it had been subsequently covered and therefore, the additions and alterations were present on the site. It was, accordingly, held that it was not the plea of the respondents also that additions and alterations have been made with the consent of the landlord and therefore, the conclusion was arrived at that there was material impairment and merely because the landlords were residing in the same building, the defence was irrelevant. Accordingly, the finding of the Rent Controller was held to be patently illegal and a misreading of the evidence and the findings on issue No.3 was reversed and decided in favour of the respondents.

A perusal of the eviction petition which was filed would go on to show that the ejectment was sought from the 4 shops in question which formed part of property No. B VII 567 to 570 situated at Raman Market, Cinema Road, Ludhiana. The tenanted property has been shown red in the site plan and was initially stated to be owned by three persons namely Radha Raman Thapar, Tirath Ram Kapoor and Shanti Sarup Sehgal. On the account of the death of the said persons and on account of the death of Chajju Ram Thappar, who also died in the year 1992, the

petitioners landlords no. 3 and 4 Ravinder Kumar Thapar and Deepak Kumar Thapar were alleged to be the co-sharers. Similarly, on account of the death of Tirath Ram Kapoor and his widow, respondents no. 7 and 1, Varinder Kapoor and Vinod Kapoor were some of the co-sharers and were competent to maintain the petition. Respondent No.8, Anand Sarup, S/o Shanti Sarup and was legal representative of Shri Sarup Sehgal. The said shops were alleged to be part of the bigger property known as Raman Market and the present petitioner-tenants were in possession at a monthly rent of Rs.247/-. Resultantly, eviction was sought on the ground of arrears of rent from 01.06.1996 and it was pleaded that the earlier rent were tendered to Mela Ram in the Court of the Rent Controller. The property were stated to be unfit and unsafe and one shop at Mark-A had fully fallen down and the roof caved in and the malba was lying inside the shop. The roofs of the said shop were built of wooden balas and phattas and were third class construction of very old age and it had out-lived its age. Co-owners of the property had filed a suit for partition and in the year 1974, Mela Ram was appointed as a receiver, who acted as a landlord on behalf of the co-sharers. He had filed a petition in the Court of the Rent Controller on 02.05.1996, on the ground of non-payment of rent, material impairment and on the ground of building being unfit and unsafe. A Local Commissioner-Shri Harjinder Singh, Advocate had been appointed, who had given his report dated 18.05.1996 that the structure of the property was old but he could not assess the age of the construction. He had found that the main entrance to the building was

from shop No.2 at Mark-B in the site-plan prepared by him. Iron shutters were fitted at point marked G-I to G-II, and an office at point marked-A, the door of the office opened towards shop No.2 at point G-3 and on the front-side, i.e., southern side an air conditioner was fitted at point marked G-4. The property let out was shown in plan No.1 but the tenant had broke open the window at point marked G-I and opened the door. The earlier passage was from the passage as indicated in the plan and that they had illegally covered the space between the passage and the shops and converted into a cabin and shed and installed a gate at point G-II. The three walls of the shop at Mark-B, C and D had been removed and these portions along with the shop to make it a larger portion. A wall between the rooms A and B stood completely removed and in its place, a wooden partition had been raised at the spot and a door had been affixed at point G-3 and an air conditioner was installed at point G-4. The cabin was constructed at point X and the tenants were having access from point G-I instead of having a passage from the east. Thus, additions and alterations were stated to have been done without the consent of the landlord and other co-owners and as per the report, the construction of the office was much later in time than the other construction.

Roof of the portion shown as office has already caved in and fallen down and malba was lying on the ground. Photographs were attached with the petition and the tenants had also placed wooden balas on the tarpal in order to avoid it being blown away and therefore, there was material impairment of value and utility. Earlier petition was stated

to have been dismissed on 04.11.2000 in default, without any decision on merits, as Mela Ram had fallen sick due to a broken pelvis and he ultimately expired and there no receiver appointed and the petitioners themselves had filed the petition. The condition of the premises had deteriorated further and the walls were also in falling condition and there were big cracks. The adjoining property, in possession of M/s National Soap Mills was also in a very bad condition and partly fallen down and a separate petition was also being filed against them. Structures of the remaining rooms marked B, C and D were stated to be in a very bad condition. The shops B, C and D had been built at the same time and the office, cabin and shed had been illegally constructed without the consent of the landlords and the window had been broken open towards the right at point G-I and converted into a big door by breaking open the said walls and also opening a door at point G-II, outside the eastern walls at points B, C and D and material additions and alterations had been made and resultantly, it was also pleaded that the building was unfit and unsafe. It was further mentioned that a suit for permanent injunction had been filed titled as *Varinder Kapoor & others Vs. Punjab Soap Factory*, covering the adjoining properties which was also pending in the Civil Court.

In the written statement filed by the partner of Punjab Oil Company, namely, Sham Lal, plea taken was that one petition regarding the 4 shops was not maintainable, as one shop was taken in the year 1963, second shop in the year 1972 and the remaining two shops in the year 1976 and therefore, separate and distinct tenancies were there and

therefore, separate petitions should have been filed. Mela Ram was the official receiver of the property and after his death, the petitioners had not appointed any fresh receiver and therefore, the eviction was not maintainable. The plea of constructive *res judicata* was also taken, since the earlier petition had been dismissed on 04.11.2000. The petitioners' proof of ownership was demanded and the dates of death of the persons who had owned the property had not been specified. It was admitted that the total rent of all the shops was Rs.247/- per month, but it do not give a right to the petitioners to file one petition. The entire rent having been tendered, the ground of eviction on account of non-payment of rent, was, accordingly, resisted. The property being unfit and unsafe was denied and that any mabla had been lying inside the shop. It was also denied that any portion of the walls had fallen down or any other portion of the shops had fallen down and that it was not a third class construction or it had outlived its age with the passage of time. It was denied that earlier, Harjinder Singh was appointed as Local Commissioner and that he had submitted any report and that any observation can only be made regarding the age of the property by an expert person and not by an advocate. He had never visited the property nor any plan was prepared by him and no report was submitted by him regarding the condition of the property and the conversion of the passage, fitting of iron shutters or the construction of any office and that there was no air conditioner fitted. The factum of breaking open the window or opening a door was also denied. The removal of the walls of the shops in question was also

denied and the putting up of the partition. It was alleged that the property was in the same condition as it was let out and the alleged report submitted had no legal value. The photographs produced did not relate to the property in question. It was stated that the petitioners owned more than 100 shops and were misusing the process of law. It was stated that the petitioners themselves were residing in the remaining portion of the property and they could not be permitted to say that the property is unfit and unsafe. The adjoining property was also stated to be in a good condition and no portion had fallen down. It was further denied that any roof was covered with iron sheets and a tarpal and any wooden balas had been placed on it to avoid it being blown away. The petitioners were already living in the property along with their family members and were doing business and accordingly, prayer was made that the eviction petition be dismissed.

The following issues were, accordingly, framed *inter se* the parties:

- “1. Whether the petitionere is entitled for ejectment on the ground of non payment of rent? OPP
2. Whether the petitioner is entitled for ejectment on the ground of unfit and unsafe for human habitation? OPP
3. Whether the petitioner is entitled for ejectment on the ground of material alterations? OPP
4. Whether the petition is not maintainable? OPR
5. Whether the petition is barred by principle of constructive res-judicata? OPR
6. Relief.”

A perusal of the statement of the landlord No.4, Deepak

Kumar Thapar, in the cross-examination, would go on to show that the property was basically owned by two families, known as Kapoor family and Sehgal family and during partition, Mela Ram was appointed as the official receiver. The same had not been partitioned and the receiver used to collect the rent and deposit the same with the bank, as per the orders of the Court. The tenants were in possession of 4 shops which were part of the main building and on account of death of the receiver, the landlord had started looking after the properties. The property in dispute was a single-storey building whereas the landlord were residing at another portion which was a double-storey building, which had been constructed later-on. It was averred that the shops were separate but the respondents had removed the intervening walls of said shops and constructed the shed behind the four shops and opened a rasta by installing rolling shutter on both sides and it was admitted that no application had been filed for restoration of the earlier rent petition.

