

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1376 of 2014(O&M)
Date of decision:02.04.2022

S.K.Ghai

...Petitioner

Versus

M/s Kapsons Agencies Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Chetan Mittal, Sr. Advocate, with
Mr. Kunal Mulwani, Advocate and
Ms. Shifali Goyal, Advocate
for the petitioner.

Mr. Akshay Bhan, Sr. Advocate, with
Mr. Santosh Sharma, Advocate
for the respondent.

ANIL KSHETARPAL, J (Oral)

While assailing the concurrent findings of fact arrived at by the Rent Controller as well as the Appellate Authority, ordering ejectment of the petitioner from a portion of ground floor of SCO No.136-137-138, Sector 17-C, Chandigarh, this revision petition has been filed.

The petitioner has been ordered to be evicted on the ground that the tenant has committed such acts as are likely to impair materially the value or utility of the building. The respondent alleges that the tenant without any written permission of the landlord, has constructed a mezzanine floor which puts the building on the peril of resumption. It is the case of the landlord that in the year 1983, the building was resumed and one of the grounds on which the resumption order came to be passed, was with respect to the construction of mezzanine floor which was not compoundable.

Thereafter, the construction of mezzanine floor was removed and the

building was restored. The respondent also alleges that the tenant has once again repeated the same violation by constructing a mezzanine floor. He relies upon the inspection report dated 30.01.2006 prepared by the official of the Chandigarh Administration reporting that there is a violation. The petition was filed on 31.07.2007.

The tenant contested the petition while asserting that the violation has been removed. As already noticed, the Rent Controller as well as the Appellate Authority ordered eviction of the petitioner.

This Bench has heard the learned senior counsel representing the respective parties at length and with their able assistance perused the paper book as well as record of the Rent Controller.

During the pendency of the revision petition, in additional evidence, the petitioner has been permitted to produce the communications between the owner and the Chandigarh Administration for permission to mortgage. At this stage, it is important to note that the respondent-landlord was also a tenant in the disputed premises. He purchased the property in the year 2006 and a General Power of Attorney was executed by the owner in favour of the respondent. Ultimately, the sale deed was executed on 06.11.2006 and the entry in favour of respondent in the record of the Chandigarh Administration was made on 08.01.2007.

The learned senior counsel representing the petitioner has contended as under:-

- (1) The report that 30.01.2006 has neither been proved nor it is established that the violation, if any, was continuing till the filing of the petition.
- (2) The present petition is barred under Order 2 Rule 2 CPC as the respondent filed a petition on 16.12.2006 seeking

eviction of the petitioner on the ground of bonafide necessity which was dismissed in the year 2014.

- (3) The present petition is barred by principle of res-judicata as the previous landlord had also sought eviction of the petitioner which was dismissed.
- (4) In the end, the learned senior counsel submits that the mezzanine floor has become compoundable.

Per contra, the learned senior counsel representing the respondent while drawing the attention of the court to the order of resumption passed in the year 1983, the report dated 30.01.2006, the report dated 12.03.2008 and 04.12.2008, submits that the mezzanine floor after 1983 was, no doubt, removed, however, it was once again constructed by the tenant as would be evident from the report dated 30.01.2006. He further submits that under the 1949 Act various grounds to evict a tenant are available and the landlord cannot be compelled to file a consolidated petition by including all the grounds which are independent in nature. He further submits that the judgment in the previous case has neither been brought on record nor proved and therefore, the eviction petition cannot be dismissed on the ground of res-judicata.

In the present case, the landlord has proved that in the year 1983, the building in question was resumed by the Chandigarh Administration. One of the non-compoundable violation was the construction of mezzanine floor on the ground floor which is in possession of the petitioner since then. There is no dispute that subsequently on removal of the violation, the building was restored to the owner. On reading of the report dated 30.01.2006, it is evident that the mezzanine floor has been constructed once again. The relevant part of the report reads as

under:-

Sr.No.	Building violation	Status	Remarks
1.	Partitions made at ground floor are against the sanctioned plan	Still existing	Sanctionable through Revised Building Plan with composition fee on approval of Plan Approval Committee (P.A.C.)
2.	Mezzanine floor made in the shop at ground floor	-do-	To be set right
ADDITIONAL VIOLATIONS			
1.	Stair planning to basement is changed	Still existing	Sanctionable through Revised Building Plan
2.	Basement is being used as a shop and a (trail) try room made in it	-d-	To be set right.

This report has been proved by Sh. Ram Lal, Junior Engineer in the office of Sub Divisional Officer, Building Branch, Chandigarh Administration. There are subsequent reports dated 12.03.2008 and 04.12.2008 which prove that mezzanine floor has been removed. However, the present petition was filed on 31.07.2007. The rights of the landlord crystallized on the day the petition was filed. Once the acts of the tenant puts the ownership of the landlord at peril, such acts or omission do fall within the expression impair materially the value and utility of the building. Hence, the argument of the learned senior counsel representing the petitioner that the mezzanine floor was removed before the filing of the petition is not correct. In fact, the petitioner (tenant) has not led any evidence to prove that fact.

As regards the second argument, it may be noticed that the respondent filed the previous petition on the ground of bonafide necessity on 16.12.2006. As already noticed, the East Punjab Urban Rent Restriction Act, 1949, enables the landlord to seek eviction of the tenant on various

grounds including the ground of bonafide personal necessity as well as material impairment of value and utility of the building or the rented land. The rule of Order 2 Rule 2 CPC would not apply because these are independent grounds seeking eviction of the tenant. Merely because a previous eviction petition on one of the grounds is pending, the second petition cannot be said to be barred under Order 2 Rule 2 CPC. The bar under Order 2 Rule 2 CPC operates only if it is established that the plaintiff is entitled to include whole of the claim in respect of the cause of action but he relinquishes any part or omits to include the whole claim. For proving Order 2 Rule 2 CPC, it has to be established that the landlord has omitted to include a claim in respect of the same cause of action, deliberately.

As regards the third argument, it may be noticed that the previous judgment filed by the previous owner on the same ground has not been brought on record and in absence thereof it would not be appropriate to return a finding on the question of res-judicata.

Hence, no ground to interfere with the concurrent findings of fact is made out.

Dismissed.

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

April 02, 2022
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No