

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2324 of 2009(O&M)
Date of Order: 08.10.2018

Shish Pal

..Petitioner

Versus

Bhim Sain Gupta

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S.Budhwar, Advocate,
for the petitioner.

Mr. Aman Bansal, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Tenant-petitioner is in the revision petition against the order passed by the learned Appellate Authority, ordering his eviction while setting aside the dismissal of the eviction petition by the learned Rent Controller.

Undisputedly, a plot measuring 72 feet X 74 feet was given on rent for the purpose of dairy business. The eviction was sought on three grounds:-

- (i) material impairment in the value and utility of the building;
- (ii) change of user from non-residential to residential;
- (iii) non payment of rent @ Rs.3000/- per month with effect from January, 2001.

Tenant-petitioner disputed the relationship between the parties

as a landlord and a tenant and it was pleaded that previously landlord posing as an owner, used to collect rent and now the payment has been stopped.

Learned Rent Controller held that there is a relationship of landlord and tenant between the parties as in the previous petition tenancy has been admitted. However, learned Rent Controller after appreciating the evidence found that the rate of rent is Rs.600/- per month which shall be payable within one month from the date of judgment, failing which tenant shall be liable to be evicted. On two remaining grounds, the court found that there is neither any material impairment in the value and utility of the building nor the premises has been changed from non-residential to residential. The court found that property was leased out for running a dairy and it is being used for the dairy. Only temporary room has been constructed which is for the purpose of taking rest of the persons working in the dairy.

Landlord filed an appeal. Learned Appellate Authority has reversed the judgment of the learned Rent Controller while assessing the rent payable @ Rs.3000 per month. It may be noticed that learned appellate authority has relied upon statement of one PW4 Kharaiti Lal to determine that the rent is Rs.3000/- per month. It is admitted fact between the parties that there is no receipt of proof of rent @ Rs.3000/- per month. Still further, learned Appellate Authority has ignored that in the previous petition, tenant had paid and tendered rent @ Rs.600 per month which was received by the landlord.

As regards, material impairment, the learned Appellate Authority has noticed that at the time when the premises was let out it was a plot with Verandah and a Tin Shed, however, a room, kitchen and

bathroom have been constructed in the premises without written permission of the landlord. As explained by the learned Rent Controller, the aforesaid temporary room is only for the purpose of taking rest of the workers who are working in the dairy. If the property was in the shape of plot, construction of a single temporary room with kitchen, bathroom would not be materially impaired the value and utility of the building. No evidence on this aspect has been led by the landlord. Next ground i.e. conversion of the building from non-residential to residential is also not substantiated. It is not the case of the landlord that user of the entire premises has been converted from non- residential to residential.

Keeping in view the aforesaid facts, the order passed by the learned Appellate Authority is clearly erroneous and therefore, liable to be set aside. Accordingly, the revision petition is allowed. The order passed passed by the learned Appellate Authority is set aside and that of the learned Rent Controller is restored.

October 08,2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No