

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

Civil Revision No. 6830 of 2018(O&M)

Date of Decision: October 08 , 2018.

Brij Bhushan

..... Petitioner

Versus

Tarlok Nath through LRs

.....Respondent (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vaibhav Narang, Advocate
for the petitioner.

LISA GILL, J.

The tenant/petitioner is aggrieved of judgment dated 03.09.2015 passed by the learned Rent Controller, Gurdaspur whereby eviction of the present petitioner from the demised premises has been ordered as well as judgment dated 05.09.2018 passed by the learned Appellate Authority, Gurdaspur dismissing the appeal filed by the present petitioner.

Brief facts necessary for the adjudication of the case are that a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, was filed by the respondent-landlord-Tarlok Nath son of Durga Dass (now represented by his legal heirs) seeking ejectment of the present petitioner from the house in dispute which was detailed and described in the plaint. It was pleaded that the present petitioner (respondent in the petition before the learned Rent Controller) was a tenant at the rate of ₹50/- per month. He failed to pay the rent of the demised premises since 01.11.1999. Moreover, the house was in a dilapidated condition, thus, unfit and unsafe for human habitation. Major portion of the house had fallen. Hence the petition was filed for eviction of the tenant.

The present petitioner who was arrayed as the respondent resisted the petition while stating that the house was given on rent at the rate of ₹28/- per month by Durga Dass, father of the respondent-landlord to Om Parkash, father of the petitioner-tenant. Om Parkash, passed away. He was survived by the present petitioner as well as four others. Rate of rent was increased to ₹50/- per month. Thereafter, Durga Dass also passed away leaving behind the landlord-respondent. Tirlok Nath, his four brothers and two sisters as the legal heirs. It was denied that the tenant was in arrears of rent or that the house in question was in dilapidated condition or unfit for human habitation. Dismissal of the petition was prayed for.

From pleadings of the parties, following issues were framed by the learned Rent Controller:-

1. Whether the respondent is liable to be evicted from the house in dispute on account of arrears of rent? OPA
2. Whether the house in dispute is in dilapidated condition and is unsafe and unfit for human habitation? OPA
3. Whether the present application is barred of any earlier application filed by the applicant on the same ground has been dismissed? OPR
4. Whether the applicant has got no cause of action? OPR
- 4A. Whether the application is bad for non-joinder of necessary parties? OPR
5. Relief.

The learned Rent Controller, Gurdaspur vide judgment dated 03.09.2015 concluded that the petitioner-tenant in his cross-examination admitted that roof one of the rooms had fallen and that his mother had taken a house on rent consisting of six rooms adjoining the demised premises. The petitioner alongwith his family were admittedly residing therein. Reference was also made to the report (Ex.RW/2) submitted by the expert, V.P.Saini. It has been observed by the learned Rent Controller that the conduct of the petitioner/tenant was not good. The petitioner, it is noted, suffered a statement on 12.02.2005 that he would

hand over the vacant possession but thereafter he withdrew his consent. Eviction of the petitioner from the demised premises was ordered.

Appeal filed by the petitioner was also dismissed by the learned Appellate Authority, Gurdaspur. Aggrieved therefrom, the present revision petition has been filed.

Learned counsel for the petitioner vehemently argues that the respondent-landlord has not led any evidence whatsoever to show that the premises in question were not fit for habitation. The so-called expert AW3 Subedar Jagir Singh examined by the landlord was not a competent witness. He was not an expert, therefore, his report does not hold any good and cannot be relied upon. Moreover, the landlord had earlier filed an eviction petition which was dismissed in the year 1992. The present application was filed in the year 1998. It was allowed in the year 02.09.2009 by the learned Rent Controller, however, the matter was remanded back on 18.04.2012 to the learned Rent Controller on an appeal filed by the present petitioner to afford him an opportunity to lead evidence. Matter was ultimately decided by the learned Rent Controller on 03.09.2015. It is contended that there is nothing on record that from the year 1992 to 1998, the building was rendered unfit for habitation. Moreover, all the legal heirs of the original tenant have not been impleaded. Learned counsel for the petitioner relies upon judgment of the Hon'ble Supreme Court in **Piara Lal v. Kewal Krishan Chopra, 1988(3) SCC 51** and **M/s Bhim Sain Nardosh Kumar and others v. Raj Pal, 1993(1) RCR (Rent) 165**.

I have heard learned counsel for the petitioner and have gone through the photocopy of the record which was produced in Court today by him.

A perusal of the site plan relied upon by the petitioner-tenant

(Ex.RW2/B) reveals that the demised premises consists of one room i.e. 10-3" x 11-0" and another room marked 'OTS', a verandah and the lawn. The site plan (Ex.A-2), relied upon by the landlord also reflects two rooms, roof of one of which has fallen. RW-2-Ved Parkash Saini i.e. the expert who was examined by the petitioner has clearly admitted that the roof of one of the rooms as pointed by him in the site plan, had fallen down. A papaya tree was growing over the area of the roof. When specifically questioned further about the roof, RW-2 stated that he had not mentioned the condition of the internal surface of the wall as well as the roof, though he usually used to mention the same in his reports. Similarly, he had not mentioned anything in his report regarding the condition of the joinery or wooden battens of the verandah. RW-2, expressed ignorance about the existence of any kitchen, bathroom or toilet on the premises in dispute. The learned Rent Controller as well as the Appellate Authority have rightly held the premises in question to be unfit for human habitation. Therefore, there is no merit in the argument raised by learned counsel for the petitioner that there is nothing on record to indicate that the premises in question are unfit for human habitation or that falling of the roof of one room does not mean that the entire premises are rendered inhabitable. It is not in dispute that the premises consist of only two rooms.

Another argument vehemently urged was that the earlier eviction petition filed in 1992 on the same grounds was dismissed. This argument has been succinctly dealt with by the learned Appellate Authority, while observing that the petition filed in the year 1992 was dismissed on the ground that Durga Dass original landlord/owner was alive and he did not file the ejectment petition himself. The said petition was dismissed on the ground of locus standi. Therefore,

the same cannot be a bar to filing of the present subsequent petition by the respondent-landlord. Judgments/case law relied upon by learned counsel for the petitioner, are not applicable in the facts and circumstances of the case. It is a settled position of law that when concurrent findings of fact recorded by the learned Courts below are duly supported by the evidence on record and not vitiated by any perversity, there should not be another independent re-assessment of the evidence by this Court. Reference in this regard can be gainfully made to the judgment of the Hon'ble Supreme Court in **Rajbir Kaur Vs. M/s S.Chokesiri and Co. 1988 (2) R.C.R. 328 (SC)**.

No other argument has been raised.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 03.09.2015, passed by the learned Rent Controller, Gurdaspur as well as order dated 05.09.2018 passed by the learned Appellate Authority, Gurdaspur, which calls for interference by this Court in exercise of revisional jurisdiction.

Petition is accordingly dismissed.

October 08, 2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No