

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

**Civil Revision No.4719 of 2003 (O&M)
Date of Decision:February 23, 2018.**

Munish Aggarwal

.....PETITIONER(s).

VERSUS

Smt. Anar Devi and others

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.M. Sharma, Advocate
for the petitioner (s).

Mr. Avnish Mittal, Advocate
for LR's of respondent No.1.

SURINDER GUPTA, J.

This is revision petition by Munish Aggarwal, whose petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973 seeking ejectment of the respondents on the ground that respondents had not paid the rent from 21.03.1988 to 02.03.1991; made addition and alterations in the tenanted premises which had impaired its value and utility and they have sublet the portion of demised premises without the consent of the petitioner, was dismissed.

Admittedly, respondent No.1 is tenant in the demised premises, much prior to its purchase by the petitioner vide sale deed dated 23.01.1988.

The ground of non-payment of rent was not pressed before the Rent Controller. The plea of petitioner-landlord that respondent No.1 has

made material additions and alterations in the demised premises to impair its value and utility, was rejected with the observation that firstly the same is not proved and secondly the addition and alteration do not impair the value and utility of the demised premises. The plea of petitioner-landlord that respondent No.1 has sublet part of the premises to respondent No.2 was also held as not proved. The petitioner filed appeal before the Appellate Authority, which was also dismissed.

I have heard learned counsel for the petitioner and have perused the paper book with his assistance.

In order to prove the plea of petitioner that premises has been sublet by respondent No.1 to respondent No.2, learned counsel for the petitioner has made reference to the report of local commissioner in another suit regarding the same property, wherein it was reported that at the time of visit by local commissioner, one Mr. Mukesh Gulati was present at one of the counter, where lottery was being sold. As per the local commissioner, she was apprised by that Mukesh Gulati that he was paying ₹50/- on daily basis to Anar Devi as rent for using said shop.

The above report is of no help to the revision petitioner as no case has been set up that Mukesh Gulati is sub tenant over the demised premises. Even the local commissioner has not found Om Parkash or his family living in the demised premises. Though Bharat Bhushan PW1 has stated that Om Parkash has since died and his family is still living in part of the demised premises but his statement cannot be relied for the fact that he had never gone inside the demised premises and there is nothing in his statement that any specific portion of the demised premises was ever in

exclusive possession of Om Parkash or his family. Rahul Aggarwal, who appeared as attorney of petitioner, has stated that possession of portion of Om Parkash is with his family, which is living there but that portion has nowhere been depicted in the site plan of the demised premises or has been pin pointed anywhere. Learned Rent Controller on the basis of evidence on record, has committed no error while observing that there is no evidence to show that Om Parkash or his family is in possession of any portion of the demised premises as sub tenant. It was observed that even the existence of Om Parkash or his so called family was not proved.

The Courts below have taken note of the fact that the petition remained pending from 1991 to 1998 and summons sent to respondent No.2 Om Parkash were received unserved with the report that no such person was residing there. PW1 Bharat Bhushan has deposed that Om Parkash and his family is residing in the demised premises but has admitted in his cross-examination that on the front of the shop, there are 3/4 lottery stalls and Anar Devi charged rent from them on daily basis.

Findings recorded by the Rent Controller and Appellate Authority that subletting of portion of the demised premises of Om Parkash or his family is not proved, are based on evidence on record which call for no interference in this revision.

The other contention of learned counsel for the petitioner-landlord is on the material addition and alteration in the demised premises. Admittedly, the *Verandah*, which is on the front side towards the road, has been provided with shutter(s) and a wall in between has been constructed.

The question which arise for consideration is as to when this

construction was raised. Respondent No.1 while appearing as RW2, has stated that she had affixed the shutter and raised the wall in the *Verandah* about 25 years back. Her statement was recorded in the year 2000. It means that it was raised around the year 1975. The petitioner had purchased the premises in the year 1988. Respondent No.1 has alleged that she affixed the shutter and constructed the wall with the oral consent of the previous landlord.

The question which arise for consideration is as to whether the tenant has committed such act as are likely to materially impair value and utility of the demised premises without written consent of the landlord. While answering this issue, learned Rent Controller has observed that mere fixing of shutters does not amount to any permanent alteration as the shutters are easily removable and do not, in any manner, permanently damaged the premises. Regarding the wall, it was observed that there is no evidence that this wall was erected on foundations. While referring to the observations of Hon'ble Apex Court in case of ***Om Parkash Vs. Amar Singh 1987 HRR 220***, the Rent Controller has observed that where partition wall can be removed without causing damage to the accommodation, it does not fall within the mischief of material alteration.

In the case of ***Waryam Singh Vs. Baldev Singh 2003 (1) PLR 154***, Hon'ble Apex Court in somewhat similar circumstances, has observed that it cannot be inferred that value and utility of the building has been diminished from the mere fact that *Verandah* has been enclosed. In case of ***Smt. Kala Wati Vs. Ram Piari and others 2005 (2) PLR 570***, this Court has observed that only those additions and alterations which amount to certain

structural changes and which are of permanent character that could be termed to be sufficient to hold that the value and utility of the premises has been impaired. In this case, the construction as pointed out by the petitioner was much prior to his purchasing the building and do not fall in the category of permanent construction or resulting in structural changes in the demised premises.

On perusal of the judgments of Rent Controller and Appellate Authority, I find no legal or factual infirmity therein calling for any interference.

This revision petition has no merits. Dismissed.

February 23, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

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

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