

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

**450**

**Civil Revision No.4164 of 2017 (O&M)  
Date of Decision: 23.2.2023**

Shri Gaushala, Bhiwani Road,  
Jind through Sh. Bhal Chander ... Petitioner

Versus

Chandi Ram ... Respondent

**CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Argued by: Mr. Ashish Gupta, Advocate,  
for the petitioner.

Mr. Sanjiv Sheoran, Advocate,  
for the respondent.

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**MANISHA BATRA, J.**

**CM-12937-CII-2017**

For the reasons mentioned in the application, the same is allowed and the delay of 69 days in filing the revision petition is condoned.

**Main Case**

1. The present revision petition has been directed against the order dated 30.07.2016 passed by learned Appellate Authority, Jind whereby, the findings as recorded by learned Rent Controller, Jind thereby, ordering ejectment of the respondent-tenant on the ground of material impairment of the demised premises, had been reversed and the petition filed by the present revision petitioner for ejectment of the

respondent from the same, was dismissed.

2. The present petitioner filed a petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short 'Act, 1973') seeking ejectment of the respondent-tenant from the demised shop on the grounds of arrears of rent, value and utility of the shop having been impaired by the respondent by opening a door and window towards western side of the demised shop opening towards the land of the petitioner without its consent and permission and further on the ground that the respondent had committed acts of nuisance by fixing door and window in the western wall of the demised shop.

3. The respondent admitted the relationship of landlord and tenant between the parties in the reply filed by him and submitted that on 21.04.2012, a rent note was executed between them whereby, one plot behind the demised shop was also let out to him and he was authorized to construct a building in the said plot and to join the same in the demised shop. He had given an amount of Rs.10,000/- to the petitioner on 28.04.2012 and was also allowed to open door and window in the gali existing towards the western side of the demised shop. He had accordingly raised construction of a building and had opened windows and door with the oral permission of the petitioner. It was alleged that the petitioner was offended due to the fact that the respondent had appeared as a witness in a rent petition filed by one of its tenants. While denying the allegations that he had materially impaired the value and utility of the demised shop or had committed any act of nuisance, dismissal of the rent petition had been prayed for. It will be relevant to mention here that arrears of rent were tendered on the first day of hearing.

4. On the pleadings of the parties, the following issues were settled by the Court of learned Rent Controller vide order dated 05.03.2013:-

1. Whether the petitioner is entitled for eviction order on the grounds as mentioned in the body of the petition? OPP
2. Whether the petition is not maintainable in the present form? OPR
3. Whether the petitioner has no cause of action and locus standi to file the present petition against the respondent? OPR
4. Whether petitioner has not come in the court with clean hands and has suppressed true and material facts from the court? OPR
5. Relief.

5. The parties adduced evidence in support of their respective assertions. Besides relying upon certain documentary evidence, the petitioner examined his Deputy Manager Bhal Chander as **PW-1** whereas the respondent had himself appeared as **RW-1**. The learned Rent Controller while order dated 23.07.2014, allowed the petition and passed an order for ejectment of the respondent on the ground that he had committed act of material impairment in the value and utility of the shop. However, the other grounds as taken by the petitioner seeking ejectment of the respondent had not been accepted.

6. Feeling aggrieved, the respondent-tenant had preferred an appeal before the learned Appellate Authority under the Act, 1973 which was allowed vide order dated 30.07.2016. The findings given by learned Rent Controller which formed basis for ejectment of the respondent, were set aside and the petition was ordered to be dismissed.

7. The present petition has been preferred by the petitioner-landlord while assailing the order passed by learned Appellate Authority. It is submitted therein and it was vehemently argued by learned counsel for the petitioner that overwhelming evidence had been produced on record by it to prove that the respondent had opened a door and window in the western side of the demised premises opening towards its land and had thereby caused material impairment in value and utility of the shop. The impairment in the value and utility of the building was to be determined and judged from the point of view of the landlord and not of the tenant but this fact had not been taken into consideration by the learned Appellate Authority. A cryptic and non-speaking order had been passed. The fact that the respondent had violated terms and conditions of the rent agreement Ex.P-3 stipulating that he would not be opening any door and window towards the property of the petitioner had also not been taken into consideration. The learned Appellate Authority did not apply its judicious mind and did not appreciate the evidence produced on record in a proper manner. With these broad arguments, it was submitted that the impugned judgment was liable to be set aside and the revision petition deserved to be allowed and further that the respondent was liable to be ejected from the demised premises. To fortify his argument, learned counsel for the petitioner placed reliance upon authorities cited as **Gurbachan Singh vs. Shivalak Rubber Industries**, 1996(1) R.C.R. (Rent) 398; **Bhagirath Mal vs. Smt. Yuvrani Sahiba**, 2005(1) R.C.R. (Rent) 56 and **Piara Lal vs. The Liquidator Cooperative Store, Kapurthala**, 2004(2) R.C.R. (Rent) 214.

