

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

201

CR-237-2004 (O&M)

Reserved on:05.08.2024

Date of pronouncement:23.08.2024

Sarwan Kumar & others

... Petitioners

Vs.

Jagram

... Respondent

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Sudhir Aggarwal, Advocate for the petitioners.

None for the respondent.

...

SUKHVINDER KAUR, J.

1. Instant revision petition has been filed by the petitioners/landlord against the concurrent findings recorded by both the Courts below vide which ejectment petition filed by the petitioners/landlords was dismissed.

2. The brief facts of the case as per petitioners are that building No.1, 2 and 3 situated in Ward No.13, near Old Bus Stand Opposite Devi Mandir, Sohna is ownership of the petitioners to the extent of their shares as detailed in the petition. Respondent – Jagram (now being represented through his L.Rs.) is in occupation of shop No.3 with verandah in front thereof, as tenants on monthly rent of Rs.10/50 excluding the house tax at the rate of 10% of the monthly rent which comes to Rs.1/05 per month total Rs.11/55 per month since time of the previous owners, from whom the present petitioners purchased the aforesaid shop along with portion of

aforesaid building No.1, 2 and 3. Respondent is running a tea stall in the tenanted premises since the date of inception of the tenancy. The shop in question is non-residential building and was let out to the respondent as such by the previous owners. After its purchase by the petitioners from its original owner, the relationship of landlord and tenant was created between the parties regarding the demised shop. Hence, the petitioners have right to file the present petition. It is alleged that the entire building No.1, 2 and 3 including the demised shop has outlived its life and is in a dilapidated condition. This building was constructed more than 200 years ago. The joint of the walls have left their grip, the plaster has peeled off and cracks have appeared in the walls through and through and the flooring has been damaged. The wooden *karies* have bent down and have been eaten by white ants and there is imminent danger of the collapse of the entire building, including the shop in question which may result into heavy loss of human life. It has been further alleged that some of the portion of this building has already fallen down and the shop in question along with other portion of the main building is dangerous and is unsafe and unfit for human habitation and requires reconstruction after its demolition.

The ejectment was also sought on the ground that respondent has failed to make payment of rent and house tax to the petitioners since 01.06.1990 after purchase of this shop by the petitioners.

3. In reply to the petition, the relationship of landlord and tenant between the petitioners and the respondent was admitted. It was alleged that the amount of rent as claimed with interest and costs as calculated by Rent

Controller amounting to Rs.660/- was tendered in Court by tenant on 10.02.1994 and was accepted by the petitioners. Therefore, ground of non-payment of rent was not available. It was denied that the demised shop and verandah has outlived its life and is in dilapidated condition and had been constructed 200 years ago. It was denied that some portion of the building has fallen down and alleged that some portion of the building might have been pulled down by the petitioners. It was denied that the demised shop is unsafe and unfit for human habitation and requires demolition.

In the replication filed by the petitioners the averments as made in the petition were reiterated.

4. From the pleadings of the parties, the following issues were framed:

“1. Whether the respondent is liable to be ejected on the ground that the demised shop has outlived its life and is unsafe and unfit for human habitation? OPP

2. Relief.”

5. Thereafter both the parties led their respective evidence. In order to prove its case, the petitioners have examined Ajay Kumar Ahlmad as PW1, Nand Kumar Nagpal Building Expert as PW2, Arun Kumar Dhingra, DRK Gurgaon as PW3, Sh. Arun Sharma, Advocate, Gurgaon as PW4, Arvind Kumar, Document Writer as PW5. Petitioner Sarwan Kumar himself stepped into the witness box as PW6 and the petitioners also examined Sh. Raj Kumar Goyal, Advocate as PW7.

6. On the other hand, respondent examined RW1 Fateh Singh,

RW2 Murari Lal Sharma, Y.D. Adlakha Chartered Engineer as RW3 and respondent Jagram himself stepped into the witness box as RW4.

7. Vide judgment dated 17.09.2002, learned Rent Controller, Gurgaon dismissed the ejectment petition. An appeal was preferred before the Appellate Authority, Gurgaon, which was also dismissed vide judgment dated 25.11.2003. Hence, feeling aggrieved of the same, the petitioners/landlord have knocked the doors of this Court by way of filing the present revision petition.

8. Learned counsel for the petitioners has contended that the Courts below have misinterpreted and misconstrued the evidence on record. The expert produced by the petitioners in his report Ex.PW2/A has clearly stated that major portion of the building has fallen down and the portion in possession of the respondent which is a part of the main building is also in a ruined condition. The lime mortar has peeled off, wooden lumbers used in the roof, door frame, lintels and doors are eaten by white ants and the walls are wet due to seepage. The mortar of the walls sound hollow and has lost its strength. So Courts below have erroneously held that the demised shop is not in a dilapidated condition. He has argued that it is settled principle of law that if major portion of the building even if it is in possession of the landlord has collapsed due to the fact that it has outlived its life and utility, the portion which is in possession of the tenant even if intact, can be got vacated, as the same would also be considered to be unsafe and unfit for human habitation. He has urged that there is no basis for holding the demised shop to be not an integral part of the remaining building which had

already fallen down due to its dilapidated condition. The entire building is one building known as '*Bhatiari Ki Sarai*'. He has further argued that this fact has also not been appreciated that one Hilal Ahmed, who was tenant in remaining portion of the building and against whom an ejectment petition was filed on the ground of unfit and unsafe for human habitation, in which a compromise was effected and Hilal Ahmed has vacated the premises. In the compromise, it was clearly mentioned that the whole building including the demised premises has outlived its life and is unfit and unsafe for human habitation. The Local Commissioner has also categorically stated that the verandah of three rooms marked 'ABC' was broken and the plaster has peeled off. There are several cracks in the walls through and through. The shops which are on both sides of main road are made of *karies* but the *karies* are in broken condition and *kharanja* was visible and there were cracks in the roof. He has vehemently contended that learned authorities below have not appreciated the evidence on record in the right perspective and the impugned judgments are not sustainable in the eyes of law and are liable to be set aside.

