

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

**Civil Revision No.5662 of 2013 (O&M)
Date of Decision: April 16, 2018.**

Smt. Satya Wati

.....PETITIONER(s).

VERSUS

Narinder Kumar Ahluwalia (since deceased) through LR Rajesh Kumar
Ahluwalia and another

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arun Jain, Senior Advocate with
Mr. Chetan Salathia, Advocate
for the petitioner (s).

Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for respondent No.1.

None for respondent No.2.

SURINDER GUPTA, J.

Revision petitioner Smt. Satya Wati has challenged the legality and validity of the orders passed by Rent Controller and Appellate Authority, Ambala on the petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973 (later referred to as 'the Rent Act, 1973'), ordering ejectment of revision petitioner from the demised premises comprising of Shops No.1150, 1151 and 1152 situated at Railway Road, Ambala City on the ground of materially impairing the value and utility of the demised premises.

Respondent-landlord sought ejectment of the revision petitioner

from the demised premises on the ground that she had removed the intervening walls between the three shops and converted the same into one shop and thereby materially impaired its value and utility. He has also sought ejectment of the revision petitioner on the grounds that she has ceased to occupy the premises in question for a continuous period of four months without any reasonable cause and is guilty of such act and conduct as are a nuisance to the occupants of the building but these grounds did not find favour of the Rent Controller or the Appellate Authority.

While approving the contention of respondent-landlord that revision petitioner-tenant has materially impaired the value and utility of the demised premises by removing the intervening walls, learned Rent Controller observed as follows:-

“18. PW1 Gurdeep Singh has stated that prior to January 2005 there were three shops of the premises in question but in the month of January 2005, the intervening walls between the premises No.1150-1151-1152 has been removed and whole shop has been converted into one shop from the three shops. This has also been testified by Rajesh Kumar Ahluwalia.

“19. RW1 Satyawai has admitted in her cross examination that she got erected two polls in the suit shop. She also admitted that earlier the walls were in existence in the three shops and she further stated that only lintel was laid and the walls were never touched.

20.

21. RW3 Ashwani Kumar son of Ram Krishan who in his cross examination admitted that the shops in dispute were bearing separate numbers and they were 1150-1151-1152. He further admitted that a compromise was effected in the year 1998 and the construction was made

in 2000. He also stated that there was no permission for removal of the walls and there was a writing and it was in the shape of permission. Now on the basis of the entire evidence which has been discussed by me, it has been amply proved on the record that there were three shops and these were separate from each other and were having an intervening walls but the intervening walls were removed by the respondent. The respondent has given much emphasis on the compromise Ex.D1. On the recapitulation of compromise Ex.D1, it is very much clear that petitioner Narinder Kumar (since deceased) gave a consent and permission to the respondent to make necessary repairs in the shops bearing No.1150-1151-1152 by changing of roof, plastering of walls and flooring etc.”

Appellate Authority affirmed the findings of learned Rent Controller.

Learned counsel for the revision petitioner has argued that firstly the petition filed by the respondent-landlord was barred by principle of res judicata as the earlier petition filed by him seeking the ejectment of revision petitioner on several grounds including the ground of material impairment of demised premises, was dismissed. Secondly, the matter was compromised between the parties on 27.06.1998, whereby rate of rent was enhanced from ₹37.50 paisa to ₹500/- per month and the revision petitioner was allowed permission to carry out necessary repairs in the shops by changing roof, plastering walls and flooring etc. as and when required at her own expenses. This shows that respondent-landlord had acquiesced the material alteration and addition, if any, in the demised premises. Thirdly, the respondent-landlord has not pleaded or proved as and when the disputed

walls were removed. The respondent is living on the first floor and it is not possible that he was not aware about timing of removal of intervening walls by respondent. Fourthly, respondent had not produced any evidence to prove that the walls allegedly removed by the revision petitioner, were ever in existence. Though the property is bearing 3 separate municipal numbers but it is not required that to get separate municipal numbers, property should have separate units. No approved site plan of the premises to prove the existence of the walls has been produced by the respondent. Fifthly, the respondent-landlord has not produced any evidence to prove that the walls allegedly removed were load bearing walls. In the absence of any proof to this effect, even if plea of the respondent-landlord is accepted, the removal of walls does not amount to material addition or alteration in the demised premises. Sixthly, the respondent had not appeared as witness to depose and support the plea raised by him and the statement of his attorney cannot be given any weight. Seventhly, the building expert examined by the respondent has nowhere stated that any sign of removal of walls was visible at the time of his inspection of the demised premises. In support of his contentions, he has placed reliance on the observations in cases of ***Waryam Singh Vs. Baldev Singh 2003 (1) PLR 154; Jawahar Lal Vs. Bal Krishan (died) through LRs. 2005(1) RCR (Rent) 116; M/s Sarup Chand Tarsem Chand Vs. Dhan Devi 2005 (3) PLR 802; and Mehtab Singh Advocate Vs. Shri Tilak Raj Arora and anr. AIR 1989 Punjab and Haryana, 12.***

