

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

(308)**Civil Revision No.1917-2023 (O&M)****Date of Decision: 04.10.2023**

1. Rajinder Kumar and others ...Petitioners

Versus

Sukhcharanjit Singh ThindRespondent

Civil Revision No.1899-2023 (O&M)

2. Raj Kumar ...Petitioner

Versus

Sukhcharanjit Singh ThindRespondent

Civil Revision No.1920-2023 (O&M)

3. Gulshan Kumar ...Petitioner

Versus

Sukhcharanjit Singh ThindRespondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Gurcharan Dass, Advocate, for the petitioners.

Mr. Namit Gautam, Advocate, for the respondent.

HARKESH MANUJA, J.(ORAL)

1. This order of mine shall dispose of above mentioned 3 revision petitions wherein similar facts and controversy are involved. For reference, facts are taken from Civil Revision No.1917 of 2023 (O&M).

2. By way of present revision petition, challenge was made to the order dated 06.12.2021 passed by the Rent Controller, Ludhiana, whereby, an additional issue was framed on an application made by respondent-landlord, in addition challenging an order dated 06.02.2023 whereby, an application seeking its review stands declined.

3. Briefly stating, the respondent-landlord sought eviction of petitioners-tenant from tenanted premises i.e. shops No.7 and 8 situated at Ferozepur Road, Bhai Bala Chowk, Ludhiana, by filing an eviction petition on 24.05.2019. Written statement to the same was filed by the petitioners-tenant on 06.12.2019 followed by filing of replication by the respondent-landlord on 07.01.2020.

4. Upon consideration of the pleadings, the Rent Controller vide order dated 08.11.2021, formulated the following issues :-

- “1. *Whether the respondent is liable to be evicted from the demised premises on account of non-payment of arrears of rent? OPP.*
2. *Whether the respondent is liable to be evicted from the demised premises on the ground of personal use and occupation? OPP.*
3. *Whether the petition is not maintainable? OPR.*
4. *Whether petitioner has concealed the material facts from the Court? OPR.*
5. *Whether petition is bad for partial ejectment and is liable to be dismissed” OPR.*
6. *Whether the petitioner is bad for non-joinder and mis-joinder of necessary parties? OPR.*
7. *Relief.”*

5. Immediately thereafter, on 06.12.2021, respondent-landlord filed an application seeking framing of additional issue to the following effect i.e. “2(a) Whether the property has become unfit and unsafe for human habitation? OPP”.

6. Though, no reply to the aforementioned application was filed at the instance of petitioners-tenant, yet the same was strongly opposed.

7. The Rent Controller vide order dated 06.12.2021, allowed the application filed at the instance of respondent-landlord thereby, framing the following additional issue No.2 (a):-

“2(a) Whether the property has become unfit and unsafe for human habitation? OPP”.

8. Aggrieved thereof, petitioners-tenant filed an application seeking recalling of the order dated 06.12.2021, however, the same was declined by the Rent Controller by passing a detailed order on 06.02.2023.

9. Impugning the aforementioned two orders dated 06.12.2021 and 06.02.2023, learned counsel for the petitioners vehemently submits that in the absence of use of words; “unfit and unsafe” having been pleaded in the ejectment petition, no such issue qua the said plea could have been framed by the Rent Controller and thus, the impugned orders were liable to be set aside having been passed exceeded its jurisdiction. In the alternate, relying upon a decision of this Court in case of **Hakam Singh Vs. Jagir Singh and others, 1991(2) R.R.R 170**, learned counsel for the petitioners submits that in the wake of additional issue having been framed, the petitioners-tenant may be permitted to file an additional written statement so as to controvert the issue of demised premises being unfit and unsafe for human habitation.

10. On the other hand, learned counsel for the respondent-landlord submits that though there may not be specific use of words such as “demised premises being unfit and unsafe for human habitation” in the ejectment petition, yet specific averments were there to contend that building was not in a fit condition and the same was more than 70 years old. He further submits that the use of words ; “unfit and unsafe for human habitation” were categorically made in the replication which was permitted to be taken on

Controller did not exceed its jurisdiction while relying upon the same for the purpose of framing additional issue.

11. I have heard learned counsel for the parties and gone through the paper book. I am unable to find substance in the submissions made on behalf of petitioners.

12. A perusal of the eviction petition shows that though the words; demised premises being “unfit and unsafe for human habitation” were not averred specifically in the eviction petition, yet specific averments as regards the building in question being 70 years old besides the same being not in fit condition, pleaded in the ejectment petition. The relevant portion therefrom is reproduced hereunder for reference:

“...The building as shown yellow is in possession of the petitioner but the same is on the backside and is not in a fit condition to be used for running a departmental store/super market. The building is more than 70 years as the respondents’ predecessor had been inducted in the property in question way back in the year 1951. The building shall be renovated and shall be remodeled in such a manner so that a modern departmental store/super market can be run in the entire property. The portion as shown yellow is built in such a manner that it has low roof and the area of the rooms on the first floor is too small and the roofs are at low height. The construction of the building is such that it is of no use at present...”

13. Further, in the replication filed at the instance of respondent-landlord which was undisputedly permitted to be taken on record by the Rent Controller, specific and categoric averments were made as regards the unfit and unsafe condition of the demised premises, the same being in a dilapidated condition. The relevant extract thereof is reproduced hereunder:

“...It is pertinent to mention here that the portion on the first floor of the building in question in possession of the petitioner as mentioned in the petition and as shown yellow in the plan produced on the court file is in eroded, worn out and in unfit condition and portion in the shape of an office on the ground floor as indicated in the plan is being used only for managing and protecting the property and the same is very old and also worn out and cannot be used for any other purpose without remodeling and renovating the whole building. Looking to the dilapidated condition of the property, the Municipal Corporation Ludhiana also issued a notice bearing No.4425/ATP-D dt.2.9.2019 for the purpose of demolishing the damaged portion of the building, copy of which is attached. The petitioner thereafter replied to the said notice vide reply dated 12.09.2019 copy of which is also attached herewith. The Municipal Corporation Ludhiana has assessed the condition of the building and has found and declared that first floor of the building requires to be demolished immediately to avoid any mishap and also to avoid any loss of life and property. Since the first floor of the building is an integral part of the entire building and the total building in fact is in shambles and requires demolition and reconstruction. The material used in the construction of the ground floor building has long back outlived its age and has become unfit and unsafe from every angle...”

14. Thus, on a conjoin reading of ejectment petition as well as replication, it can easily be traced out that a case regarding the demised premises being unfit and unsafe for human habitation was clearly pleaded on behalf of respondent-landlord and accordingly, the application filed at the instance of respondent-landlord was rightly allowed by the Rent Controller while framing the additional issue No.2(a).

15. Moreover, no merit can be found in the submissions made on

behalf of the petitioners that in the absence of uses of specific words such as demised building having become unfit and unsafe for human habitation, no such plea could have been permitted to be raised at the instance of respondent-landlord thereby calling for no such issue as per Clause (iii) to Sub-Section 4 of Section 13 of the Rent Act which provides ground to a landowner to seek eviction for the demised premises having become unfit and unsafe for human habitation. In the humble opinion of this Court, for setting up any such ground of eviction, it is not mandatory at all to use the exact phrase of building having become “unfit and unsafe for human habitation”. It is more than settled that the pleadings are to be construed liberally, once specific averments were made in the ejectment petition while stating that the demised premises was not in a fit condition besides the same being 70 years old requiring renovation and remodeling, the same being a building of low roof, sufficient pleadings were made so as to seek ejectment on the ground of demised premises being “unfit and unsafe for human habitation”.

16. Furthermore, the plea raised at the instance of petitioners for grant of permission to file supplementary written statement in the wake of additional issue having been framed by Rent Controller, is also devoid of merits as in the present case, no fresh pleadings have been filed at the instance of respondent-landlord and the amended issue i.e. issued No.2 (a) has been framed by the Rent Controller, based on the pleadings already available on record. Thus, in the facts and circumstances of the present case, the proposition of law laid down in case of **Hakam Singh (supra)** does not come to the rescue of the petitioners.

17. In view of the discussion made hereinabove, finding no merit in the present revision petitions, the same are dismissed.

18. Pending applications, if any, shall remain disposed of.

04.10.2023

anil

Whether speaking/reasoned

Whether reportable

:

:

Yes/No

Yes/No

(HARKESH MANUJA)

JUDGE