9. I have heard learned counsel for the petitioners at length and have perused the record.

10. In order to substantiate their plea that the shop in question is in dilapidated condition and is unfit for human habitation, the petitioners have relied upon Ex.PW2/A report of the Building Expert, Nand Kumar Nagpal, who has been examined as PW2. Much stress has been laid upon by learned counsel for the petitioners that as per the aforesaid report, some portion of

the building has already been fallen down and the portion in possession of respondent – Jagram is shown to be part of the building which is already in ruined condition. But it has not been observed in the said report that whether said portion of the building had fallen down at its own or the same was pulled down by the petitioners. Rather it is made out from the evidence on record that fallen portion of the building was pulled down by the petitioners after getting the same vacated from the earlier occupant.

11. Every damage to a building, without reference to the seriousness of its nature or to the condition of the building as a whole, would by itself not entitles a landlord to seek eviction of the tenant. In **Piara Lal Vs. Kewal Krishan Chopra, 1988 (2) RCR (Rent) 32**, the Hon'ble Apex Court held as under:

“6. We are clearly of opinion that the High Court was not justified in allowing the revision and directing the eviction of the appellant under [Section 13\(3\)\(a\)\(iii\)](#). It is true that a roof of one of the rooms on the rear-side had fallen down and required replacement but there was no evidence whatever that the entire building or a substantial portion of it was in a damaged condition and consequently the building as a whole had become unfit and unsafe for human habitation. Unless the evidence warranted an inference that the falling down of the roof in one room was fully indicative of the damaged and weak condition of the entire building and that the collapse of the roof was not a localised event, we fail to see how the High Court could have concluded that the entire building had become unsafe and unfit for human habitation. ”

12. Thus the mere fact that building is very old is not the conclusive proof that the same is unfit for human habitation. It has been observed in the

report Ex.PW2/A that cracks have developed in the walls, but the length and width of the said cracks have not been mentioned. It has also been observed that some portion of wooden lumbers of roof, door frames have been eaten by white ants. But from the aforesaid observations, this inference cannot be drawn that the shop in possession of the respondent has become unfit and unsafe for human habitation. So far as seepage in the walls is concerned, in the old building such a seepage is generally seen and when building is admittedly made up with stones with lime mortar then such building is not likely to be much effected by such seepage.

13. So far as report Ex.PW4/A given by the Local Commissioner Sh. Arun Kumar Sharma, Advocate Gurgaon is concerned, this report is not specifically qua the shop in question. While appearing as PW4, the Local Commissioner admitted in his cross-examination that shop in question had not been seen by him from inside and shop seems to be good from outside. He has further stated that he was not allowed to enter the shop. So when he has not inspected the shop from inside after entering the same, then he cannot observe that *karies* were in broken condition and there were cracks in the roof. So this report appears to be factually incorrect. Moreover, he is not a building expert and this report was given in case titled as 'Sarwan Kumar Vs. Hilal Ahmed' and was not appointed as Local Commissioner in the present case.

14. Though RW1 has not supported the case of the respondent yet even his testimony is of no help to the petitioners, as even this witness has not stated that the shop is not in a good condition and is unfit for human

habitation. Sh. Y.D. Adlakha, RW2 the building expert examined by the respondent has deposed that the rooms and varandah were constructed in two stages. The rooms were found to be about 60-65 years old, and the varandah was constructed in the second stage and was found to be 50-55 years old. The normal life of this type of construction is 80/100 years depending upon the maintenance.

15. Though from the evidence on record, it transpires that the shop in dispute is part of the building, but it has not been proved that it is an integral part of the building in question. As per Ex.PW6/A, the shop in question and the adjoining shops are independent from the remaining portion of the building and are not joint. The Municipality of Sohna has also divided the said building into three units i.e. 1, 2 and 3 and separate numbers have been given to separate portions. The portion allegedly fallen down has no concern with the shop in dispute.

16. No photographs have been placed on record in order to show the dilapidated condition of the demised premises. During pendency of the revision petition before this Court, the application under Order 41 Rule 27 CPC was filed for producing photographs of the demised shop. But no such photographs have been placed on record to show that what exactly was the condition of the demised premises when eviction of the tenant on this ground had been sought. It is also not proved that when the photographs, which the petitioners want to produce on record were clicked and whether they are pertaining to the demised premises. So these photographs are of no help to the petitioners to prove their case.

17. Thus both the Courts below have rightly reached at the conclusion that the petitioners have failed to prove on record that shop in dispute is unfit and unsafe for human habitation.

18. In the light of the above, there is no illegality or perversity in the judgments passed by the Courts below. Accordingly, the revision petition sans merit and is hereby dismissed.

19. Pending application(s), if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

23.08.2024
harjeet

- | | | |
|----|----------------------------|--------|
| 1. | Whether speaking/reasoned? | Yes/No |
| 2. | Whether reportable? | Yes/No |