Similarly, one Harinderjit Singh, Advocate was examined as PW2, who had been appointed by the Court as a Local Commissioner, on 07.05.1996 and had given his report, had visited the premises on 10.05.1996 and prepared a site-plan. The certified copies of his report, rough site-plan and site-plan were exhibited as Exs.P4, P5 & P6, respectively. Similarly, the building expert, namely, G.D.Wadera was examined as PW3, who was a qualified Engineer and retired as Deputy Executive Engineer from the PWD Department and had got completed the construction works in PWD (B&R). He deposed that he had been

appointed as a building expert along with one Raj Kumar, Advocate, who was the Local Commissioner and Surinder Sharma was the photographer and they had gone to the site on 22.01.2005 and in the presence of the petitioner-tenant and Shri M.C.Sehgal, counsel, the measurements, notes and photographs had been taken and the presence sheet had been prepared. The report was exhibited as Ex.P11, giving the details that on the eastern side one shed and cabin had been built after the original construction of the four shops and in intervening wall of shop No.1 and a cabin there was a door opening and in the case of shops No.2, 3 & 4, the same had been closed by making brick masonry in cement mortar, cement plastered and white washed. One rolling shutter had also been provided on western side of shop No.2 after removing the old window to enter shop No.2 and the remaining portion of the property and a pucca ramp had been made on the western and eastern side. A wooden door, air conditioner and small ventilator had been provided by dismantling the intervening wall of shops No.1 & 2. The original entry seemed to be from the eastern side which had been changed to the western side which was on the basis of the windows from the western side and the old street were at higher level than the level of the disputed property. The outlook of the property had been changed and air and light had been reduced and the value and utility had been impaired. Additional weight had been put by these additions and alterations on the structure which was very old and had outlived its age and there was a leakage in the roofs and the damaged roofs had been repaired with tiles in cement mortar from the top sides.

To conceal the damaged condition of the roofs of shops No.1, 2, 3 & 4, it had been found covered from the top side with polythene sheet, tarpal and tin sheets and wooden balas. The floors had also become uneven and the mortar had left the grip and it was unfit and unsafe for human habitation and the repairs could not set right the entire property and it required reconstruction after complete demolition.

Similarly, the photographer also deposed as PW4 and submitted his affidavit that he had visited the shops along with the building expert and clicked 40 photographs.

Landlord No.2-Vinod Kumar Kapoor also appeared as PW5 and submitted his affidavit on the same terms and was, accordingly, cross-examined.

Deepak Singla, son of Sham Lal, proprietor of M/s Punjab Oil Company submitted his affidavit and had appeared as RW1 and examined Ravi Kumar, Civil Engineer as RW2. He admitted that he was born on 27.09.1985 and he had come to know about the dispute 3-4 years back and he had no prior knowledge. He admitted that his father had told him that one tenancy was created in the year 1963 and one was created in 1972. He could not tell the terms of the tenancy settled at that point of time. He also admitted that Mela Ram, receiver had died but he could not tell the month and the year and that he was sitting in the property for the last 40-50 years. He also admitted that the roof of the property was made of wooden balas and girders and the floor of the property was made of brick and some part of it was cemented. The air conditioner had been

installed prior to his joining and the property in dispute had been used for trading of soap and office. He was not aware if Harjinder Singh, Advocate was appointed as Local Commissioner and made a report dated 18.05.1996 and also of appointment of Raj Kumar, Advocate, in the present case and the report prepared by him.

