

**CR-3217-2006****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.****Case No. : CR No. 3217 of 2006****Date of Decision : October 15, 2024**

Narinder Pal (deceased) through his LRs Petitioners

vs.

Promila Kumari and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Sarju Puri, Advocate
for the petitioners.Mr. Saurav Verma, Advocate
and Ms. Preeti Grover, Advocate
for the respondents.

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GURBIR SINGH, J. :

1. Challenge in this petition is to the order dated 22.03.2006, passed by learned Appellate Authority, Hoshiarpur, whereby the judgment dated 29.04.2002, passed by learned Rent Controller, Garhshankar, dismissing ejectment petition filed by the respondents/landlords, was set aside and ejectment order was passed against the petitioner.

2. Briefly, case of the landlords (respondents herein) is that the shop in question was on rent with the tenant (petitioner herein) @ Rs.20/- per month for the last more than 50 years. Respondents Subhash Kumari and Promila Kumari purchased the said shop along with superstructure from Balbir Sen – the original co-sharer, vide sale deed dated 13.12.1985 and they had become owners to the extent of ½ share. Similarly, Vishwa Bandhu – original co-sharer sold his entire share along with superstructure and



appurtenant rights in favour of respondents Raghubans Lal and Premwati and they also became owners in the said property to the extent of $\frac{1}{2}$ share.

3. The ejectment of tenant (petitioner herein) was sought on the ground of non-payment of arrears of rent; premises in question was in dilapidated condition and was unsafe and unfit for human habitation; the tenant had made unauthorized addition/alteration in the shop in dispute without consent of the landlords and thereby materially impaired the value and utility of demises premises and tenant is a source of nuisance.

4. The portion of the property, shown as ADEF in the site plan, fell down on 29.03.1996 due to its dilapidated condition and the tenant reconstructed the same without the consent of the landlords, thereby making unauthorized material alteration and also addition, by removing the door from its place and fixing the same at the other place. It was further alleged that the respondent/tenant converted the shop into an open verandah and also lowered down the roof of portion ADEF by 1-1 $\frac{1}{2}$ inch from the other existing portion of the roof, thereby materially impairing the value and utility of the demised shop. Moreover, the respondent/tenant had become source of nuisance due to nature of work being carried by him in the said premises i.e. business of transportation and loading/unloading of goods at the demised shop.

5. The tenant contested the petition and filed reply, submitting therein that the ejectment petition was preferred at the instance of one Bharat Bhushan – husband of respondent Promila Kumari, who was inimical towards him and intended to usurp the property in dispute and its



surrounding area. Relationship of landlord and tenant was admitted. It was also admitted that the shop in dispute was on rent with the tenant. Purchase of property by the landlords was denied. The shop in dispute was ownership of Raj Dulari. The site beneath the verandah, marked as ADEF, was not the part of the property of Raj Dulari. It was further submitted by the tenant that the building was fit for human habitation and the cracks in the wall were superficial. No material alteration was effected. There was verandah in the portion shown as ADEF which was constructed by the tenant himself and on the intervening night of 29/30.03.1996, at about 01:00 AM, a tourist bus collided with the verandah, as a result of which verandah collapsed and the tenant had to reconstruct the same. Neither he made any material alteration nor he removed any door from the site AD as no such door was at such place right from the beginning. He did not remove any western wall, as alleged by the petitioners. The rent was already tendered. From the pleadings of the parties, following issues were framed :-

- “1. Whether the tender of the rent is short and invalid, if so its effect? OPP
2. Whether the premises in question have become unfit and unsafe for human habitation? OPP
3. Whether the respondent has made unauthorised alterations and additions without the consent of the petitioners? OPP
4. Whether the act of the respondents in loading and unloading the trucks causes nuisance to the neighbourers, if so, its effect? OPR
5. Whether the petition has been filed through



duly authorized attorney? OPP

6. *Whether the relationship of landlords and tenant exists between the parties as alleged?*

OPP

7. *Whether Smt. Raj Dulari was landlord regarding the property marked as BCEF as shown in the site plan of the respondents, if so its effect? OPR*

8. *Whether the site ADEF was not a part of the shop and was never rented out as alleged, if so, its effect? OPR*

9. *Whether the shop in question falls in Khasra No.482 as alleged? OPP.*

10. *Relief.”*

6. In support of their case, landlords examined C. Bhupinder Singh as PW-1, Sectional Officer Sudesh Kumar as PW-2, Bharat Bhushan – Attorney of Sudesh Kumari as PW-3 and Advocate R. K. Bhatti as PW-4.

7. On the other hand, respondent examined House Tax Clerk namely Santokh Singh as RW-1, neighbour Hari Ram as RW-2, Dev Raj as RW-3, Jagjit Singh as RW-4 and tenant himself stepped into the witness box as RW-5.

8. After appreciating the evidence on record, the learned Trial Court held that there was a relationship of landlord and tenant between the parties and petition was filed through duly authorized persons. The shop in dispute falls in Khasra No.482, so, issues no.5, 6 and 9 were decided in favour of the landlords. It was held that the landlords failed to prove that the premises

in question had become unsafe and unfit for human habitation and the tenant



had made unauthorized alterations and additions without the consent of the landlords and the act of the tenant, in loading and unloading the trucks, is causing nuisance. So, issues no.2, 3 and 4 were decided against the landlords. On the basis of findings on issues no.2, 3 and 4, the petition was dismissed by learned Rent Controller.

9. The learned Appellate Authority held that the landlords failed to prove that the act of the tenant was creating nuisance to the neighbours. So, finding on issue no.4 was upheld. The Appellate Court further held that the shop in question was fit for human habitation. So, finding on issue no.2 was also affirmed. Finding on issue no.3 was reversed. It was held that the tenant had made material alteration in the demised premises without the consent of the landlords. On the basis of finding recorded on issue no.3, the ejectment petition was allowed and order of ejectment was passed. Against the said order of ejectment, the tenant has approached this Court by way of present revision petition.

10. Learned counsel for the petitioner/tenant has argued that the ejectment petition was filed on various grounds i.e. the demised premises had become unsafe for human habitation; the act of tenant in loading and unloading the trucks was causing nuisance to the neighbours; non-payment of arrears of rent and tenant had made unauthorized alteration and addition in the rented premises without the consent of the landlords. The learned Courts below did not believe the landlords' above-said grounds except that the tenant had made unauthorized alteration and addition without the consent of the landlords. The landlords wrongly pleaded that portion marked as



ADEF in the site plan had fallen on 30.03.1996 and the tenant reconstructed the same in their absence and also made material additions and alterations without their consent. The tenant took a specific plea that about 32-33 years ago, he was inducted as tenant in the portion marked as BCEF by Raj Dulari wife of Bhadder Sen. The site beneath the verandah, marked as ADEF, as shown in the site plan, was a vacant space in front of the said shop, which was not ownership of Raj Dulari. The tenant asked Raj Dulari whether she would have any objection, if he would construct a shed over the said space for its utilization and Raj Dulari stated that she had no objection as the same was not her ownership. So, in the beginning, the tenant constructed a shed in the said site ADEF and later after asking Raj Dulari, constructed a pucca verandah in the site ADEF in front of the rented shop by spending money from his own pocket. The verandah, shown as ADEF in the site plan, was not a part of the shop and it was not a part of the rented premises.

11. It has been further argued that it was specifically pleaded that on 29.03.1996 at about 01:00 AM, a tourist bus collided with the said verandah and as a result, the said verandah collapsed. So, the tenant had to reconstruct the verandah. The tenant did not make any material addition or alteration in the premises nor removed any door from the site AD as there was no door at that place from the very beginning. He did not remove the western wall. The learned Appellate Court had erroneously held that it was nowhere mentioned in the written reply filed by the tenant that he constructed the verandah after taking consent of landlady Raj Dulari. Thus, the findings recorded by the Appellate Court are perverse.



12. On the other hand, learned counsel for the landlords has argued that on 30.03.1996, a portion of the demised premises had fallen down in the night due to dilapidated condition of the building. DDR No.49 dated 30.03.1996 was also got recorded, copy of the same was proved as Ex.P-1 by examining Constable Pushpinder Singh as PW-1. It was further contended that the tenant was asked not to make any construction but he reconstructed the same thereby making material alterations. It was further argued that there was one big wooden door. The tenant had converted the front of the shop in the shape of verandah and raised its level from the remaining portion of the shop. The tenant also removed the walls. The said construction was made without written consent of the landlord. Since the landlords were not present during construction, an application (Ex.P-9) was moved to the police but no action was taken on it and the landlords were asked to approach the Court.

13. I have heard the submissions of learned counsel for the parties and perused the case file.

14. The tenant has proved the site plan (Ex.R-11). Copy of *jamabandi* for the year 1991-92 (Ex.R-12) shows that in Khasra No.482, Vishav Bandhu had $\frac{1}{2}$ share, Sudesh Kumari had $\frac{1}{3}$ rd share and Promila Kumari had $\frac{1}{2}$ share. There is also entry of mutation in favour of landlords Promila Kumari and Raghubans Lal with regard to sale of property to the extent of $\frac{1}{2}$ share. The landlords also proved two sale deeds Ex.P-7 and Ex.P-8 to the effect that the shop in question was purchased by them vide two sale deeds and the same falls in Khasra No.482. Even Local Commissioner namely



Shangara Ram proved his report Ex.P-13 that he demarcated Khasra No.482. *Aks Shijra* was prepared on the spot and the disputed shop falls in said khasra number. Report of the Local Commissioner was tendered with the statement of the landlords and no objection was raised with regard to the report.

15. From the evidence brought on record, it is proved that the shop in question was purchased by the landlords vide two different sale deeds. The tenant had been paying the rent. Both the Courts have found that there is relationship of landlord and tenant between the parties and it is well settled that a pure finding of fact, unless and until perverse and opposed to the evidence on record, cannot be interfered with, by exercising revisional jurisdiction.

16. The ejectment has been ordered on the ground that tenant has made material alterations, without the consent of the landlords, thereby diminishing the value of the demised premises. The law is well settled that nature of impairment should be considered from the view point of the landlord. The tenant has not denied reconstruction of the verandah. It is the specific case of the tenant that a tourist bus collided with the said verandah which collapsed and he reconstructed the same. The learned Trial Court came to the conclusion that tenant had made alteration by removing door at the front side of the shop and inserting it at point 'Y' and converting front side into verandah but this alteration could not be termed as material because front side could be converted into closed portion by way of installation of door and it could not be said that the tenant had caused material alteration.



Accordingly, the said issue was decided against the landlords and in favour of the tenant.

17. The learned Appellate Court observed that it was admitted case of the parties that verandah ADEF was constructed by the tenant and while stepping into the witness-box as RW-5, the tenant also stated that the said verandah was constructed by him by taking consent of landlady Raj Dulari and at that time, he did not effect any change in the shop in dispute but the said version was found to be beyond pleadings. So, it was held that construction of the verandah was raised with the consent of the landlady. The learned Appellate Court had held that the verandah had fallen and the same was reconstructed and there was nothing on record to suggest that it was reconstructed with the consent of landlady Raj Dulari, and despite the fact that protest was lodged by the landlords. The tenant took the plea that earlier, there was tin shed and thereafter, he raised pucca construction of verandah. This fact itself shows that the tenant made substantial alteration and addition without the consent of the landlords.

18. Section 13(2)(iii) of the East Punjab Urban Rent Restriction Act, 1949 provides that a landlord who seeks to evict his tenant, shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause, is satisfied that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied, he shall make an order rejecting the



application, provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

19. In the case in hand, the tenant had not denied about reconstruction of verandah. In case Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh, reported as 2014 (4) RCR (Civil) 162, it has been observed by Hon'ble Apex Court that a finding of fact recorded by the authority below, if perverse and having arrived at without consideration of the material evidence and such finding being based on no evidence or misreading of evidence or on being grossly erroneous that, if allowed to stand, which would result to gross miscarriage of justice, is open to correction. It was also observed that the Rent Act did not entitle the High Court to interfere with the findings of fact recorded by the First Appellate Court/authority because on re-appreciation of the evidence, its view is different from the Courts below. Revisional power is not and cannot be equated with the power of re-consideration of all questions of fact as a Court of First Appeal.

20. From the evidence, it is proved that while constructing the verandah, door was also removed and was fixed on the other side. A portion of the demised shop was converted into verandah and such an act on the part of the tenant amounts to material alteration, thereby diminishing the value of the demised premises. In the absence of any illegality, infirmity or perversity in the impugned order dated 22.03.2006, passed by learned Appellate Authority, it is held that no ground is made out to interfere in the

same and thus, the present revision petition is dismissed with no order as to costs.

21. Pending applications, if any, shall stand disposed of along with this judgment.

October 15, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.