

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

CM No. 23718 CII of 2015 in
CR No. 7496 of 2015 (O&M)
Date of decision: 22.1.2019

Murti Shri Shankar Bhagwan

...Petitioner

Versus

Dr. Budh Ram

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Alok Mittal, Advocate,
for the petitioner.

JAISHREE THAKUR, J.

CM No. 23718 CII of 2015

This is an application that has been filed for seeking
condonation of 87 days delay in filing the revision.

For the reasons mentioned in application, which is supported by
an affidavit, delay in filing the revision is condoned.

Main case

In brief, the facts are that the petitioner/landlord herein i.e.
Murti Shri Shankar filed an ejectment petition under Section 13 of the
Haryana Urban (Control of Rent and Eviction) Act, 1976 through its
Muntzim seeking eviction of the tenant/respondent herein from shop 24, 25
and 26 on the ground that the tenant was in arrears of rent and also on the
ground that the tenant has impaired the value and utility of the shops in

question. It was pleaded that the respondent/tenant had not paid the rent after 30.11.2006 and as such was in arrears of rent and was liable to be ejected on this ground, while further pleading that he had impaired the value and utility of the shops by removing the middle wall of the shops in question without consent of the landlord.

Reply was filed to the ejectment petition controverting all the averments made therein. It was contended that the petitioner herein had refused to accept the rent and resultantly, the respondent paid and tendered the rent by depositing the same before the Rent Controller by filing an application. As far as the ground mentioned in the ejectment petition regarding impairment of the property by removing the intervening wall is concerned, the respondent/tenant contended that he had been in possession since 1978 and when the shops were taken on rent there was no middle wall in the said shops.

The Rent Controller framed the issues as to whether the respondent/tenant is liable to be ejected from the shops in question and whether the petition was maintainable in the present form. In support of his claim, the petitioner examined Pranav Kumar as PW1, who deposed on the similar line as averred in the petition and site plan Ex. P.1 was also produced on the record. The respondent examined himself as RW1, who reiterated the stand taken in the written statement, while also producing the documents i.e. Ex. R1 to R6 on the record.

The Rent Controller on appreciation of the evidence came to hold that there was no evidence available on the record to show that there was any material of alteration or change in the nature and character of the

shops in question, which could have impaired the said building by the tenant. These findings were affirmed in the appeal filed by the petitioner. Aggrieved against the said order dated 13.4.2015, the instant revision has been filed.

Learned counsel for the petitioner herein argues that the building has been subjected to material alteration by removing the intervening wall and, therefore, the respondent herein has impaired the value and utility of the building. However, the argument as raised would have no merit as there is no evidence on the record other than the statement given by PW1 Pranav Kumar to establish that the respondent has impaired the value and utility of the shops in question. It is for the petitioner to prove that on the date the shops were rented out, there was an intervening wall between the shops which was subsequently removed, thus impairing the building. In order to prove that the building had been impaired and had become unsafe, a building expert should have been examined, which evidence is lacking. In the absence of material and cogent evidence, a bald assertion would not be sufficient to establish impairment to the building. Under such situation when there is no material available on the record to substantiate the plea taken by the petitioner, this Court finds no ground to interfere with the well reasoned judgments passed by both the courts below.

The revision petition is dismissed.

22.1.2019

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No