The building expert of the tenants denied that there was any impairment and the litigation between the parties and supported the case of the tenants. He admitted that no physical test of any sort was conducted to check the strength and quality of the construction and he never used any hammer to check the strength. He, however, admitted that the entry of the disputed property was from the eastern side as well as from the western side and did not know that the change in the western side was later on introduced by the respondents. He further admitted that there was no wooden door towards the eastern side of the entrance to the property in dispute. He admitted that there were no doors at Marks A & B mentioned in the site-plan prepared by him and that the rolling shutter installed at the front of the shops in dispute was 50 years of age. He also admitted that he did not mention these facts specifically in his report. He submitted that he had not gone through the report given by the expert of the landlords (Ex.P11). He admitted that there was a cabin made on the north-east side, made of wooden partition and with a ACC sheet roof, which had been placed at Marks B1 to B4 and on the walls from marks B5 to B8 and the heights of the floors in the shops were different from the rooms.

A perusal of the earlier petition filed on 03.05.1996 would go on to show that even at that point of time, Mela Ram, who was the official receiver, had taken the same plea that there were material alterations and additions made in the premises which was without the written consent of the petitioners by the landlords and it had been pleaded in the said petition that he was appointed as an official receiver vide order dated 05.01.1984 and therefore, he was competent to file the petition.

The same was resisted by the tenants on the ground that he had no right to file the petition and the plea taken was that there was no material additions and alterations made and neither they had encroached in the passage, as alleged in the petition and no additions and alterations had been effected by them. Similarly, the allegations of the property being unfit and unsafe was also denied.

A perusal of the report of the Local Commissioner, who was appointed, namely, Harinderjit Singh, Advocate and who prepared the report dated 18.05.1996 and two site-plans (Exts. P4 to P6) would go on to show that he had noticed that there was an office at mark A and the door of the office opened at mark X at point G-3 and there was an air conditioner installed and there was difference in the age of the construction with the rest of the building. It was noticed that the passage towards the eastern side behind the blocks was blocked by the tenants by placing drums on both sides and the construction was much later than the construction in the other part of the building. The report of G.D.Wadhera (Ex.P11) noticed regarding the change of entry of the property from the

eastern side to the western side and came to the conclusion that the original entry was apparent because of the existence of three old doors whereas the fourth door in the intervening wall of shop No.1 and the cabin marked AB, seems to have been removed and closed by brick masonry. From the windows on the western side, he came to the conclusion that the window of shop No.2 had been removed and a rolling shutter had been installed. The street on the western side was 1'6" higher than the level of the shops and 9" from the level of the passage. A ramp had been constructed for entrance from the western side for entering the shop in question, as per the photographs and it showed that the main entry door from the shop was changed from the eastern side to western side.

Similarly, regarding the construction of shed, it was noticed that there was an open courtyard of a shed of 31'4" in which a cabin of size 8'5" with a width of 10' had been found built by utilizing the walls on the northern side and southern side, belonging to the owner and the western wall of the shop. The eastern wall of 5 pillars of size 3'9" with 9" thick wall had been built from the street of 9'2" on the eastern and 10' on the western side. The roof having been made of cement sheets was duly bolted as visible in photograph no.5 and supported on one wooden balas in the northern and southern directions and of wooden balas of size 4"X2" had been laid in the eastern and western directions. Photographs in support of all had also been appended. On the eastern side, one new rolling shutter of size 5'x7'6" had been provided, which was as per

photograph No.10 and the air, light had been reduced. Similarly, the condition of the shed appeared to be of 10-11 years old and the life span of such type of structure was about 7-8 years and it had outlived its life and the cement sheds had lost the strength and there was leakage in the roof and to conceal the damaged condition, the roof had been covered from the top with tin sheets and loose bricks had been kept to prevent the sheets to be blown away by the wind. The construction of the shed had put additional load on the walls and the structure and the light and air had been materially blocked to the shops.