Learned counsel for the respondent has argued that the plea of res judicata is neither attracted nor proved in this case. The revision petitioner has not placed and proved on record pleadings and issues of the

passed in the earlier petition shows that the plea of material addition and alteration was raised by respondent-landlord in the earlier petition but the same was not with regard to the removal of intervening walls of the three shops. The testimony of revision petitioner, who appeared as RW1 and Ashwani Kumar, RW3 prove on file that the wall was removed after the compromise dated 27.06.1998 and these were load bearing walls. Removal of intervening walls amounts to material alteration and he has supported his contention with observations in cases of *Onkar Vs. Sugan Chand 2000 HRR 227*; *Vijay Kumar Bansal (Died) through LRs Vs. Bishan Sarup 2003 (1) RCR 627*; *Piara Lal Vs. The Liquidator Cooperative Store, Kapurthala 2004 (2) Rent Control Reporter 214*. He has argued that a tenant had no right to raise or remove any construction in the demised premises without the permission of landlord. She was let out three shops and could not alter the shape and size of shops, let out to her. After proper appraisal of evidence, both the Courts below have committed no error of law while recording findings that the petitioners have carried out the material alteration and addition in the demised premises so as to reduce its value and utility.

The first question raised by learned counsel for the revision petitioner is regarding the applicability of the principle of res judicata to the facts of the present petition. Section 14 of the Rent Act, 1973 provides that the Rent Controller shall summarily reject any application under Sub Section 2 or 3 of Section 13 which raises substantially the issues as have been finally decided in any former proceedings under this Act. The revision petitioner-tenant has utterly failed to prove that the issue regarding

material alteration in the demised premises as raised in this petition has been finally decided by the Court in any former proceedings under this Act. Reference has been made to the order passed by the Appellate Authority in Rent Appeal No.15 of 1992 decided on 04.11.1993 which shows that the respondent-landlord has raised the plea that the petitioner has materially impaired the value and utility of the shops in question. However, the copy of earlier petition was not produced before the Rent Controller to find material alteration and addition pleaded in that petition by the respondent-landlord. The onus was on the revision petitioner to prove that the plea raised in the earlier petition was the same as has been raised in this petition, which she has utterly failed to discharge. Even otherwise, the statement of revision petitioner Satya Wati, who appeared as RW1, categorically proves that the intervening walls of the three shops were in existence at the time of compromise dated 27.06.1998. Admittedly, those walls do not exist at this stage and have been removed. This shows that no plea regarding the removal of the intervening walls was ever specifically raised or decided by the authority under the Rent Act, 1973 in any former proceedings. If the walls had been removed prior to the compromise dated 27.06.1998, this fact might have found mention in that writing. Though the copy of the petition filed under the Rent Act, 1973 filed by respondent-landlord was not proved on file but Annexure P-4, which has been attached with the revision petition shows that the earlier petition was filed by respondent-landlord on 24.10.1987 i.e. much before the compromise and the petition was decided on 28.10.1992.

In case of ***Mehtab Singh Advocate Vs. Shri Tilak Raj Arora***

and anr. (supra), the principle of application of Section 11 Civil Procedure Code were explained but the observations therein are not applicable to the facts and circumstances of the present case as there is no evidence that respondent/landlord in earlier rent petition has raised similar plea regarding addition and alteration in demised premises, as raised in this petition. In view of the above, I am of the considered opinion that the principle of res judicata is not attracted in the facts and circumstances of this case.

About the existence and removal of the walls, the admission by revision petitioner while appearing as RW1 is suffice to prove that intervening walls of the shops were in existence at the time of compromise. Statement of RW3 Ashwani Kumar son of revision petitioner proves that the walls were removed after compromise. He has stated that they had no written permission to remove the walls. The only permission with them was compromise dated 27.06.1998 which nowhere authorise the petitioner to remove the intervening walls. He has also admitted that the pillars shown in the site plan were constructed in the year 2000 to give support of lintel and these pillars are from floor to roof level and the walls shown at point 'C' in the site plan is still in existence.

Perusal of the site plan Ex.P3 shows that the three shops have been converted into one hall, kitchen, store, space for gas *bhatti*, coal *bhatti*, water tank, washing space etc. Statement of RW1 Satya Wati proves that the Walls were in existence at the time of compromise and were removed later on. Statement of her son RW3 Ashwani shows that in order to give support to the lintel the pillars were erected which shows that the walls were load bearing walls. Observations of the Hon'ble Apex Court in case of

Waryam Singh Vs. Baldev Singh (supra) that closing of Veranda without further evidence to prove that value and utility of the premises is effected, cannot be termed as material alteration, are not applicable to the facts of the present case. In this case, the landlord has specifically alleged that act of revision petitioner has materially changed the value and utility of the premises. In the case of **Jawahar Lal Vs. Bal Krishan (died) through LRs. (supra)**, the landlord has failed to show when the alteration was made but in this case revision petitioner herself has stated that walls were removed after the compromise. It has nowhere been pleaded or proved that the revision petitioner has conducted the alteration with the consent of the respondent-landlord. In case of **M/s Sarup Chand Tarsem Chand Vs. Dhan Devi (supra)**, the construction raised was beyond the premises allowed to be constructed but total area of construction was less than the area permitted to be constructed. It was found that by such construction, the landlord has not suffered any loss, injury or damage to the tenanted premises or to his other property. Under these circumstances, the plea of the landlord-respondent that tenant has carried out unauthorized construction was rejected. The observations in that case, as such, are of no help to the revision petitioner.

