

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR-5907-2004 (O&M)

Reserved on:08.08.2024

Date of pronouncement: 30.08.2024

Harcharan Dass Norata Ram

... Petitioner

Vs.

Anil Kumar and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Argued by: Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunal Mulwani, Advocate and
Mr. Vikas Thakur, Advocate
for the petitioner.

Mr. Kanwal Goyal, Advocate and
Mr. Prince Singh, Advocate and
Ms. Sheena Dahiya, Advocate
for the respondents.

...

SUKHVINDER KAUR, J.

1. Instant revision petition has been filed by the petitioner/landlord against judgment dated 27.09.2004 passed by Appellate Authority, Sangrur vide which the ejectment petition filed by the petitioner was dismissed while reversing the ejectment order dated 22.07.2004 passed by learned Rent Controller, Malerkotla.

2. The brief facts of the case as per petitioners are that the petitioner is owner/ landlord of the shop in dispute. Shop in dispute was rented out to respondent Janak Raj about 12 years back prior to filing of this petition. The annual rent of the demised premises was settled as Rs.22,000/-

per year and tenant was also liable to pay the house tax @ 15% on the rental value of the tenanted premises. Before the learned Rent Controller, the landlord alleged that tenant had not paid to him rent of the demised premises @ Rs.22,000/- per year w.e.f. 01.07.1999 and was thus, in arrears of rent. It was also alleged that the respondent/ tenant had made material alterations in the demised premises, thereby impairing its value and utility. He had broken the lintel of the roof of the shop on its western side and have crossed through the holes of the lintel two chimneys for discharge of smoke. The radius of one hole is 5' and the other hole is about 2 ½" x 2 ½". The respondent had made material alterations in the lintel roof of the shop and has thus materially diminished the value and utility of the shop in dispute. On the aforesaid two grounds the landlord filed the ejectment petition against the tenant before the learned Rent Controller, Malerkotla.

3. The respondent-tenant appeared and filed written statement denying that he was in arrears of rent. He also denied that he has diminished the value and utility of the shop in question. It was alleged that on the next date of hearing he tendered the arrears of rent alongwith interest thereon and cost assessed by the Court which were accepted by the landlord/ petitioner. About 12 years back, he had taken on rent the shop in dispute from the petitioner for running a goldsmith manufacturing business therein. Since the very beginning, he is running the business of manufacturing gold and silver ornaments. In order to discharge of smoke, which is emitted in the process of manufacturing of ornaments, he raised two chimneys through the roof. It was alleged that it has not impaired the value and utility of the shop in

question, rather it was necessary for running of his business and prayed for dismissal of the ejectment petition.

4. In the replication filed by the petitioners the facts as alleged in the petition were reiterated and those of the written statement were denied.

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

“1. Whether respondent is in arrears of rent w.e.f. 01.07.1999 onwards, if so its effect? OPP

2. Whether respondent is in arrears of house tax at rate of 15% of rental value, if so its effect? OPP

3. Whether respondent has made material, alteration in the tenant premises, if so its effect? OPP

4. Whether petition is not maintainable in the present form? OPR.

5. Relief.”

6. Thereafter both the parties led their respective evidence. In order to prove its case, the petitioner examined PW1-Dev Raj Gupta, Building Expert, AW2-Vijay Kumar, AW3-Rupinder Singh Battu, AW4-Mr. K.K. Riware, Advocate and petitioner Harcharan Dass Norata Ram, himself stepped into the witness box as AW5.

7. On the other hand, respondent examined RW1-Anil Kumar, RW2-Manjit Singh and RW3-Shamsher Singh, Building Expert.

8. Learned Rent Controller decided issues No.1 and 2 against the petitioner/ landlord. Issues No.3 and 4 were decided in favour of the

petitioner/ landlord and vide judgment dated 22.07.2004, learned Rent Controller, Malerkotla ordered eviction of the respondent from the demised premises on the ground of having made material alterations in the tenanted premises. Against the said ejectment order dated 22.07.2004, the petitioner/ landlord (LRs of deceased/ petitioner-Janak Raj) filed Rent Appeal which was allowed by learned Appellate Authority, Sangrur vide judgment dated 27.09.2004 and order dated 22.07.2004 passed by learned Rent Controller, Malerkotla was set aside. Hence, feeling aggrieved of the same, the petitioner/landlord knocked the doors of this Court by way of filing the present revision petition.