Similarly, regarding the construction of cabin also, it was stated to have been built 10-11 years back, after the original construction of the 4 shops, by utilizing the western side of the northern wall and the eastern wall had been newly built. With the construction of the cabin, outlook of the property had been changed and the air and light had been further reduced. Regarding all the 4 shops also further details were given regarding removal of wall between shops No.1 & 2 also. At the end, the opinion of the building expert was summed up, as under:

“a) that on eastern side one shed and one cabin has been built after the original construction of four shops. In the intervening wall of shop no.1 and of the cabin, it appears that there was a door opening as in the case of shops no.2, 3 and 4 the same has been closed by making brick masonry in cement mortar, cement plastered and white washed. One rolling shutter has also been provided on western side in shop no.2 after removing the old window. To enter in the shop no.2 and remaining portion of the property pucca ramp has been made on western and eastern side. A wooden door,

A/C and small ventilator have been provided by dismantling the intervene wall of shops no.1 and 2. From the existence of the doors on eastern side, windows on western side and old street at higher level than the level of the disputed property, it appears that the original entry of the entire property was from eastern side which has been found changed to western side. With all the additions made as stated above outlook of the property has been changed, air and light has been reduced and it has also impaired and utility in dispute. Additional weight has been put by these additions and alterations on the existing structure which is already very old and outlived its age. In spite of these additions and alterations made in this property, the condition of the property is not improved.

b) That due to outliving its life of the property, shops no.1, 2, 3 and 4 are deteriorated to such an extent that roofs have completely lost the strength, there is a leakage in the roofs and damaged roofs have been found repaired with tiles in cement mortar from the top sides. To conceal the damaged condition of the roofs of shops no.1, 2, 3 & 4 have been found covered from the top side with polythene sheet, tirpal and tin sheets and wooden ballas. Floors have also become uneven, mortar applied on the walls has left the grip. Due to outliving the life, shed and cabin are unfit and unsafe for human habitations.

Thus, on the facts stated above, entire property i.e. four shops, one shed and one cabin are structurally weak, unfit and unsafe for human habitations, beyond scope of repairs, no amount of repairs can set right the entire property. Infact the entire property requires reconstruction after complete demolition.”

Keeping in view the above background, the opinion which has now been arrived at by the Appellate Authority under issue No.3 that

material additions and alterations have been raised which has diminished the value and utility of the building, stand duly proved by the landlords. A perusal of the site-plan (Ex.P1) would go on to show that the landlords clearly have depicted that how there was an open courtyard in front of the four shops in question and which had a window at the back on the western side. Ex. P1 would show the previous position at the time of the tenancy and the present position showing the additions and alterations, which is apparently proved by the reports of the Local Commissioner and the building expert and the photographs. Sufficient material, especially in the form of pleadings and evidence has come on record which would show that the courtyard had been closed and the shops which had independent approach from the eastern side of the courtyard have only one entry which is from shop no.2, from the western side, which has been done by installing a rolling shutter and the common courtyard had been covered by ACC sheets, duly supported by wooden balas. On the northern side, a cabin has been constructed in shop no.1 which is partitioned from the courtyard by a wooden partition.

As noticed, the tenancy was never granted at one stretch and they were tenanted at different point of time, ranging from 1963 till 1976. It is the admitted case of the parties that 3 separate tenancies of the 4 shops were there and therefore, now, they have all been made consolidated into one by the tenants. The said factum of Ex.P1 whereby the present position has been shown is the same which is exhibited as Ex.R2, which has been admitted by the building expert produced by the

tenants themselves. The earlier petition was filed wayback in the year 1996 and therefore, the petitioner-tenant, Deepak Singla who deposed in support of the allegations, having been born on 27.09.1985, was only 11 years at that point of time and therefore, cannot, now, turn around and say that it was done with the consent of the landlords as no other evidence, as such, has been brought on record regarding this aspect by cross-examining any other person.

The stand taken in the earlier set of litigation would also go on to show that there was just a bald denial that there were any material additions and alterations. No such plea was taken by the deceased/petitioner-Sham Lal and father of petitioner No.1 at that point of time that the construction had been done with the consent of the landlords and therefore, now, it does not lie in their mouth to argue that there was an implied consent of the landlords, since they were residing in the same locality. It is settled principle that material impairment to the extent that the value and utility must be judged from the point of view of the landlord and no one else.

