

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

CR No.2503 of 2014 (O&M)

Date of decision : 27.08.2018

Mohan Lal

...Petitioner

Versus

Montgomery Guru Nanak Educational Trust and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Naresh Prabhakar, Advocate for the petitioner.

Mr. Vikram Anand, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

CM No.15279-CII of 2017

Application is dismissed as not pressed.

Main Case

The tenant-petitioner is in the revision petition against the order of ejectment passed by the learned Rent Controller as well as by Appellate Authority.

Although, learned Rent Controller and Appellate Authority have ordered the eviction on the grounds of subletting as well as on the ground of material alteration, however, this Court is of the opinion that the revision petition can be decided only while deciding one ground i.e. material alteration.

As per Ex.R2 which is a lay out plan, shop measuring 13.6 feet x 18 feet was rented out, whereas the tenants have covered the front portion which is 19 feet in length, meaning thereby that the area more than the length of the shop has been covered by the tenants.

Learned counsel for the petitioner while referring to the statement

of an expert produced by them, has submitted that such construction is temporary in nature and can be removed within 3-4 hours. Therefore, he submitted that such construction would not fall within the definition of material alteration as defined in Section 13 of the East Punjab Urban Rent Restriction Act, 1949.

This Court has considered the submissions.

In the considered opinion of this Court, once the construction has remained in existence approximately seven years prior to the filing of the petition and it exists till date, such construction cannot be said to be temporary in nature. In the present case, the petitioner who is alleged to be tenant was given a shop to run a tenancy whereas he has covered more than what was leased out to him as additional area.

Learned counsel for the petitioner further submitted that a previous petition was filed on 06.04.1996 but the tenant did not plead this ground. He while drawing the attention to para 7(c) of the rent petition, submitted that such construction was raised by the petitioner in November 1995. Hence, he submitted that the subsequent petition would be barred under Order 2 Rule 2 CPC.

This Court has considered the submissions. No doubt, in the previous petition, such ground was not taken, however, learned counsel for the petitioner could not draw attention of the Court to any provision which strictly makes the provisions of Code of Civil Procedure applicable to the rent proceedings under the East Punjab Urban Rent Restriction Act, 1949.

On the other hand, learned counsel for the respondents, while drawing attention of the Court to the judgment passed by the Coordinate Bench of this Court, reported as **2010(4) PLR 663, Manohar Lal Vs. Mrs. Inderjit**

Singh @ Shakuntla Devi and others, has pointed out that the Code of Civil Procedure is not strictly applicable and, therefore, only general principle would apply for the purpose of regulating the proceedings. Order 2 Rule 2 CPC, is not a procedural provision rather in fact it creates a bar on subsequent suit being filed.

However, as noticed above, learned counsel for the petitioner could not draw attention of the Court to any provision or binding precedents which lays down that the provision of Order 2 Rule 2 CPC would be applicable to the proceedings under the East Punjab Urban Rent Restriction Act, 1949. Still further, this Court has carefully examined the photographs which have been exhibited as Ex.P7, Ex.P8, Ex.P9, Ex.P10, Ex.P11 and Ex.P13. It is apparent that the entire shop has been extended to the main road by covering the entire parking area.

In view thereof, there is no ground to interfere. The present revision petition is hereby dismissed.

Learned counsel for the respondents has also pointed out that the arrears of rent for the year 2010 has not been paid.

In the present petition, while deciding revision petition, this Court cannot pass a decree for recovery. If any rent is due, the landlord shall be entitled to resort to the remedy available under law.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

27.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No