8. Per contra, learned counsel for the respondent argued that the findings as given by learned Appellate Authority were well reasoned. The

petitioner had failed to produce any evidence whatsoever on record to prove that there was any material impairment in the value and utility of the demised shop. The respondent, on the other hand, was proved to have opened door in the western side of the demised shop after seeking oral permission from the authorities of the petitioner and in lieu thereof, he was also proved to have deposited an amount of Rs.10,000/- in favour of the petitioner. By simply opening door in the western side of the demised shop, no act of material and permanent impairment could be inferred. It was not proved that the value of the demised shop had been reduced. The alteration as made by the respondent was of such nature which was necessary for running his business. The door could be shut without any damage to the demised shop. Hence, it was urged that the revision petition being devoid of any merit was liable to be dismissed.

9. Due deliberation has been given to the contentions raised by both the parties and the material produced on record has been carefully appraised. The relationship of landlord and tenant between the parties has not been in dispute. The petitioner-landlord has sought ejectment of the respondent-tenant from the demised shop on the grounds of non-payment of rent, impairment in value and utility of the demised shop and nuisance. So far as the ground pertaining to non-payment of rent is concerned, on the first date of hearing, the respondent had tendered the arrears of rent. The learned Rent Controller had concluded that the tender was valid. This point has not been urged further by the petitioner and, therefore, there is no need to discuss the same. So far as the second ground as taken by the petitioner that the respondent-tenant was guilty of causing nuisance is concerned, the

learned Rent Controller had also decided this point as against the petitioner and from the order passed by learned Appellate Authority, it clearly appears that this ground had not been urged before it. Therefore, it has become unnecessary to ponder further in this regard. The learned Rent Controller had, however, observed that the respondent-tenant was proved to have opened a door in the back side of his shop towards the building of the petitioner and had caused material impairment in value and utility of the shop in dispute. The learned Appellate Authority while reversing the findings as given by learned Rent Controller on that point had held that the petitioner had failed to prove that the value and utility of the demised shop was materially impaired due to opening of a door by the respondent in the back side of his shop and towards the other property of the petitioner. It is this finding which has been challenged by the petitioner.

10. The first question that requires consideration before this Court is as to whether the respondent was proved to have opened door and window in the western side of the demised shop and towards the property of the petitioner. It is admitted case of both the parties that the respondent was occupying the demised shop as a tenant since long. Both the parties have taken a common stand that vide rent agreement Ex.P-3 as executed on 21.04.2012, the petitioner had permitted the respondent to raise construction of building upto ground floor on the plot existing behind the demised shop but he was not permitted to install any window, ventilators, drainage pipes or door towards the property of Gaushala. It was not disputed by the respondent that he had opened door and windows towards the western side of the demised shop and opening towards the land of the petitioner. Now it is to be seen that merely because of the fact that door and window had been

opened by the respondent in the western side of the demised shop opening towards the property of the petitioner, it could be inferred, without any further evidence or proof that the value and utility of the demised shop was materially impaired. It will be proper to refer to Section 13 (2) (iii) of the Act, 1973 in this regard, as per which an order of eviction can be passed only if the landlord proves, (a) that the tenant had carried out some construction, (b) that the same was without the consent of the landlord, (c) that the value or utility of the property of the landlord had been materially impaired. The three conditions as mentioned above are cumulative in nature. It is well settled that it is necessary to establish each one of them before a decree of eviction can be passed. The case of petitioner mainly rested upon the testimony of PW-1 Bhal Chander, its Deputy Manager. On perusal of his statement, it is revealed that he admitted during cross-examination that the petitioner-Gaushala owned several shops in the same building wherein the demised shop was existing. It was also admitted by him that the doors of three other tenanted shops adjacent to the demised shop were opening towards the western side and that very property of the petitioner wherein the respondent had also opened a door and windows. The stand taken by the respondent was that he had opened this door with the permission of the petitioner on payment of a sum of Rs.10,000/- and a receipt Ex.R-1 had also been issued in this regard. Receipt Ex.R-1 was with regard to donation of an amount of Rs.10,000/-. The learned Rent Controller as well as the learned Appellate Authority had disbelieved the plea so taken by the respondent and in the opinion of this Court rightly so as on the basis of receipt Ex.R-1 simplicitor, no inference could be drawn as to the fact that petitioner had permitted respondent to open the door in the back side of the demised shop

and towards the street/property belonging to it. Therefore, it can be concluded that the respondent had opened door and windows in the back side of the demised shop without the consent and permission of the petitioner.

