

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

CR No.2295 of 2017

Date of Decision: October 14, 2019

Jagdish Rai & Ors.

.... Petitioners

Versus

Roshan Lal & Ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Manu Loona, Advocate for the Petitioners.

Mr. Ashok Aneja, Advocate for the Respondents.

SUDIP AHLUWALIA, J.

This Revisional Application is directed against the Order dated 31.01.2017 passed by the Ld. Rent Controller, Abohar in Rent Petition No.8 of 2015 under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 whereby the Application of Landlords/Respondents had been allowed.

2. Vide the impugned order, the Ld. Rent Controller had allowed the Application (Annexure P-9), in which, the Respondents/Landlords had prayed for a direction upon the present Petitioners/Tenants to allow inspection of the demised Shop by an Expert witness. The Ld. Court below in allowing the Application observed *inter-alia* -

“3. After hearing counsel for both the parties and going through the material available on record, this Court is of the considered view that by way of present application, the petitioner wants to get inspect the shop

in question from an expert alleging that the shop in question is in dilapidated condition and is not fit and safe for human habitation and working. However, this fact has been denied by the respondent in his reply. However, in order to prove the condition of the shop in question to be fit for human habitation or not, or to avoid any irreparable loss in future it is necessary that the shop in question should be got inspected from the Engineer. Hence, the present application is allowed and the Junior Engineer, Municipal Council, Abohar is directed to visit the spot and to inspect the spot and prepare detailed report along with photographs during the working days by giving one day prior notice to the respondent No.1 regarding the alleged inspection of shop in question. His fee is assessed at Rs.2500/- which shall be paid by the petitioner. The Junior Engineer, Municipal Council, Abohar is directed to submit his report before this Court on or before the next date fixed. The case is adjourned to 3.3.2016 for awaiting report of Junior Engineer, MC, Abohar.”

3. It is thus seen that in allowing the relevant Application, the Ld. Rent Controller had entrusted the job of reporting about the condition of the demised Shop to a Public Servant/Junior Engineer in the Municipal Council of the local area.

4. The grievance of the Petitioners is that such prayer could not have been allowed inasmuch as by way of having an Expert appointed

in this manner to report about the alleged dilapidated condition of the demised premises, the Respondents/Landlords were seeking to cover up the lacunae in their evidence, and that in any case, the Shop in question had already been inspected by an Advocate Commissioner, who had reported about its condition as seen, before the Court.

5. After hearing Ld. Counsel for both sides and considering the available material on record, it transpires that the Advocate Commissioner's report was not submitted in the present Eviction Application, but in connection with some separate Civil proceedings arising out of a Suit for injunction filed by the Respondents/Landlords against the Petitioners/Tenants. On the other hand, the present Eviction Application is virtually based on sole ground of demised Shop being allegedly in a very dilapidated condition and unfit for human habitation, as can be seen from the following averments made in the original Eviction Application -

“On the night between 03-03-2015 & 04-03-2015, the roof of the shop in question fell down. The intimation of the same was given the civil suit titled as “Roshan Lal VS. Jagdish Rai” as was even then pending in the court of Civil Judge (Junior Division) Abohar for the relief of permanent injunction restraining the respondent No.1 from raising any type of construction or making any addition or alteration in the demised shop without recourse to law. The said suit is now pending in the court of Ms. Satbir Kaur Civil Judge (Junior Division) Abohar. The demised shop has become unsafe & unfit for

human habitation and requires reconstruction.”

(Emphasis added)

6. Needless to mention, the alleged ground of Petitioners being in arrears of rent is effectively not a real ground for eviction in such proceedings because the default, if any, in payment of rent can always be covered up by the Tenants once the provisional assessment of the outstanding dues is made by the Rent Controller.

7. So the real issue to be determined in the case happens to be only an ascertainment of the actual condition of the demised premises in order to decide whether or not it is liable to be got vacated allegedly on account of its unfitness for the purpose of human dwelling/occupation.

8. The submission to the effect that by allowing the Respondents' Application, an opportunity was being granted to them to fill up the lacunae in their evidence is otherwise unsubstantiated, since it has transpired that so far the evidence of Tenants' side has not yet commenced. The question of filling up the lacunae in such circumstances could have arisen only if the evidence from the Landlords' side had actually been completed, which has not been done in the present case till now.

9. For the aforesaid reasons, this Court finds no ground to interfere with the impugned order. The Revision is therefore, dismissed.

(SUDIP AHLUWALIA)
JUDGE

October 14, 2019
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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |