

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR No.486 of 2018 (O&M)
Date of Decision : 25.10.2018

Kawaljit Singh Ahluwalia

..... Petitioner

Versus

Manreet Phoolka

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Avnish Mittal, Advocate
Mr. Gurmohan Singh Bedi, Advocate and
Mr. Divanshu Jain, Advocater
for the petitioner.

Mr. M.L. Sarin, Sr. Advocate
with Ms. Himani Sarin, Advocate
for the respondent.

AJAY TEWARI, J. (ORAL)

This revision has been filed against the concurrent judgments of the courts below ordering eviction of the petitioner from the demised premises on the ground of material impairment in value and utility of the building.

The essential non-disputed facts are that the petitioner had made the following alterations and additions in the building:-

- i. Existing IRC fabric with door (not compoundable and not allowed as/bye-laws).
- ii. Existing overhead water tank (not compoundable and not allowed as/bye-laws).
- iii. False ceiling at 6'-9" HT (not compoundable and not

allowed as/bye-laws).

iv. Passage 2'-6" wide (not compoundable and not allowed as/bye-laws).

v. Existing Advertisement Panel (not permitted & not allowed as/bye-laws).

Admittedly, even as per the petitioner at least item No.(ii) is non-compoundable and non-sanctionable (though it is the argument of the counsel for the petitioner that its a temporary construction). Both the courts below held that these additions and alterations materially impaired the value and utility and consequently allowed the eviction petition and that is how the petitioner is before this Court. Counsel for the petitioner has laid great stress on the fact that those additions which have been taken to be non-compoundable and non-sanctionable are temporary in nature and in fact even the notice/s issued by the Municipal Corporation and the Chandigarh Administration only required removal of the same. He has further argued that in fact whatever temporary violations had been pointed out by the concerned authority were removed. As per him, there is a catena of judgments which lay down that a temporary additions or alterations can not constitute material impairment in value and utility of the building.

On the other hand, learned senior counsel for the respondent points out that general body of law on material impairment in value and utility which has developed under the East Punjab Urban Rent Restriction Act, 1949 may not be strictly applicable to the case of Chandigarh because in Chandigarh, violations of building bye-laws are viewed with much more strictness and even the notice/s issued by the Municipal Corporation and the Chandigarh Administration had unequivocally given the threat of resumption in the event of non-compliance.

In my opinion, the arguments of learned senior counsel carry more weight. The issue really cannot be taken to be one which can be determined only if resumption actually takes place. Whenever a tenant in Chandigarh violates a building bye-law which is non-compoundable and non-sanctionable, he exposes the landlord to the risk of resumption, thereby hitting at the very title of the landlord. To my mind, this is a clear impairment in the value and utility of the building. As far back as in 1995, the Supreme Court in the matter of ***Durga Seed Farm vs. Raj Kumari Chadha, 1995(1) RCR 606*** had an occasion to deal with this precise contention. In that case, the tenant had erected a temporary shed in an industrial plot and the Supreme Court had considered the argument of the temporary nature of the shed but had upheld the eviction. This judgment was followed by this Court in the matters of ***M/s United Engineers through its Sold Prop. Sarup Singh and another vs. Nirmal Bhasin, 2004(2) RCR 627, Sukhdev Rai Kaushal vs. Partul Chand and others, 2009(2) RCR 131 and Anil Talwar vs. P.C. Verma, 2010(1) RCR 348***. As mentioned above, the judgments relied upon by the counsel for the petitioner relate to tenanted premises which were not situated in Chandigarh i.e. in areas where building violations are not viewed with as much seriousness. In this view of the matter, I find no fault with the findings of the courts below.

Consequently, the petition is dismissed. However, counsel for the petitioner states that the Executing Court has directed that the locks be broken open on 29.10.2018 and prays that some breathing time may be given to the petitioner so that they can file an appeal before the Supreme Court.

I find this to be a fair request. Consequently, the Executing

Court is directed to adjourn the case to 20.11.2018. Needless to say, with the dismissal of the petition the mesne profits which the petitioner has deposited be disbursed to the respondent.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

October 25, 2018
ashish

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No