

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

CR-5521-2022 (O&M)

Date of decision: 29.11.2022

Smt. Renu Gupta and others

...Petitioners

Vs.

M/s Pioneer Timber Products and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Divanshu Jain, Advocate for the petitioners.

MANOJ BAJAJ, J. (Oral)

Petitioners have filed this revision petition to challenge the impugned judgment dated 23.09.2022 passed in Rent Appeal No.141 dated 31.03.2015, by Appellate Authority, Chandigarh, whereby it has reversed the judgment of eviction passed by Rent Controller in Rent Case No.1643/2013 titled 'Smt. Renu Gupta and others Vs. M/s Pioneer Timber Products and another'.

The facts, in brief leading to the revision petition are that the petitioners filed eviction petition under Section 13, East Punjab Urban Rent Restriction Act, 1949 for eviction of respondents from the premises bearing Industrial Plot No.662, Industrial Area, Phase I, Chandigarh. As per averments, the respondents were inducted as tenant in the year 1973 @ Rs.1500/- per

month as rent apart from other charges, which was increased from time to time. In 1983, a rent petition was filed against the tenants and the same was withdrawn as the parties arrived at a compromise through the agreements dated 16.11.1984 and 06.12.1984. As per settlement, the tenants were to vacate the premises by 31.12.1999 and in case of the non-compliance, the rate of rent of the property was fixed as Rs.20,000/- per month w.e.f. 01.01.2000. While giving details of other litigation between the parties, it was pleaded that the respondents applied for change of trade in respect of the plot in question before the Chief Administrator, Chandigarh, wherein they admitted the rate of rent as Rs.20,000/- per month. Finally, the landlord sought eviction of tenants on the grounds of non-payment of rent w.e.f. 01.04.2003 to 31.10.2008, as well as requirement of premises for their own use and occupation, because the date of vacating the premises bearing No. SCF 20, Sector 18-C, Chandigarh from where petitioner No.3 is presently carrying his business is drawing near i.e. in July, 2008.

The petition was contested by tenants by filing joint written statement, wherein they raised various preliminary objections relating to the maintainability, etc. and on merits, denied the material averments and grounds raised by the petitioners and contested the eviction petition by questioning the status of petitioners as landlord/owners. In the end, it was prayed that the eviction petition be dismissed.

The petitioners filed replication to the written statement in order to controvert their stand and reiterated the averments and prayer made in the eviction petition.

After completion of pleadings of the parties, the Rent Controller, Chandigarh in all, framed nine issues and thereafter, the parties adduced their respective evidence. Upon considering the pleadings and evidence on record, the Rent Controller, Chandigarh proceeded to decide the material issues in favour of petitioners and against the respondents and passed the judgment of eviction dated 11.03.2015.

Aggrieved against the said judgment of eviction, the respondents tenants preferred appeal before the Appellate Authority, Chandigarh, which has been accepted through impugned judgment dated 23.09.2022. Hence, this revision petition.

Learned counsel for the petitioner has argued that the Rent Controller had examined the entire evidence on record while delivering findings on all the material issues in favour of the landlord and against the tenants while accepting the eviction petition, however, the Appellate Court has set aside the said judgment of eviction dated 11.03.2015 primarily on the ground that the property in question already stands resumed by Chandigarh Administration on 19.03.2002, and in the writ petition filed by tenants to challenge the resumption, their dispossession was stayed. He further submits that the Appellate Court is required to examine the entire evidence threadbare to arrive at a conclusion, if the findings returned in the impugned judgment passed by the Court of first instance is based upon incorrect appreciation of evidence. Learned counsel has argued that the impugned judgment passed by the Appellate Authority is bad in law and deserves to be set aside.

After hearing the learned counsel and examining the impugned judgment passed by the Appellate Authority, Chandigarh, it is clear that the tenancy rights in favour of the respondents commenced in the year 1973 and prior to filing of this eviction petition, the parties have been litigating against each other on similar issues relating to the tenancy and the documentary evidence in this regard is on record. The Rent Controller had examined the entire evidence on record while returning findings on all the issues and ordered eviction of the tenants, but the Appellate Authority, while reversing the judgment passed by Rent Controller has mainly relied upon interim order passed by Writ Court in CWP No.1838 of 2008, wherein the tenants have challenged the resumption order dated 19.03.2002 passed by Chandigarh Administration, whereby the property in question was resumed. It is also noticed by the Appellate Authority that the Writ petition is pending adjudication before this Court, therefore, it is evident that the issue of resumption is yet to attain finality, but the Appellate Authority concluded that the property stands resumed, and further held that the appellants are not owners of the property in question. These observations by the Appellate Authority are conclusions and are not supported with any reasoning much less based upon analysis of the evidence on record.

Besides, it also becomes clear that the eviction faced by tenants in these two separate proceedings is founded upon different causes of action, emanating from different statutes, therefore, to hold the eviction petition as not maintainable, only in the light of the interim order passed by the Writ Court may not be justified. Erroneously, the case law relied upon by the appellants

was brushed aside with the observation that the same is not applicable.

Strangely, the Appellate Authority instead of examining the issue No.1 relating to the ground of *bonafide* need and personal necessity set up by the landlords, on the basis of evidence available on record, it proceeded to observe that the Rent Controller ought not to have decided this issue. Thus, this Court has no hesitation in holding that the Appellate Authority has failed to exercise the appellate jurisdiction vested in it, as it has not examined the entire evidence on record carefully to test the correctness and validity of the judgment of eviction passed by Rent Controller. Needless to observe that the Court of First Appeal is the last Court for recording the findings on fact, therefore, it becomes incumbent for the Appellate Court to independently examine the entire evidence to decide the material issues effectively between the parties. As a consequence, the impugned judgment is not sustainable as it suffers from grave illegality and impropriety, and thus, the matter deserves to be decided afresh by the Appellate Authority.

Since, this Court has neither decided the revision petition on merits nor has expressed any opinion on the merits of the case, while remanding the case before the Appellate Authority for deciding it afresh, therefore, no notice is being issued to the tenants, as this order would not cause any prejudice to them. However, as caution, liberty is granted to respondent-tenant to seek recalling of this order, in case, they feel that any prejudice has been suffered by them.

Resultantly, the impugned judgment dated 23.09.2022 passed by

the Appellate Authority is set aside and the case is remanded back for deciding it afresh after hearing both the parties.

The parties are directed to appear before the Appellate Authority on 15.12.2022. Let, this exercise be completed expeditiously preferably within a period of three months from the date when the parties appear before the Appellate Authority.

Revision petition is disposed of.

(MANOJ BAJAJ)
JUDGE

29.11.2022
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No