

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

**CR-2849-2021 (O&M)
Date of Decision : 19.09.2023**

Lal Chand (since deceased) through his LRs. Petitioner

Versus

Krishna Devi and others Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Ajay Jain, Advocate
for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

CM-16395-CII-2023

Prayer in the present application moved under Order 22 Rule 3 read with Section 151 CPC is for bringing on record the legal representatives of the petitioner/deceased-Lal Chand who is stated to have expired on 17.05.2021.

The details of the legal representatives of the petitioner/deceased have been given in paragraph 2 of the application. It has also been averred that apart from the legal heirs mentioned in paragraph 2 of the application, there are no other legal representatives of the petitioner/deceased.

For the reasons mentioned in the application which is duly supported by an affidavit, the same is allowed subject to all just

exceptions. Legal representatives of petitioner/deceased-Lal Chand are ordered to be brought on record.

Amended memo of parties appended alongwith the application is taken on record.

The Registry is directed to tag the same at an appropriate place in the case file.

CM-16396-CII-2023

Prayer in the present application filed under Section 151 CPC is for preponing the date of hearing of the revision petition from 18.09.2023 to some earlier date.

Since the revision petition is listed for hearing today, the present application has been rendered infructuous and is accordingly disposed of as such.

CR-2849-2021

1. The present petition assails the judgment dated 11.02.2020, passed by the Appellate Authority, Rewari, vide which the appeal filed by the petitioner-tenant against the judgment dated 05.02.2015, passed by the Rent Controller, Rewari, was dismissed. Vide judgment dated 05.02.2015, the Rent Controller, Rewari allowed the eviction petition filed by the respondents-landlords.

2. The facts, as emanating from the paper book, are that a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the Rent Act') was filed by the respondents-landlords for eviction of the petitioner-tenant from the shop bearing No.3126/120, situated at Krishna Kuteer, Circular

Road, Rewari (hereinafter referred to as 'the disputed shop'). It was the case of the respondents-landlords that the petitioner-tenant was in occupation of the disputed shop as a tenant on a rent of ₹300/- per month + house tax under Smt. Kamla wife of Sh. Ram Chander since 1964. After the death of Smt. Kamla, the petitioner-tenant was a tenant under the respondents-landlords since 12.11.2001. The eviction of the petitioner-tenant was sought on the grounds of non-payment of rent since 01.06.2002, the petitioner-tenant having ceased to occupy the disputed shop and that the disputed shop had become unsafe and unfit for human habilitation.

2(i) With regard to the first ground, it was averred that the rent had not been paid since 01.06.2006. With regard to the second ground, it was averred that no business activities were being carried out by the petitioner-tenant from the disputed shop and the same was lying closed for more than five years. It was averred that even the electricity connection of the disputed shop had been disconnected for more than 03 years. With regard to the third ground, it was averred that major cracks in the walls, roofs and floors of the disputed shop had appeared and rainy water had started leaking from the roof. It was also averred that the property just behind the disputed shop had crumbled and a big portion had fallen down as a result of which the disputed shop was in a dangerous condition. It was averred that the disputed shop was required to be demolished and reconstructed.

2(ii) The petitioner-tenant opposed the eviction petition. The

relationship of landlords and tenant was admitted. The rate of rent was also admitted. Other grounds of eviction were denied. It was averred that the respondents-landlords had got the electricity connection disconnected without the consent of the petitioner-tenant on the ground of non-payment of bill. It was averred that the shop had never been closed and that it was fit and safe for human habitation.

2(iii) From the pleadings of the parties, the following issues were framed by the Rent Controller:-

1. Whether in the shop in dispute no business activity is being carried out by the respondent ? OPP
2. Whether the Shop has become unfit and unsafe for human habitation ? OPP
3. Whether the Petition of the petitioner is not maintainable in the present form ? OPR
4. Whether the petitioner has concealed the true and material facts from the Court ? OPR
5. Whether the petitioner is estopped from filing the present petition by his own act and conduct ? OPR
6. Relief.

2(iv) After considering the evidence of the parties, the Rent Controller allowed the eviction petition on the ground of the petitioner-tenant having ceased to occupy the disputed shop and the disputed shop having become unsafe and unfit for human habitation. However, the ground of non-payment of rent was not pressed since the rent was tendered before the Rent Controller.

