

CM No. 1203-CII of 2023 in/and
CR No. 432 of 2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(120)

CM No. 1203-CII of 2023 in/and
CR No. 432 of 2023 (O&M)
Date of Decision : 23.01.2023

Vijay Kumar

...Petitioner

Versus

Man Mohan Goel

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. D.K. Tuteja, Advocate for the petitioner.

Harsimran Singh Sethi J. (Oral)

CM No. 1203-CII of 2023

Present application has been filed seeking condonation of delay of 29 days in re-filing the appeal.

Keeping in view the averments made in the application, which is duly supported by an affidavit, the same is allowed and delay of 29 days in re-filing the appeal is condoned.

CR No. 432 of 2023

In the present civil revision petition, the challenge is to the order dated 08.08.2022 passed by the lower appellate court by which the rent petition filed by the respondent-landlord has been allowed by the learned Rent Controller vide order dated 20.08.2018 on the ground of material alteration and the appeal filed by the petitioner-tenant has been dismissed.

The respondent-landlord had filed a rent petition for eviction of

the present petitioner from the shop in question, description of which was given in the rent petition on the ground that he has re-constructed the four walls of the shop after demolishing the same, which has materially changed the construction. Apart from the said ground, certain other grounds were taken seeking eviction of the shop in question.

After notice was issued, the petitioner-tenant filed reply to the rent petition admitting the re-construction of the walls but submitted that the same was done on the oral instructions of the respondent-landlord keeping in view the notice, which was received from the Municipal Corporation, Rohtak on 16.07.2014, according to which notice, the original construction of the property in question involved encroachment.

After leading the evidence, the learned Rent Controller came to a conclusion that re-construction of the walls of the shop in question has been admitted by the tenant and the plea that the re-construction has been done on the oral instructions of the landlord, has not been proved hence, there is a material change in the property as, the re-construction was done to overcome the encroachment being alleged by the Municipal Corporation, Rohtak and the dimensions of the property has been changed. The learned Rent Controller ordered the eviction of the property in question by the petitioner-tenant vide order dated 20.08.2018.

Against the said order, the petitioner-tenant filed an appeal before the lower appellate court and the lower appellate court also came to the conclusion that keeping in view the material changes in the property, which has been admitted by the petitioner-tenant but was being supported on the ground of oral permission, has not been proved as no oral permission

could be proved by the petitioner-tenant so as to re-construct the walls of the property again to do away with the alleged encroachment by the tenant so as to reduce the area of the property which tenancing.

In the present civil revision petition, the order passed by the learned Rent Controller as well as the lower appellate court are under challenge.

Learned counsel for the petitioner argues that in the present case, there is only re-construction of the walls and once, it has not come on record that the said re-construction has impaired the value of the property in question, the eviction order by the learned Rent Controller which was upheld by the appellate authority is contrary to the settled principle of law. Learned counsel for the petitioner further argues that there was no admission that the petitioner-tenant had materially altered the property by re-construction of the walls of shop in question.

I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

Not only the rent petition filed by the respondent-landlord is on record but even the reply filed by the petitioner-tenant is also on record. Even the statement of the petitioner-tenant is also on record. The reply to the rent petition, wherein, the petitioner-tenant has made following submissions, goes un-rebutted. The relevant admission on part of the petitioner-tenant in the reply is as under :-

“ii) xxx xxx xxxx On or about 16.7.2014, M.C. Rohtak has issued a notice to the respondent that the shop exists on an encroached portion of the Gali and directed to remove the

encroachment within three days of the receiving of notice. The respondent immediately on receiving this notice contacted the landlord/petitioner and show him the notice and on taking oral consent from the petitioner, the respondent removed only the alleged encroached portion of one side of the wall. The remaining walls of the shop are intact.”

A bare perusal of the above admission would show that the petitioner-tenant has raised a plea that there was a consent from the respondent-landlord to remove the alleged encroachment from one side, which was undertaken by the petitioner-tenant so as to remove the said wall to do away with the encroachment and the walls were re-constructed. This admission on the part of the petitioner-tenant clearly shows that the encroached portion being alleged by the Municipal Corporation, Rohtak was removed so as to construct the walls again. Once, the portion of an area has been given back to the Municipal Corporation, Rohtak as per their notice, the area in question, which was given to the petitioner-tenant on tenancy, has already been reduced.

That being so, it cannot be said that there is no material change in the property concerned or the value of the property has not materially changed qua the said constructions, which have been undertaken by the petitioner-tenant, especially when the petitioner-tenant has failed to prove the permission of the landlord in order to take action in pursuance to the notice issued by the Municipal Corporation, Rohtak.

Learned counsel for the petitioner-tenant has not been able to show any evidence to prove that the said material changes were made with the permission of the landlord. The findings have already been recorded by

the courts below that there is no evidence, which has come on record to show that the changes, which the petitioner-tenant had undertaken on the property in question, were with the permission of the landlord. Learned counsel for the petitioner-tenant has not been able to show that the findings recorded by the courts below are contrary to the facts on record or perverse to any evidence. In the absence of any perversity being pointed out and it is proved on record that no permission was taken by the petitioner-tenant before undergoing the alterations and in the alterations, the petitioner-tenant himself has conceded that the encroached area was given back to the Municipal Corporation, Rohtak, the findings recorded by the courts below that there were material alteration in the property, which have been undertaken by the tenant and the same have de-valued the property, cannot be treated to be without any facts or evidence on record.

Learned counsel for the petitioner-tenant has argued that the onus to prove that the tenant has made structural changes, which has materially altered the suit premises, is on respondent-landlord, which have not been proved by him. Hence, the eviction order of the Rent Controller is contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No. 9809 of 2010 titled as ***Krishan Kumar Vs. Krishna Nath and others***, decided on 06.02.2020. In support of the said contention, learned counsel for the petitioner-tenant has also relied upon several judgments of this Court in CR No. 1618 of 1979 titled as ***Pritam Singh (died) by his Legal Representatives Vs. Kailash Chand***, decided on 18.04.1987, CR No. 562 of 1988 titled as ***Lachhman Dass Vs. Charan Kaur***, decided on 05.08.1992, CR No. 1575 of 1983 titled as ***Madan Lal***

Saggi and another Vs. British Motor Car Company (1933) Pvt. Ltd. and another, decided on 27.09.1984, CR No. 2805 of 1988 titled as *Kewal Chand Jain and another Vs. Jiwan Kumar Kaushal*, decided on 18.05.1989, CR No. 3199 of 1986 titled as *Suraj Bhan Vs. Diwan Chand and another*, decided on 08.03.2006, CR No. 2416 of 1990 titled as *Subhash Chander Vs. Valayati Ram*, decided on 18.10.1993 and judgments of the Hon'ble Supreme Court of India in Civil Appeal No. 886 of 1976 titled as *Om Parkash Vs. Amar Singh*, decided on 09.01.1987, Civil Appeal No. 2471 of 1980 titled as *Om Pal Vs. Anand Swarup (dead by his legal representative)*, decided on 04.10.1988 and Civil Appeal No. 6942 of 2000 titled as *Waryam Singh Vs. Baldev Singh*, decided on 31.10.2002.

Qua the said argument, the respondent-landlord need not prove the said material changes, which has affected the valuation of the property as the petitioner-tenant in his reply has conceded the said fact, that in order to do away with the encroachment, as alleged by the Municipal Corporation, Rohtak in their notice dated 16.07.2014, the original wall was demolished and the same was re-constructed after leaving the encroached portion is an admission of fact of reducing the area under tenancy, which is co-related to the devaluation of the property concerned and also to take away the right of the respondent-landlord to assert before the Municipal Corporation, Rohtak and prove that there was no encroachment in any manner qua the property which was under tenancy of the petitioner-tenant. Rather, without the knowledge of the landlord, the alleged encroached area was given away by the tenant, which was beyond his jurisdiction, which clearly goes to show

that the property got hampered by the material alterations, which were effected by the tenant.

No other argument has been raised.

Keeping in view the above, no ground is made out for any interference in the present civil revision petition.

Dismissed.

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As the civil revision petition has been dismissed, the present application also stands dismissed.

January 23, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No