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In the High Court of Punjab and Haryana at Chandigarh

CR No. 6007 of 2015(O&M)
Date of Decision:21.11.2018

Punjab Khadi Mandal, Adampur Doaba, District Jalandhar
---Petitioner

vs.

P.K.Anand
---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

***

Present: Mr.Varun Sharma, Advocate
for the petitioner

Mr. S.S.Brar, Advocate
for the respondent

***

Rekha Mittal, J.

The present petition directs challenge against order dated 21.5.2015 passed by the Appellate Authority, Jalandhar whereby appeal against order dated 9.9.2011 passed by the Rent Controller, Jalandhar ordering eviction of the respondent-tenant from the shop in question was allowed, eviction order was set aside and the application for eviction filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short "the Act"), was dismissed.

The petitioner filed the eviction application from portion of first floor shown red in the site plan on the twin grounds that the respondent has failed to pay arrears of rent with effect from 1.4.2006 @ Rs. 787/- per month and has materially impaired value and utility of the tenanted premises by making structural additions and alterations without

PARAMJIT KAUR SAINI
2018.12.13 11:08
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written consent and permission of the petitioner. The learned Rent Controller negated plea of the petitioner for ejectment on the ground of arrears of rent as arrears of rent were tendered by the respondent and the said issue was not pressed by the petitioner. However, the Rent Controller allowed eviction on the ground of material impairment to value and utility of the demised premises on the ground of removal of intervening wall between two rooms under tenancy of the respondent.

As has been noticed hereinbefore, the appeal preferred by the respondent came out to be successful and the eviction order was set aside.

Counsel for the petitioner would argue that there is no dispute between the parties that intervening wall between the two rooms under tenancy of the respondent, depicted in the site plans Exs. A-2 and A-3 has been removed by the respondent-tenant who was permitted to make additions and alterations but without making any structural change in the demised premises when the parties on the basis of request made by the respondent vide letter dated 28.3.1994 (Ex. R-1) agreed to enhance the rent to Rs. 650/- per month with effect from 1.4.1994 vide agreement dated 4.4.1994. It is vehemently argued that as the respondent is guilty of making structural change by removing the intervening wall and converting two rooms into a big hall, the respondent is guilty of such acts as are likely to impair the value or/and utility of the tenancy premises. In support of his contention, he has heavily relied upon Division Bench judgment of this Court **Narain Singh vs. Bakson Laboratories etc. 1981(2) RCR (Rent) 237.** Further reference has been made to judgments of this Court **Harbans Sharma vs. Smt. Pritam Kaur 1981 (2) RCR (Rent) 476** and **Smt. Kala**

PARAMJIT KAUR SAINI
2018.12.13 11:08
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Wati vs. Ram Piari and others 2005(1) RCR (Rent) 666.

Counsel representing the respondent has supported the order passed by the Appellate Authority by making reference to site plans Exs. A-2 and A-3 and Rent Agreement dated 4.4.1994. It is argued that the petitioner has failed to establish that the wall in question was a load bearing wall or removal thereof has resulted in cracks in the existing structure as has been sought to be stated by the so called building expert namely Mr. R.K.Verma, examined by the petitioner. It is argued that even if the two site plans Exs. A-2 and A-3 are accepted to be correct, in Ex. A-2, in the wall in question, there are two windows and one door. It is further argued that the Appellate Authority has rightly held that the respondent-tenant has spent enough money to make the tenancy premises fit for use as office by a Chartered Accountant and his staff and as a matter of fact the changes brought by the tenant have enhanced the value and utility of the premises in dispute. In support of his contention, he has relied upon judgments of this Court **Subhash Chander vs. Valayati Ram son of Mstu Ram 1994 PLR 701** and **M/s Ram Dhan Das Ramji Das Sethi, Ferozepore City vs. Shri Desh Bandhu and another 1985(1) RCR (Rent) 520.**

I have heard counsel for the parties, perused the paper book and records.

Before adverting to the submissions made by counsel for the parties, it is appropriate to extract the averments pertaining to material impairment set up in sub para (b) of para 3 of the eviction application, reads thus:-

“That the respondent has materially impaired the value and

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2018.12.13 11:08
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utility of the tenanted premises by making structural additions/additions without the written consent and permission of the petitioner. The respondent was given right to make temporary additions/alterations for his office working, but in no case the respondent was allowed to make additions/alterations so as to change the existing structure of the building. The respondent was given on rent two rooms as shown yellow in the site plan attached, but the respondent by making structural changes removed the intervening wall of the rooms and made a big hall, thereby materially impairing the value and utility of the tenanted premises. The wall removed was a load bearing wall of the room and by removal of this wall the building has become weak. The respondent had damaged the structure of the demised premises despite the protest by the petitioner."

Indisputably, the Rent Controller accepted claim of the petitioner that the respondent-tenant has made structural change in demised premises by removing the intervening wall and converting two rooms into a big hall and this act is likely to impair the value or/and utility of the tenancy premises.

The Appellate Authority, in para 25 of the judgment, has held that on careful scrutiny of oral and documentary evidence led by the parties, it can safely be held that there was one wall connecting two rooms which was removed by the respondent-appellant while renovating his office i.e. fixing vitrified tiles on cemented floor and false ceiling to cover wooden balas and iron angles. It has also taken note that the respondent-

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2018.12.13 11:08
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tenant was authorised to make such additions/alterations as mentioned in his letter dated 20.3.1994 as were convenient for his office working but those additions/alterations should not damage existing structure of the building.

In para 26, the court has posed a question whether removal of intervening wall amounts to material additions/alterations which had damaged existing structure of the building leading to impairing the value and utility of the building. In paras 27 onwards, the court has made reference to judgments relied upon by the tenant (appellant therein) and concluded in para 34 that by applying the ratio of law to the facts and circumstances of the present case, only inescapable conclusion is that act of the tenant in removing the intervening wall can not be said to have caused impairment of value and utility of the building nor the same amounts to material additions/alterations or affecting the structural change of the demised premises. Further held that the landlord is running business on the ground floor of the premises. It is not version of the landlord that due to removal of said wall, structure of the ground floor particularly the pillar or foundation has developed any crack or has been damaged. The wall in question can not be declared to be a load bearing wall but appears to be a parda wall. The tenant is running office of chartered accountant on the first floor. He has renovated the demised premises in order to suit his requirement. No such sane person would ever opt to make any addition or alteration in the rented property which could cause impairment of the value and utility of the building and can demolish the same rendering his own life unsafe while running the office. Rather, by fixing vitrified tiles, false ceiling

PARAMJIT KAUR SAINI
2018.12.13 11:08
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and renovating the other portion, value and utility of the premisses appear to have enhanced.

When the aforesaid observations of the Appellate Authority are analyzed in the light of averments raised in sub para (b) of para 3 of the eviction application, reproduced hereinbefore, it can safely be held that it is not plea of the petitioner that because of removal of the wall in question, the building in question has become unfit and unsafe for human habitation. On the contrary, plea of the petitioner is that the respondent is guilty of making structural change by removing the intervening wall of the rooms and making it a big hall, thereby materially impaired value and utility of the tenanted premises. Another plea raised by the petitioner is that the wall was a load bearing wall and with removal of the same, the building has become weak.

The Appellate Authority, in my considered opinion, has failed to appreciate that impairment of value and utility has to be examined from the point of view of landlord and not of the tenant. In this context, reference can be made to judgment of this Court in **Harbans Sharma's case (supra**) wherein by relying upon the Division Bench judgment of this Court in **Narain Singh's case (supra)**, the court has held that though it would be for the authorities under the Act to record a finding on the question of impairment of value and utility but while doing so, it is point of view of the landlord and not of the tenant regarding the utility of the building which is to be kept in view.

Before addressing the issue, if removal of the intervening wall can be said to be an act of impairing value or utility of the tenancy

PARAMJIT KAUR SAINI
2018.12.13 11:08
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premises, it is pertinent to recapitulate the relevant provisions of the Act. Section 13 (2)(iii) of the Act reads as follows:-

> "13(1) xxx xxx xxx
>
> (2)A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. It the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied-
>
> (i) xxx xxx xx
>
> (ii) xxx xxx
>
> (iii)that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, or xxxx xxx
>
> The Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied, he shall make an order rejecting the application."

The legislature in its wisdom has used the word 'likely' in the aforesaid provision. The statute has not used pre-emptory or categoric language. It is not the intention that the impugned act must have conclusively diminished the value or utility of the building but it would be within the mischief of the statute if the act(s) is likely to do so. A closer look at the extracted provision would indicate that it is titled in favour of the landlord even if the acts may not conclusively impair the value or utility but merely have tendency of the same effect, they may fall within the

PARAMJIT KAUR SAINI
2018.12.13 11:08
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wider net of the language used by the legislature. Equally settled is that the words 'value or utility' in the aforesaid provision have to be read disjunctively. It is not that the impugned act must impair both the value and utility of the building but it suffices if the material impairment is either of the financial value of the building or of the utility of the building. Resultantly, it would serve purpose of the landlord if he is able to establish either of the two requirements.