3. An appeal was preferred against the decision of the Rent Controller which was also dismissed leading to the filing of the present revision petition.

4. I have heard learned counsel for the petitioner and have perused the paper book.

5. Learned counsel for the petitioner has submitted that both the Courts below gravely erred in allowing the eviction petition. With regard to the ground of the petitioner-tenant having ceased to occupy the disputed shop, reference has been made to the statement of RW1 Satyabir, who deposed that the disputed shop had never been closed except on Sundays and National holidays. Reference has been also made to the own statement of petitioner-tenant wherein he had duly stated that he was carrying on his business in the disputed shop. Learned counsel has contended that the petitioner is running a small business for which no electricity connection is required.

5(i) With regard to the ground of the disputed shop having become safe and unfit for human habitation, reference has been made to the statements of RW2 B.L.Gupta, Building Expert, and RW4 Rattan Lal, photographer. It has been contended that from the evidence led on the record of the case, it stands proved that neither the petitioner-tenant had ceased to occupy the disputed shop nor the same has become unfit and unsafe for human habitation.

6. I have considered the submissions made by learned counsel for the petitioner.

7. The tenancy, relationship of landlord and tenant and the rate of rent are admitted. The petitioner is in occupation of the disputed shop since 1964. It was the categoric case of the respondents-landlords that the petitioner had ceased to occupy the disputed shop and it was lying closed for the last five years. It was also the case that the electricity connection stood disconnected for more than three years. PW2 Parveen, who was having a shop adjacent to the disputed shop stated that the disputed shop was lying closed for the last five years and the same was not fit for human habitation. He deposed about certain cracks in the roofs of the disputed shop. He also stated that the electricity connection had been disconnected in his presence. Photographs of the shop in dispute were produced on record by PW3 Nand Kumar Nagpal. In his cross-examination, he stated that there was no water connection in the shop. He produced report of building expert Ex.PW3/1 and site plan Ex.PW3/2. PW5 Dinesh Kumar stated that the disputed shop was lying closed for the last seven years and no business activities were carried out in the said shop. He also deposed about the physical condition of the shop. He deposed that the electricity connection had been disconnected for the last many years.

7(i) To counter the case of the respondents-landlords, the petitioner-tenant Lal Chand appeared as RW3. He admitted in his cross-examination that the electricity connection stood disconnected. He stated that he could not produce any record pertaining to his

business after 1998. He admitted that the electricity connection had been disconnected for the last eight years. He stated that he does not submit any income tax return. Apart from the appellant-tenant, one Satyabir stepped into the witness box as RW1 and stated that the shop in dispute had never been closed except on Sundays and National Holidays. If this Court weights the evidence led by both sides, it becomes abundantly clear that the appellant-tenant ceased to occupy the disputed shop. Many witnesses stated in one voice that the disputed shop was lying closed and that there was no electricity connection in the said shop. Without an electricity connection, no one can possibly function. The argument that small businesses can run without electricity connections is totally devoid of merit. No record pertaining to the business of the appellant-tenant was produced to even suggest that he was doing some business from the disputed shop. No efforts were made to get the electricity connection restored. Both the Courts below noticed these facts and recorded the findings accordingly. This Court does not find any reason to disturb the findings of facts and does not find any jurisdictional error in the same, warranting interference in revisional jurisdiction.

7(ii) In so far as the ground of the disputed shop having become unsafe and unfit for human habitation is concerned, the same also stood proved from the statements of PW2 Parveen, PW3 Nand Lal Nagpal, PW4 Rajinder Yadav, who produced on record the

photographs and PW5 Dinesh Kumar, who stated that the physical condition of the shop in dispute was not good and the floor and roof having major cracks. No doubt, RW2 B.L.Gupta, who was a building expert, stated that the condition of the shop was satisfactory. However, no notice was given to the other side at the time of inspection of the disputed shop. He admitted that the roof of the disputed shop was open. He further stated that some repair in the ceiling was visible in some photographs. Though, in the opinion of this Court, some more specific evidence was required for holding the disputed shop to be unsafe and unfit for human habitation, no evidence to the contrary has been pointed out by learned counsel for the petitioner which could have led this Court to take a view different than that taken by the Courts below. This Court, therefore, does not find any reason to interfere in these findings as well.

In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

19.09.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No