The Apex Court in **Gurbachan Singh & another Vs. Shivalak Rubber Industries & others (1996) 2 SCC 626**, set aside the findings of the Courts below and directed eviction wherein additional alterations had been made and the verandah in front of the shops had been merged with the shops and the doors had been closed, giving a totally new shape to the building in question. Relevant observations read as under:

“14. Thus, from the above mentioned facts it is clear that even if it is assumed that the tenant respondents raised the construction of shed over the part of the open land of the demised premises with the written consent of the landlord as may be spelt out from the rent note Ext. A/1, then the rest of the construction, additions and alterations of the 5 shops and the verandah in front of the said shops of a permanent nature, will certainly amount to acts as have or likely to have impaired materially the value or utility of the building/premises let out to them. The nature of the construction is relevant consideration in determining the question of material impairment in the value or utility of the building or the demised premises. In the present case the removal of the roof of the shops partition walls and the doors, laying of a roof, merging of the verandah with the shops, closing the doors and opening new doors and windows and converting the premises altogether, giving totally a new and a different shape and complexion by such alteration would certainly be regarded as one involving material impairment of the premises affecting its Fitness for use for desirable practical purpose and intrinsic worth of the demised premises from the point of view of the appellant-landlords within the meaning of Section 13(2) (iii) of the Act. The High Court, therefore, fell in patent error in dismissing the revision in limine without going into the correct legal position involved in the case. Having regard to the facts and circumstances discussed above, we are of the firm view that this is a case which squarely falls within the mischief of the provisions contained in Section 13(2) (iii) of the Act which make the tenant-respondents liable for eviction from the demised premises.”

In Satish Chand Vs. Raghu Nandan Parshad 2011(4) RCR

(Civil) 453, the revision petition was also dismissed on account of

removal of the wall and the fact that the shops were let out at different point of time, after a gap of 5 years and therefore, the stand taken of the tenant was disbelieved that there was never any intervening wall.

Similarly, the argument which has been raised that by putting the shutter and it would only improve the security of the premises and could not be called to be an impairment, as such, is also to be rejected on the ground that in **G.Reghunathan Vs. K.V. Varghese 2005 (2) LAR 178**, it has also been observed by the Apex Court that destruction and damage is to be observed from the stand point of the landlord. In the present case, as noticed, it is not only the installing of the rolling shutters but the amalgamation of all the 4 shops in question and removal of intervening walls alongwith covering of the open courtyard and changing the entry from one side to the other.

Reliance upon the judgment in **Jawahar Lal Vs. Bal Krishan (died) through LRs 2005 (1) RCR 116** on the ground that the landlords were aware of the alterations, is without any basis, in the facts and circumstances. As noticed above, there was a dispute *inter se* the family regarding possession and the receiver was looking after the property for a period of more than a decade earlier and there is no dispute that he had died and thereafter, the present petition was filed.

The argument that on an earlier occasion, the petition had been dismissed on default, would also not be of much assistance to the petitioners, since the matter was not being pursued by them but by the receiver who had been appointed by the Court and therefore, on account

of the same not being taken to its logical end and on account of the eviction petition being dismissed in default without having been decided on merits, the same would not amount to constructive *res judicata* against the petitioners and there has to be a decision on merits *inter se* the parties. Reliance can be placed upon the judgment in **Kewal Singh Vs. Lajwanti 1980 (1) SCR 854** that for the principles of constructive *res judicata* there should be a formal adjudication between the parties and matter must be finally decided. Relevant observations read as under:

“9. Secondly, as regards the question of constructive *res judicata* it has no application whatsoever in the instant case. It is well settled that one of the essential conditions of *res judicata* is that there must be a formal adjudication between the parties after full hearing. In other words, the matter must be finally decided between the parties. Here also at a time when the plaintiff relinquished her first cause of action the defendant was nowhere in the picture, and there being no adjudication between the parties the doctrine of *res judicata* does not apply. The second amendment application was made in the same proceedings on a cause of action that she was allowed to insert with the permission of the court. Although both the parties went to the court on the basis of these facts, neither the bar of *res judicata* nor that O.2 r.2 appear to have been raised before the Rent Controller. For these reasons, therefore, the second plank of the argument put forward by counsel for the appellant also must be rejected.”

In **Madhu Bhatnagar & others Vs. Surinder Kumar Bansal 2004 (1) PLR 199**, it was held that the Rent Controller is a person designated who exercises summary jurisdiction and therefore, once the ejectment petition was withdrawn, without any evidence, the same would

not operate as *res judicata*.

Thereafter, in **Surinder Kaur & another Vs. Rattan Chand Duggal @ R.R.Duggal 2006 (1) PLR 123**, the same principle was followed wherein it was held that an earlier petition was dismissed in default would not, as such, bar the landlord to pursue the second petition.

In **Hariender Kaur Vs. Sharan Gurdev Singh 2008 (2) PLR 478**, it was also similarly held that the principles regulating the Code of Civil Procedure would not operate and there would not be a *res judicata* as such and reliance was also placed upon the judgment of the Apex Court. It was held as under:

“6. Full Bench of this Court in the case of Amar Singh and Anr. v. Dalip 1981 PLR 649 has held that Section 11 Civil Procedure Code deals with the decisions of the Civil Courts only and the decision of the court of exclusive jurisdiction/Tribunals are not covered by that section. The decisions of Tribunals and Courts of exclusive jurisdiction debar the raising of the issues in a civil suit on matters which are exclusively within their jurisdiction not because of Section 11 but because of the provisions contained in the statute creating those Tribunals or Courts. Sometimes, their decisions operate by way of *res-judicata* under the general principles of *res-judicata* also but never because of the provisions of Section 11.”

7. Then in Sheodan Singh v. Daryao Kunwar, AIR 1966 Supreme Court 1332, it is held that in order that a matter may be said to have been heard and finally decided, the decision in the former suit must have been on merits. It is observed that:

“....for example, the former suit was dismissed by the trial. Court for want of jurisdiction, or for default of

plaintiff's appearance, or on the ground of non-joinder of parties or misjoinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letters of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation or for failure to pay additional Court-fee on a plaint which was undervalued or for want of cause of action or on the ground that it is premature and the dismissal is confirmed in appeal (if any) the decision not being on the merits would not be res judicata in a subsequent suit."

8. As held in N.R. Narayari Swamy's case (supra), grounds of bonafide requirement or non-payment of rent is a recurring cause. Even otherwise, the principles regulating the procedure under the Code of Civil Procedure are not strictly applicable to proceedings under the Act. In view of the position as noticed, it is not possible to hold that withdrawing a petition under [Section 13](#) of the Act can act as res-judicata for the petitioner to prosecute his petition under [Section 13-B](#) of the Act. No other, point is urged before me."

Thus, in such circumstances, the landlords cannot be made to suffer for the inaction of the receiver of not taking the matter to its logical end in an earlier litigation, which was never finally decided *inter se* the parties.

Resultantly, keeping in view the above observations, this Court is of the opinion that the findings which have been recorded by the Appellate Authority is well justified and no interference is called for in

the case in hand as there is sufficient material, both by way of documentary evidence and admissions regarding the fact that alterations have been done which are material in nature and have changed the complete complexion of the building in question, to the detriment of the landlords. The Rent Controller was not justified in holding that may be because the landlords were also residing in the same vicinity and therefore, there was, as such, a consent and that it was done only in the peculiar facts and circumstances. Accordingly, the present revision petition is dismissed. However, as noticed, since it is an old tenancy, the petitioners shall not be evicted till 31.12.2017.

05.07.2017

Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*