9. Learned counsel for the petitioner has contended that the respondent has broken the lintel of the roof of the shop in dispute on its western side and crossed through the holes of the lintel two chimneys for discharge of smoke which has materially diminished the value and utility of the shop in dispute. The lintel is a single slab and even if these holes are filled, it cannot be an integral part of the remaining lintil and can cause leakage etc. Roof of the shop which is with the landlord cannot be used on account of chimneys constructed by the tenant. He has contended that initially the shop was let out for sale and purchase of ornaments but the tenant/ respondent started manufacturing the ornaments. He has contended that approach of learned Appellate Authority is totally illegal and against the facts and evidence on record and liability applicable thereto. He has contended that a well reasoned order passed by learned Rent Controller has been wrongly set aside by learned Appellate Authority.

10. Learned counsel for the respondent/ tenant while refuting the aforesaid contentions has contended that the shop in dispute was taken on rent by the tenant/ respondent to carry on the business of goldsmith for manufacturing of gold and silver ornaments and from the very inception the tenancy the said business of goldsmith is being run in the said shop. As smoke is emitted in the process of making of silver and gold ornaments, so for discharge of smoke the two chimneys in question were erected in the shop in dispute, which have not impaired the value and utility of the shop and rather it will save the shop from disfigurement. He has urged that order of learned Rent Controller has been rightly set aside by learned Appellate Authority, Sangrur and no interference in the said order is called for.

11. I have heard learned counsel for the parties at length and have perused the record.

12. The Hon'ble Apex Court summed up the law regarding impairing of value and utility in **M/s British Motor Car Co. Vs. Madan Lal Saggi (D) and another, 2004(2) R.C.R (Rent) 693.** While observing that question whether the alleged additions and alterations materially impaired the value and utility of the premises in question is a mixed question of law and fact to be determined on the application of correct principles referred to **Gurbachan Singh and another Vs. Shivalak Rubber Industries, 1996(1) R.C.C.(Rent) 398 (SC).** While observing that impairment of the value or utility of the building is from the point of the landlord and not of the tenant referred to **Vipin Kumar Vs. Roshan Lal Anand, 1993 (1) R.C.R (Rent) 675 (SC).** Reference was also made to case of **Om Parkash Vs. Amar**

Singh, 1987(1) R.C.R (Rent) 326 (SC), wherein it was held that construction raised should be of such a nature as to substantially diminish the value of the building either from the commercial and monetary point of view or from the utilitarian aspect of the building; essential element which needs consideration is as to whether the constructions are substantial in nature and they alter the form, front and structure of the accommodation; it is not possible to give an exhaustive list of constructions which constitute material alterations, as the determination of this question depends on the facts of each case.

13. It was held by Co-ordinate Bench of this Court in Mrs. Gian Kaur Vs. Mrs. Krishna Anand, 2006(2) R.C.R (Rent) 610, “the question whether the alleged additions and alterations materially impaired the value and /or utility of the premises is a mixed question of law and fact and it has to be tested in the back-drop of the facts of each case. The impairment of the value and utility of the building has also to be seen from the view point of the landlord and not the tenant.”

14. So in the instant case also the question that whether the value and utility of the demised premise has been diminished by the respondent will depend upon the facts and circumstances of this case.

15. In Om Pal Vs. Anand Sarup, 1988 (2) R.C.R.(Rent) 419 SC, it was observed that every type of alteration would not be a ground for ejectment of the tenant from the demised premises. It is only material alteration which would be a ground for the ejectment. Material alterations are one where where the basic structure of the tenanted premises is changed.

16. It was held by Hon'ble Apex Court in **Om Pal's** case (Supra), “ In the light of these decisions, if we examine the present case we find that the Rent Controller and the Appellate Authority as well as the High Court have obviously failed to construe Section 13(2) (iii) in its proper perspective and they have failed to apply the correct legal tests for judging the nature of the constructions made by the appellant. As has been repeatedly pointed out in several decisions it is not every construction or alteration that would result in material impair modulation and as such the construction of a chabutra, almirah, opening of window or closing a verandah by temporary structure or replacing of a leaking roof or placing partition in a room or making minor alterations for the convenient use of the accommodation would not materially alter the building. It would therefore follow that when a construction is alleged to materially impair the value or utility of a building, the construction should be of such a nature as to substantially diminish the value of the building either from the commercial and monetary point of view or from the utilitarian aspect of the building.”

17. In the instant case, there is ample evidence on record that the demised premises had been let out to the respondent/ tenant for running a shop of goldsmith. In para No.6 of the written statement, it has been specifically alleged that respondent took the shop in dispute on rent about 12 years back to carry on the business of goldsmith for the manufacturing of silver and gold ornaments and since then respondent has been running the said business therein. In replication to the said written statement in para No.6 it has been admitted that the respondent took the shop on rent about 12

years back for the business of goldsmith. Hence, it has been admitted by the petitioner that the shop in dispute was let out to the respondent for running the business of goldsmith. Undoubtedly a goldsmith indulges in the manufacturing of gold and silver ornaments.

