

²⁵⁵ IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-5696-2018 (O&M)
Decided on:-24.07.2023

Satish Sharma (since deceased) through LR.Petitioner..
vs.

Shri Digambar Jain MandirRespondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Gagandeep Singh Virk, Advocate,
for the petitioner.

Mr. Sandeep K. Sharma, Advocate,
for the respondent.

HARKESH MANUJA J. (Oral)

CM-16396-CII-2022

Prayer in the present application is for impleading the legal heirs
of petitioner-Satish Sharma.

Notice of the application.

Mr. Sandeep K. Sharma, Advocate, who is present in the Court
accepts notice on behalf of the non-applicant-respondent and raises no
objection to the prayer made in the application.

For the reasons mentioned in the application which is duly
supported by an affidavit, same is allowed and persons mentioned in para 2
of the application are ordered to be impleaded as legal representatives of
petitioner, for the purpose of pursuing the present revision petition.

Amended memo of parties is taken on record.

CM-16822-CII-2022

Arguments have not been addressed on this application, the same

is thus, disposed of being not pressed.

Main case

1. Challenge in the present revision petition is laid to the judgment dated 16.07.2018 passed by the Appellate Authority, Rohtak, whereby an appeal filed against the order of eviction dated 15.11.2017 passed by the learned Rent Controller, Rohtak, was dismissed, thereby, upholding the same against the petitioner-tenant.

2. In the present case, respondent-landlord filed an eviction petition qua the tenanted premises i.e. shop No.3 forming part of property bearing M.C. No.596, situated at Babra Mohalla Rohtak, *inter alia* on the grounds of non-payment of arrears of rent; change of user; the petitioner-tenant having lowered and diminished the value and utility of shop in dispute, the property become unsafe for human habitation and the same being required for personal necessity of the respondent-landlord, for the purpose of demolishing the tenanted premises alongwith other adjoining shop to convert it into a kitchen-cum-store.

3. Upon notice, petitioner-tenant appeared and filed written statement while denying the case set up by the respondent-landlord. It was stated that one store and one hall, which got vacated by the respondent-landlord were already in his possession, besides one vacant shop as well. It was also stated that the gate of the Mandir was re-constructed recently and was in a good condition, thus, the building was having proper access.

4. The Rent Controller vide its judgment dated 15.11.2017, allowed the eviction petition filed by respondent-landlord on the ground of personal necessity.

5. Aggrieved thereof, the petitioner-tenant filed first appeal, which was dismissed vide order dated 16.07.2018 passed by the Appellate Authority, Rohtak.

6. Impugning the aforesaid decisions, learned counsel for the petitioner-tenant submits that the bonafide necessity as prayed for by respondent-landlord was not made out, as in accordance with religious book “Jinwani”, which regulates ‘Jainism’, eating food or Prasad etc. within the boundaries of Mandir was prohibited in Jain religion, thus, the need of the landlord for demolishing shop in question, so as to construct a kitchen in Jain Mandir could never be termed to be bonafide. Learned counsel further submits that the basic ingredients of Section 13(3)(i)(b) of the Haryana Urban Control of Rent Eviction, Act 1973 (hereinafter referred to “1973 Act”), were never pleaded in the eviction petition at the instance of respondent-landlord, thus, the eviction petition was liable to be dismissed on this count alone, particularly, when other shops in the same premises were lying vacant and in occupation of respondent-landlord. In support, learned counsel for the petitioner relies upon judgment of Hon’ble Supreme Court titled as **“Ajit Singh and another vs. Jit Ram and another”, SLP(c) No.248-2007** as well as of this Court in CR No.392 of 1974, titled as **“Banke Ram vs. Shrimati Sarasvati Devi”** decided on 17.12.1976.

