

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

CR-1790-2021 (O&M)

Date of decision:01.10.2021

M/s Cargo Motors Ltd. and another

....Petitioners

Versus

Sadhu Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.H.K.Aurora, Advocate for the petitioners

ANIL KSHETARPAL, J

The petitioners are tenants in possession of a commercial building. Through this revision petition, the petitioners assail the correctness of the order of eviction passed by the Rent Controller, which has also been affirmed by the Appellate Authority. The ejectment of the tenants has been ordered on the ground that they have made material alterations and additions in the building without seeking the prior permission of the landlord.

Heard learned counsel representing the petitioners and with his able assistance perused the paper book. The learned counsel while drawing the attention of the Court to clause 3 of the rent deed dated 16.07.2010 contends that the tenants were permitted to make temporary alterations without causing structural damage to the premises. He contends that the alterations are temporary in nature. He further contends that PW1 did not appear to face cross examination and therefore, deposition without being cross-examined cannot be said to be

complete and thus, has been wrongly considered. Moreover, he contends that no structural engineer has been examined and the verandah was already covered before the execution of the rent deed dated 16.07.2010. In the end, he contends that since the landlord has himself not stepped into the witness box, therefore, an adverse inference is required to be drawn against him.

The first argument of the learned counsel is on the basis of clause 3 of the rent deed which reads as under:-

“Fittings, alterations and additions: The tenant will be entitled to make at their own cost temporary alterations, fittings, fixtures, cabins, counters and other additions as may be required by the tenants from time to time and to effect any changes or alteration in lay out of the office without permanent structural damages the premises.”

On careful reading of the aforesaid clause, it is apparent that the tenant was authorized to make temporary alteration, fitting, fixtures, cabins, counters and other additions, as may be required from time to time, but such alterations should not cause damage to the permanent structure. In the rent deed, the details of the constructed building were specified as under:-

- | | | |
|------|-----------------------|---------|
| “I) | Show Room size | 58'x60' |
| II) | Front Verandah size | 60'x10' |
| III) | Mercurine Floor Size | 16'x29' |
| IV) | Mercurine Floor Size | 16'x29' |
| V) | Bathrooms 2 Nos. size | 59'x6' |

VI) Area at the back which can be used as workshop and storage are:-

at left side end	30'-4"
at middle	21'6"
at end	24'-0"
Length	131'-6"

It is an admitted position on the record that front verandah has ceased to exist. Even one washroom/bathroom has been demolished and merged into the office. The respondent has examined Irvindeep Singh, a building expert as PW3, who has stated that the showroom has been extended and consequently, its opening is now on the main road. Verandah is an open space with a roof over it. It is like a roof with an open air gallery. When the official of the petitioners' company appeared in evidence, he admitted that there is no verandah in the front of the showroom at present and there is only one bathroom/washroom in the premises. He admits that the petitioners never obtained written permission from the owners to carry out the modifications. Furthermore, it has come in evidence that the entire backyard has been covered. Keeping in view the aforesaid facts, these changes cannot be said to be temporary.

The next argument of the learned counsel does not have any substance either because despite the fact that PW1 did not come forward to face the cross examination, the landlord has still put forth sufficient evidence to prove his case. PW1 is only a neighbour. Both the courts have not relied upon the evidence of PW1. The landlord has appeared

through his attorney Randhir Singh. Apart from that, the landlord has examined Irvindeep Singh as PW3 and Baldev Singh as PW4. The material witness in the present case is the building expert who, after inspecting the building, has given his report and proved the same while deposing in the court. The tenants have been given an opportunity to cross examine the expert witness at length. The next argument of the learned counsel is that no structure engineer has been examined by the landlord. It may be noticed here that a building expert has been examined by the landlord. On reading of the cross examination, as extracted by the Rent Controller, it is apparent that he has opined about the structural damages to the building and his testimony has remained un rebutted.

The next argument of the learned counsel also does not have any substance because the first rent note was executed between the parties on 02.05.1983 whereas the second rent note was executed on 16.07.2010. In both the rent notes, it is specifically noted that there is a front verandah measuring 60x10 feet size. The official of the petitioners' company has himself admitted that now there is only one bathroom whereas in the rent note, it is specifically noted that there were two bathrooms.

The last argument of the learned counsel is a request to the Court to draw an adverse inference against the owner as he did not enter the witness box. In the considered view of this Court, the adverse inference can be drawn only if the landlord fails to lead sufficient evidence. In the present case, it has come on record that the landlord

resides in UK. He has appeared through his attorney. Even the rent deed was executed by the landlord through his attorney. The attorney has answered all the relevant questions. In fact, the material evidence is of the building expert and the same has been substantially proved. Once the landlord has led sufficient evidence, there is no occasion for the court to draw adverse inference.

Keeping in view the aforesaid facts, there is no merit in the revision petition. Moreover, a Five Judge Bench in **Hindustan Petroleum Corporation Limited vs. Dilbahar Singh' (2014) 9 SCC 78** has held that the scope of revisional jurisdiction under the Rent Act, is limited and the revisional Court is not expected to interfere in the concurrent findings unless the revisional Court comes to a conclusion that the findings arrived at by the courts below suffer from perversity or material error. The learned counsel representing the petitioners has failed to draw the attention of the Court to any such perversity in the orders. Consequently, the revision petition is dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

01.10.2021

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE