

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.3323 of 2002 (O&M)
Date of Order: 10.10.2018

Siri Chand

..Petitioner

Versus

Balwant Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pritam Singh Saini, Advocate,
for the petitioner.

Mr. Sanjay Mittal, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

This revision petition has been filed by the tenant against the concurrent judgments of the courts below, ordering eviction on the ground that tenant has unauthorizedly raised construction and added a room apart from boundary wall.

Landlord while filing the petition had pleaded as under:-

“4(iii) That the respondent has made major alteration in the premises, without the knowledge and without consent of the petitioner, as the respondent has raised unauthorized construction on the premises without the consent of petitioner, therefore, the respondent is liable to be evicted on this score also.”

In reply, the tenant pleaded as under:-

“That the contents of para No.4(iii) of the petition are

wrong and denied. It is wrong and denied that the respondent made any alterations much less major alteration in the demised premises. Since the petitioner has failed to detail the alterations in this para of the petition, so he cannot take any benefit in respect thereof. In fact the respondent has not made any alteration at all in the demised premises.”

On appreciation of the evidence, both the courts have found that the tenant had taken an incorrect stand and construction was not raised with the permission of the landlord. In the present case, landlord is resident of a different city.

Learned counsel for the petitioner-tenant has submitted that as per Section 13(2)(iii) of The Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the Act'), the landlord is further required to plead and prove that such construction/acts of the tenant are likely to impair materially the value and utility of the building or rented land. He submitted that in absence of the pleadings to that effect, the petition was not maintainable and, therefore it ought to have been dismissed. However, on being call upon, learned counsel for the petitioner could not point out that such objection was taken either in the pleadings or at the time of arguments before the courts below. However, learned counsel for the petitioner submits that it is a legal objection which can be taken by the tenant-petitioner at any point of time.

This court has considered the submission.

As per Section 15(6) of the Act, this court exercises only revisional jurisdiction. The objection being taken by the petitioner-tenant is

only a technical objection through which petitioner wants to defeat the right of the landlord. If the tenant had been serious about the objection taken, it should have been raised at an appropriate time while filing the reply enabling an opportunity to the landlord to amend the pleadings to bring in consonance with the requirement of the Act. This objection was not taken by the tenant either before the learned Rent Controller or before the learned Appellate Authority. At this stage, petitioner cannot be permitted to make out a new case which is neither part of the pleadings nor part of the evidence.

Still further, learned Appellate Authority has found after appreciation of evidence that a room has been constructed along with the boundary wall on the back side without written consent of the landlord and the plea taken by the tenant that such construction was raised with the permission of the landlord has not been proved. The ground of eviction as provided in the statute is to be examined in the proper prospective. Landlord had given on lease the existing construction and he feels that the additional construction is resulting into diminishing the utility of the rented building. In such circumstances, the technical objection which is sought to be taken for the first time in the revision petition cannot be permitted.

In view thereof, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The revision petition is dismissed.

October 10, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No