A Division Bench of this Court in **Narain Singh's case (supra)** has held that any material structural alterations which tend to change the nature and character of the building would come within the mischief of the statute. The use of word 'material' in the provision only effectuates the hallowed rule of law that it does not take account of trifles and consequently both the impairing of its value or its utility must be substantial and not of inconsequential nature.

A single Bench of this Court in **Harbans Sharma's case (supra)** while relying upon Division Bench judgment in **Narain Singh's case (supra),** has held in para 7, quoted thus:-

> ".....Though Mohinder Singh vs. Om Parkash and others, 1978(1) Rent Control Journal 406 was not noticed by the Division Bench but it also stands impliedly overruled as the view expressed by R.N.Mittal, J. in **Bawa Singh vs. Smt. Pushpa Wati and others, 1980(2) RCR 492** that any material change in the building would necessarily impair its value and utility, was expressly approved. As already noticed above, even

PARAMJIT KAUR SAINI
2018.12.13 11:08
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in the present case, the wall intervening the two rooms has been removed converting them into a big room. The utility of the building as its existed prior to the removal of the wall has certainly been impaired so far as the landlord is concerned though it may have been enhanced so for as the tenant is concerned. The matter is directly covered not only by the latest Division Bench decision in **Narain Singh case (supra)** but also by two other Single Bench cases in **Rameshwar Dass Vs. Jugal Kishore 1980 (2) RLR 373** and **Kartar Singh vs. Kesar Singh and another 1979(2) Rent Law Reporter 698** wherein removal of partition wall was held to be a material alteration impairing the utility of the building."

When the facts and circumstances of the present case are examined in the light of judgments of this Court in **Harbans Sharma's case (supra)** and **Smt. Kala Wati's case (supra)**, there is no escape from conclusion that the tenant/respondent is guilty of making structural alteration in the demised premises which is likely to impair utility of the building from the point of view of the landlord. With the alterations, the landlord would not be able to use the two rooms existing earlier separately or create tenancy of one room each in favour of different tenants etc.

To be fair to the respondent, counsel has relied upon the judgment in **Subhash Chander's case (supra)** which also finds reference in the judgment of the Appellate Authority. In **Subhash Chander's case (supra)** decided in 1993, this court has not taken into consideration the Division Bench judgment in **Narain Singh's case (supra)** and Single

PARAMJIT KAUR SAINI
2018.12.13 11:08
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Bench judgment in **Harbans Sharma's case (supra)**. This apart, the court in para 9 has held that as regards removal of the intervening wall, it cannot be termed as material alteration as the landlord has nowhere pleaded as to in what manner the said alteration has impaired the value and utility of the building. It is not the case of the landlord that with the removal of the wall any damage has been caused to the floor, roof or the walls and therefore, the value of the shop in question has diminished. The Rent Controller has even observed that in the instant case it was also doubtful whether there was any wall in existence or not. No finding much less a firm finding has been recorded by the appellate authority that the tenant did remove the intervening wall and/or replaced the roof. There is no finding to that effect.

The judgment in **Subhash Chander's case (supra)** cannot be given primacy viz-a-viz judgment in **Harbans Sharma's case (supra)** which was passed by this Court after taking into consideration the judgment of Division Bench and two other Single Benches, noticed hereinvbefore.

The respondent also cannot derive any advantage to his contention from the judgment in **M/s Ram Dhan Das Ramji Das Sethi, Ferozepur City's case (supra).** In the said case, the wall which was removed was not upto the roof level which was 7-8 feet above the ground, therefore, it was held that the authority relied upon i.e. **Harbans Sharma's case (supra)** has no relevancy to the facts of that case.

On a detailed consideration of provisions of the Act, precedents on the issue cited at bar and the discussion made hereinbefore, I have no hesitation to conclude that the Appellate Authority has failed to examine the factual and legal aspects in right perspective and committed illegality by

PARAMJIT KAUR SAINI
2018.12.13 11:08
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setting aside the order of eviction passed by the Rent Controller. The respondent-tenant has made structural alterations without written consent of his landlord and the same amounts to materially impairing utility of the demised premises. That being so, findings of the Appellate Authority cannot be allowed to sustain and accordingly set aside. As a natural corollary, findings of the Rent Controller that the respondent is liable to be evicted on the ground of material impairment to the utility of the premises in question are liable to be restored.

In view of what has been discussed hereinabove, the petition is allowed. The order passed by the Appellate Authority is set aside and that of the Rent Controller is restored. The application filed by the petitioner seeking eviction of the respondent on the ground of material impairment to the value or utility of the demised premises is accepted with costs.

(Rekha Mittal)
Judge

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