18. Once it stood admitted by the petitioner that the shop in dispute was rented out to the respondent/ tenant for running shop of goldsmith which necessarily permits the manufacture of gold and silver ornaments. It is a matter of common knowledge that in the process of manufacturing of gold and silver ornaments, smoke is essentially emitted. In order to provide outlet to the smoke, chimneys have been constructed through the roof of the shop.

19. Only constructing of chimneys has been relied upon as a material alteration in the demised premises so as to impair materially the value and utility of the demised premises.

20. As per report of Local Commissioner Ex.A6, there are two chimneys and plastic pipes have been crossed through the roof. The radius of one chimney was 3.75" x 2.75". Second chimney is only a hole. Plastic pipe is also crossed through roof in that hole. That plastic pipe has been crossed through the roof after breaking the lintel of the roof of the shop.

21. Even AW1-Dev Raj Gupta, Building Expert examined by the petitioners, who is a Diploma holder in Civil Engineering has stated in his cross-examination that tenant is doing the business of sale and manufacturing of silver and gold ornaments. The gold is melted with help of gas chulla by the tenant and the smoke generated by this process is discharged through the above mentioned holes. He has categorically stated

that if smoke was not driven out through these holes then suffocation would be caused in the shop and its original look would be disfigured. He has further categorically admitted it to be correct that rainy water could not enter in shop in dispute because both the holes are covered.

22. In Ex.R2, the technical report submitted by RW3-Shamsher Singh, Building Expert, it has been observed that the said additions and alterations mentioned under sub head A B C are about 15-20 years old. So when the demised shop was let out to the tenant/ respondent for running business of goldsmith and if in order to give outlet to the smoke these chimneys have been constructed through the roof of the shop then it cannot be said that it has diminished the value and utility of the shop in dispute. As already observed and as admitted by AW1, if no outlet to the smoke by way of chimneys was provided then it would cause disfigurement of the shop as well as it would cause suffocation in the shop.

23. There is adequate evidence on record which indicates in no uncertain terms that the constructing of chimneys in question has not caused any substantial damage to the structure of the shop. Considering that it was a goldsmith business which was being started in the demised shop, these things had to be done to enjoy the tenancy.

24. In **Charan Dass (deceased) through LRs Vs. Niranjana Dass Sharma, 1992 (1) R.C.R. (Rent) 536**, it was held by Co-ordinate Bench of this Court that when a shop was let out for parching grams and groundnuts and tenant making a hole in roof for letting out smoke, there was no impairment of value and utility as nature of business demanded the same.

25. In Anup Chand and others Vs. Tarlok Singh, 1977(2) R.C.R.(Rent) 121, also it was held that when shop was let for hotel business and tenant making fire place, constructing wooden stairs and false roof for convenience of customers, tenant was not guilty of making additions and alteration and it was held that such essential changes must be anticipated by landlord while letting the premises for hotel.

26. In the instant case also the nature of the business of goldsmith demands a hole for letting out the smoke which is emitted during the process for making of gold and silver ornaments.

27. So far as the case law cited by learned counsel for the petitioner in Faqir Chand (deceased) through by LRs Vs. Smt. Basi Devi (died)through LRs., 2004 (2) R.C.R (Rent) 172 and Shri Pearey Lal Vs. Shri Surendra Nath, 2009 (2) R.C.R. (Rent) 376 is concerned, the same is not applicable to the facts of the present case. In **Faqir Chand's** case (supra) there was replacement of roof and creation of hole in the roof of rear room of the shop and in **Pearey Lal's** case (supra) tenant unauthorizedly constructed mezzanine in the shop and also made an opening in the roof and some encroachment on the terrace of shop and keeping in view the peculiar facts in those cases it was held that it amounted to material alteration and impairing the value and utility of the demised premises.

28. Though while addressing the arguments, it has been argued by counsel for the petitioner that as two chimneys have been made in the roof of the demised shops, so the petitioner will not be able to use terrace of the shop. But no such plea was earlier raised before the Courts below and there

is no evidence on record to the effect that the landlord was to use terrace of the demised shop.

29. In the light of the above discussion, I see no reason to take a different view of the matter then that of the learned Appellate Authority, Sangrur.

30. There is no illegality or perversity in the judgment passed by learned Appellate Authority. Accordingly, the revision petition sans merit and is hereby dismissed.

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

(SUKHVINDER KAUR)
JUDGE

30 .08.2024
Komal

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