7. On the other hand, learned counsel for the respondent-landlord submits that the kitchen is being constructed on the ground floor; whereas the ‘Mandir’ is on first floor of the building in question and thus, the same could not be termed to be travelling beyond the principles of ‘Jain Sect’ as laid down in “Jinwani”. He also submits that no such plea as regards non-

pleading of basic ingredients in the eviction petition was ever raised by the petitioner-tenant in the entire written statement, besides mere mentioning about the other shops lying vacant in occupation of the respondent-landlord. In support, reliance has been placed upon judgments of this Court passed in CR-1057-2017, titled as ***“Ramesh Kumar vs. Adarsh Kumar and others”***, 2020(1) RCR (Rent)93, CR-2891-2016, titled as ***“Inderjit Singh vs. Darshan Kumar and others”***, 2020(1) RCR (Rent) 307 and CR-3596-2015, titled as ***“Raj Kumar vs. Jaimal Singh”***, 2018(4) Law Herald 3091.

8. I have heard learned counsel for the parties and gone through the paper book as well as law cited at the bar. I am unable to find substance in the submissions made on behalf of the petitioner-tenant.

9. A perusal of judgment passed by the first Appellate Court shows that the issue of construction of kitchen in the premises in question by the respondent-landlord has been dealt with in detail while recording that the shop in question is situated on the ground floor, whereas, the main ‘Mandir’ is situated on the first floor of the building and thus, the construction of kitchen at the ground floor would not go against the fundamental principles of ‘Jain Sect’ as delineated in their religious book “Jinwani”. Para No.16 from the judgment passed by the Appellate Authority, which requires discussion on the point, is reproduced hereunder:-

“16. Learned counsel for the appellant-tenant has cited the religious book “Jinwani” of the Jain sect to show that eating food or Prasad etc. within the boundaries of Mandir is prohibited in Jain religion but this Court is of view that the reference of learned counsel for the appellant-tenant is of no value because the kitchen as proposed in site plan Ex.P-2 is not situated within the premises of the Jain Mandir but said portion is situated

at the ground floor and building of Mandir is situated is first floor.”

Moreover, considering the basic human need of food to survive, the construction of a kitchen becomes indispensable, may be to cater the “sewadars” or the persons who visit the temple from far away places and the same can’t thus be looked at suspiciously.

10. Besides it, though a plea of non-pleading of basic ingredients from Section 13(3)(i)(b) of the 1973 Act, has now being sought to be raised, however, the record shows that no such plea was ever raised by the petitioner-tenant either in the written statement filed before the Rent Controller or even in the grounds of appeal filed before the first Appellate Court, thus, at this revisional stage, the same cannot be permitted to be raised having been waived off during trial at his instance.

11. Moreover, in the entire evidence, the petitioner-tenant has not been able to establish on record as to whether any other property of similar nature was available with the respondent-landlord, which could be utilized for the purpose of constructing a kitchen or store. To the contrary, the respondent-landlord produced a site plan Ex.P-2 giving the description of the tenanted premises as well as other property owned by it. The said site plan was proved on record by PW-1 Vijay Jain, whereas, this witness was never cross-examined on the issue of any other property owned by respondent-landlord, besides, one described in the said site plan. In this view of the matter, once, the details of the properties owned by respondent-landlord was described in the site plan which forms part of evidence and nothing substantial to controvert the same was brought on record, non-pleading of

basic ingredients of Section 13(3) (i) (b) of the 1973 Act, could not be read against the respondent-landlord and the judgment passed in *Banke Ram's* case (supra) would not come to the rescue of the petitioners-tenants. In this way, the respondent-landlord by filing a detailed description of the property owned by it in the evidence vide Ex.P-2 i.e. the site plan, made up the deficiency, if any, about the ingredients of Section 13(3) (i)(b) of the 1973 Act and thus, could not be non-suited merely on this account. In this regard, I find support from the judgments passed by this Court in *Ramesh Kumar's* (supra), *Inderjit Singh's* (supra) and *Raj Kumar's* (supra).

12. Equally important, availability of other shop lying vacant with the respondent-landlord cannot be taken against it as the case pleaded from the beginning is that the shop in question, besides the other shops, lying vacant need to be demolished for using the entire space for raising construction of 'kitchen and store'.

13. In view of the discussion made herein above, in the limited revisional jurisdiction of this Court, finding no merit in the present revision petition, the same is thus, dismissed.

24.07.2023

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No