A Bench of this Court in case of **Onkar Vs. Sugan Chand (supra)** has observed that the question of material impairment of value and utility of the property is to be seen from the point of view of landlord and not from the point of view of tenant. In that case, the intervening walls of the premises was removed and Hon'ble Bench has observed in para 18 as follows:-

“18. In the present case, as held above, the intervening wall has been removed. No consent of the

landlord had been taken. It is not the case of the respondent that it was a parada wall. Consequently, it must follow that the respondent has impaired the value and utility of the property. Similar view had been taken by this Court in case the case of ***Ashok Kumar and others Vs. Shri Banarsi Dass and others 1999 H.R.R. 65.***”

Similar observations were also made by a Bench of this Court in case of ***Vijay Kumar Bansal (Died) through LRs Vs. Bishan Sarup (supra)***, which are reproduced as follows:-

“8. After hearing the learned counsel for the parties, I am of the considered view that this petition is devoid of merit and is thus liable to be dismissed. Learned Appellate Authority by referring to documentary evidence of Rent Note Ex. P.1 and rent receipts Ex. P.3 to P. 10 alongwith the oral statement of various witnesses has concluded that the intervening wall of the two shops has been removed by the tenant-petitioner without the permission of the landlord-respondent which has resulted in removal of the support of the roof. As such there is impairment of value and utility of the premises within the meaning of Section 13(2)(iii) of the Act. It would be appropriate to make a reference to the provisions of Section 13(2)(iii) of the Act which reads as under :—

“13. *Eviction of tenants.*—

(2) A landlord who seeks to evict his tenant shall apply to the Controller, for direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied.—

(i) and (ii) xx xx xx xx xx

(iii) that the tenant has committed or caused to be committed such acts as are likely to impair materially the value or utility of the building or rented land :”

9. A similar provision from the East Punjab Urban Rent Restriction Act, 1949 which is parimateria to the above extracted provision came up for consideration before the Supreme Court in ***Vipin Kumar Vs. Roshan Lal Anand 1993 (1) RCR 675***. Their Lordships of the Supreme Court came to the conclusion that once the tenant is proved to have made additions and alterations then whether such an addition and alteration would impair the value and utility of the premises would be an inferential fact to be deduced from the proved facts. It has further been held that assessment regarding impairment of value and utility of the building is to be examined from the point of view of the landlord and not that of the tenant. The observations of their Lordships read as under :

“Clause 3 of sub-section (2) of Section 13 provides that if the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, the Rent Controller may make an order directing the tenant to put the landlord in possession of the building or rented land. If the Controller is not so satisfied, he shall make an order rejecting the application. It is, therefore, clear that if the tenant had committed such acts as are likely to impair materially the value or utility of the building, he is liable to ejectment. The finding recorded by the Controller is that on account of the construction of the wall and putting up a door the flow of light and air had been stopped. He removed the fixtures. So, the value of the demised shop has been impaired and utility of the building also is impaired. The impairment of the value or utility of the building is from the point of the landlord and not of the tenant. The first limb of Clause 3

of Subsection (2) of Section 13 is impairment of the building due to acts committed by the tenant and the second limb is of the utility or value of the building has been materially impaired. The acts of the tenants must be such that by creating the wall had materially impaired the value or utility of the demised premises. It is contended by Mr. Prem Malhotra that the landlord should prove as to how it is materially effected and that there is no evidence adduced by the landlord. We find no force in the contention. By constructing the wall, whether the value of utility of the building has materially been impaired is an inferential fact to be deduced from proved facts. The proved facts are that the appellant without the consent of the landlord had constructed the wall and put up a door therein as found by the Rent Controller, the flow of air and light has been stopped. He removed the fixtures. From these facts it was inferred that the value or utility of the building has been materially affected.”

In view of the above facts, which are proved on file, learned Rent Controller and Appellate Authority have committed no error while recording the finding that the revision petitioner has committed material alteration and addition in the demised premises without the consent of the landlord. The non-examination of landlord is immaterial as his attorney has been examined, who has stated that respondent-landlord is unable to appear because of paralysis. Even otherwise, the attorney of respondent-landlord is his nephew and was well aware of the facts of the case and Rent Controller has rightly taken note of his testimony as a witness and also as attorney of

respondent-landlord. Even otherwise, the case of the respondent-landlord is duly proved from the testimony of revision petitioner and her son.

Keeping in view the above facts and circumstances, I find no reason to interfere with the finding of learned Rent Controller and Appellate Authority ordering ejectment of the revision petitioner from the demised premises for causing material alteration and addition without the consent of landlord.

This revision petition has no merits. Dismissed.

The revision petitioner is carrying on business of restaurant/*Dhaba* in demised premises. She is allowed two months time to vacate and hand over vacant possession of demised premises to the respondent-landlord.

April 16, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***