11. Now the question arises as to whether the value and utility of the demised shop was proved to have been impaired due to opening of door and windows in the western side of the demised shop by the respondent. In this regard, it may be mentioned that apart from the bare oral deposition made by PW-1, which could not be stated to be sufficient, no other evidence had been produced by the petitioner on record. The simple statement of PW-1 that the respondent had materially impaired value and utility of the building does not inspire any confidence. He did not explain as to how the value and utility of the demised shop or the building of the petitioner had been diminished due to the act of the respondent. The argument raised by the petitioner's counsel that no evidence was required to be led as it has to be inferred that the value and utility had been diminished, is not acceptable in the considered opinion of this Court in the absence of any proof of material impairment in the value and utility. In **Gurbachan Singh's** case (Supra), the tenant had removed the roof of the shops, partition walls and the doors and constructed a lintel roof merging into the verandah with the shops and had also enclosed open space and had opened new doors. On these facts, it was held that the tenants had committed acts which impaired materially the value and utility of the premises. In **Bhagirath Mal's** case (Supra), the tenant had opened two doors, had covered verandah and had affixed tin shed in front of the same due to which, it was observed by High

changed the front and structure of the premises and had impaired the value and utility of the demised premises. In **Piara Lal's** case (Supra), the tenant had opened the door from adjoining shop by breaking common wall due to which the shop had lost its identity as single shop and, therefore, it was held that the value and utility of the demised shop was impaired. In the opinion of this Court, the ratio of law as laid down in the above cited cases is not applicable to the peculiar facts and circumstances of the case as the same are distinguishable. Undoubtedly, the impairment of value or utility has to be judged from the point of view of the landlord. However, merely because some additions or alterations are made by a tenant itself would not amount to impairment in the value and utility. It is well settled that not every addition or alteration which could be said to be material impairment or utility and it has to be proved by the landlord that the value and utility has been materially impaired actually. Since no such evidence could be placed on record by the petitioner, therefore, this Court finds itself unable to accept the proposition that the value and utility of the demised shop was diminished/impaired due to opening a door by breaking wall of the demised shop. The respondent-tenant might have violated the terms and conditions of the rent agreement between the parties but that violation falls short of proof of fact that there was any material impairment in the utility of the demised shop. In this regard, this Court finds support from the authority cited as **Waryam Singh v. Baldev Singh**, (2003) 1 SCC 59, wherein there were concurrent findings of all the Courts that the tenant had enclosed verandah in front of the shop and had put up a rolling shutter but no evidence had been led by the landlord to prove that the value and utility of the shop have been affected. The Hon'ble Apex Court had dismissed the

appeal filed by the landlord by observing that in the absence of any proof of material impairment in value or utility, no decree for eviction could be passed. As such, the findings given by learned Appellate Authority do not warrant any interference.

12. Even otherwise the scope of revisional jurisdiction of this Court in such like matters is very limited. It is well settled that pure finding of fact until and unless perverse and opposed to the evidence on record cannot be interfered with and the examination or consideration of the evidence by the High Court in revisional jurisdiction under the Rent Acts is confined to find out that finding of fact recorded by the Court or authority below was according to law and did not suffer from any error of law. Reference in this regard can be made to Hon'ble Apex Court judgment in **Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh**, 2014 (4) RCR (Civil) 162, wherein it was observed that a finding of fact recorded by the authority below, if perverse and having arrived at without consideration of the material evidence and such finding being based on no evidence or misreading of evidence or on being grossly erroneous that, if allowed to stand, which would result to gross miscarriage of justice, is open to correction. It was also observed that the Rent Act did not entitle the High Court to interfere with the findings of fact recorded by the First Appellate Court/authority because on re-appreciation of the evidence, its view is different from the Courts below. Revisional power is not and cannot be equated with the power of re-consideration of all questions of fact as a Court of First Appeal.

13. Accordingly, it is held that the findings recorded by learned Appellate Authority were based on a wholesome and proper appreciation of

evidence on record and do not suffer from any procedural irregularity much less illegality warranting intervention of this Court in exercise of limited revisional jurisdiction. As such, in the absence of any illegality, infirmity or perversity in the impugned order dated 30.07.2016 passed by learned Appellate Authority, it is held that no ground has been made out to interfere. Accordingly, the revision petition is dismissed with no order as to costs.

23.2.2023  
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(MANISHA BATRA)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |