

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

CR-5406-2022(O&M)

Date of decision:-27.2.2023

Kanwaljit Singh Kanda alias Kamaljit Singh Kanda

...Petitioner

Versus

Arya Pratinidhi Sabha Punjab (Regd.), Jalandhar

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.K.S. Dhillon, Advocate
for the petitioner.

Mr.Sudhir Pruthi, Advocate
for the respondent.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 10.10.2022 vide which in an ejectment petition titled 'Arya Pratinidhi Sabha Punjab Versus Kanwaljit Singh Kanda', an application for appointment of Local Commissioner filed by the petitioner/landlord was accepted.

2. Briefly stated, facts of the case are that an ejectment petition was filed by the landlord against the tenant on several grounds, first being that the tenant has ceased to occupy the demised premises for a continues period for more than four years immediately preceding the presentation of the ejectment petition without sufficient cause and the second ground

taken was that the demised premises is in dilapidated condition, as such unfit and unsafe for human habilitation.

3. The rent petition was contested by the tenant. During the course of proceedings, the landlord had filed an application for appointment of a Local Commissioner to ascertain the actual and factual position with regard to the condition of the demised premises.

4. That application though opposed by the tenant was allowed by the Rent Controller, Jalandhar vide the impugned order, leaving the tenant aggrieved and he has approached this Court by way of filing the present revision petition, notice of which was given to the landlord, who has put in appearance through counsel.

5. I have heard learned counsel for the parties besides going through the record and I find that the order passed by the Rent Controller, Jalandhar is not legally sustainable

6. Keeping in view the ground taken by the landlord in the ejectment petition to ascertain whether the tenant ceased to occupy the demised premises for a period of more than four months in terms of Section 13(v) of East Punjab Urban Rent Restriction Act, 1949 before filing of the suit, the petitioner is required to lead evidence and an Advocate going to the spot for a short time is certainly not in a position to report in that regard. Similarly, with regard to the demised premises in question being in dilapidated condition that can be best reported by a building expert and an Advocate cannot be expected to have specialized knowledge in that regard. Appointment of an Advocate to visit the spot and to report in this case would amount to collecting evidence by the

Court on behalf of the landlord, which is against spirit of law. The case is at the stage of evidence of the petitioner/landlord. The petitioner/landlord may lead evidence to prove the grounds taken by it in the ejectment petition. Such evidence may be in the form of examining building expert, a photographer, who may have taken photographs of the demised premises or prepared a video thereof as well as examining persons from the neighbourhood.

7. Learned counsel for the respondent has referred to judgment *Jitender alias Leela Versus Rashma, 2002(1) Law Herald 178* by a Single Judge of this Court. However, the said judgment is not applicable to the present case due to different facts and circumstances of the case and the context in which such observations had been made.

8. Therefore, the order passed by Rent Controller, Jalandhar appointing Local Commissioner cannot stand judicial scrutiny and is hereby set aside with the observation that if the Local Commissioner has already visited the spot and submitted his report in the Court, the same shall not be taken into consideration by Rent Controller, Jalandhar and Rent Controller, Jalandhar would proceed further to decide the matter in accordance with law.

9. The present petition is allowed accordingly.

Since the main revision petition has been allowed, the miscellaneous application(s), if any, stand disposed of accordingly.

27.2.2023

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No