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**(2016) 12 AHC CK 0206**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 149 (RC) of 2013**

Anwar Ahmad

APPELLANT

Vs

Judge Small Cause Court, Faizabad

RESPONDENT

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**Date of Decision :** 16-12-2016

**Acts Referred:**

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —  
Section 20(2)

**Citation :** (2017) 1 ADJ 25 : (2017) 1 AllWC 800 : (2017) 120 ALR 845 : (2017)  
1 ARC 168 : (2017) 1 RCRRent 665

**Hon'ble Judges :** Dr Devendra Kumar Arora, J.

**Bench :** Single Bench

**Advocate :** Mr. Vishal Dixit, learned Counsel, for the Petitioner; Mr. Ankit  
Srivastava, learned Counsel, for the Opposite parties Nos. 3 to 7

**Final Decision :** Dismissed

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## Judgement

Dr Devendra Kumar Arora, J.— Heard Mr. Vishal Dixit, learned Counsel For the petitioner and Mr. Ankit Srivastava, learned Counsel For the Opposite parties Nos. 3 to 7.

2. Aggrieved by the judgment and order dated 29.8.2013 passed by the Additional District Judge, Faizabad, dismissing SCC Revision No. 2 of 2013 preferred by the petitioner against the judgment and decree dated 27.2.2013 passed by the Judge Small Causes Court, Faizabad decreeing the SCC Suit No. 55 of 1995, the petitioner has filed the instant writ petition inter-alia on the grounds that the finding recorded by the courts below are erroneous and perverse as the courts below had wrongly put the burden of proof upon the tenant/petitioner with regard to removal of wall.

3. Bereft of unnecessary details, in short, the facts of the case are that according to the petitioner, late Sri Ram Narain [the original plaintiff], predecessor of opposite parties nos. 3 to 7, constructed several shops with the financial assistance of the petitioner in consideration of which, he let out one of the

constructed shops on 5.12.1991 in which the petitioner commenced his business of sale of electronic goods at the monthly rent of Rs. 700/- per month. As the petitioner required greater space for the business, the landlord delivered the shop situate at the back of the shop, under the tenancy of the petitioner after removing the intervening wall between the two shops and determined the rent of both shops together as one shop at the monthly rent of Rs. 1300/- per month. It is said that the said shop was let out for a period of 25 years for which a written agreement was also executed by the landlord. Subsequently, the petitioner converted the above shop into a show-room of Gold and Silver ornaments in the name and style of M/s Mahaan Jewellers. On 28.10.1995, Sri Ram Narain gave a notice under Section 106 of the Transfer of Property Act stating therein that the petitioner had committed default of four months in payment of rent and therefore, he is liable to be evicted. Said Sri Ram Narain, later on, filed a suit for ejectment and arrears of rent which was registered as SCC Suit No. 55 of 1995.

4. According to the learned Counsel for the petitioner, the Trial Court accepted the submission of the petitioner that he was not in arrears of rent for four months on the date of institution of the case, and therefore, the ground for his eviction from the shop fails but erroneously fixed liability upon the petitioner for payment of already deposited rent/damages for the month of July and December, 2003 to March, 2009. In this situation, the learned Trial Court recorded a finding that as the notice (paper no. 8GA-1) was invalid as the petitioner was not in default of payment of rent for four months on the date of the above notice, therefore, he was not liable to be evicted under Section 20(2)(a) of U.P. Act No. 13 of 1972. It has been pointed out that during the pendency of the above suit, the original plaintiff died and was substituted by his legal representative [opposite party nos.3 to 7]. Ultimately, the trial court decreed the suit for eviction of the petitioner on the ground of demolition of the intervening wall between the two shops as alleged in the plaint and so far as the default in payment of rent is concerned, the above suit was dismissed only with the exception that a decree for Rs. 22,100/- as damages was passed against the petitioner.

5. Aggrieved by the aforesaid judgment of the Trial Court, the petitioner filed a SCC Revision No. 2 of 2013. On the other hand, Rajendra Prasad and others [ opposite party no. 3 to 7] also filed their revision challenging the dismissal of the suit for default in payment of rent, which was registered as SCC Revision No. 3 of 2013. Both the Revisions were clubbed together and decided by a common judgment and decree dated 29.8.2013, which is impugned in the present writ petition.

6. Learned Counsel for the petitioner has contended that finding recorded by the Trial Court that the intervening wall between the two shops let out to the petitioner as tenant was removed by the petitioner and not by the landlord himself before letting the shop to the petitioner has been recorded without any cogent and reliable evidence. It has further been contended that the findings

recorded by the courts below that the removal of the intervening wall has materially altered the accommodation in dispute and diminished its value is based on pure conjectures and surmises. Therefore, the impugned orders are liable to be set aside.

7. To strengthen his aforesaid assertions, learned Counsel for the petitioner has relied upon the decision rendered by the Apex Court in Hari Rao v. N. Govindachari and others [2005(61) ALR 597] and by this Court in Satish Chand Kakkar and others v. VII Addl. District Judge, Allahabad and others [2006(64) ALR 414] and Kalideen v. Nathu Ram Gupta [2008 (3) ARC 136].

8. In contrast, the learned Counsel for the contesting respondents has submitted that the answering respondents are owners and landlords of two distinct shops, which were let out to the petitioner in the year 1993 on a composite rent of Rs. 1300/- per month. Both the shops were different and distinct from each other and there was a wall existing in between the two shops. However, the petitioner without any consent written or otherwise from the answering respondents, demolished the intervening wall of the two shops. On account of removal of the intervening wall, both the shops have lost specific existence.

9. It has further been submitted that after the determination of the tenancy and after the expiry of the period stated in the notice for determination of lease, the petitioner did not vacate the premises, as such, the landlords filed the SCC Suit for arrears and ejectment.

10. It has been vehemently argued on behalf of the contesting respondents that the suit has been rightly decreed in accordance with law after appreciating the pleadings and evidences on record. A categorical finding has been recorded that the petitioner without any consent of the landlords, demolished the intervening wall of the two shops. The demolition and removal of the intervening wall of the two shops not only has diminished the value and utility but also has disfigured both the shops.

11. Apart from above, it has also been pointed out that the instant writ petition has been filed initially under Article 226 of the Constitution of India. Later on, an application for treating the writ petition to be a writ petition under Article 227 of the Constitution was preferred, which stood dismissed as not pressed vide order dated 19.10.2016. Therefore, issue regarding the maintainability was also raised during the course of arguments.

12. From the pleadings, it comes out that there is no dispute between the parties that landlord tenant relationship existed between the opposite parties and the petitioner, out of two shops, one was let out on rent in the year 1991 and the other in the year 1993 on a composite rent of Rs. 1300/- per month. There is also no dispute to the fact that the intervening wall between the two shops has been removed.

13. The assertion of the petitioner that both the courts below wrongly held that

the burden of proof regarding removal of intervening wall was upon the petitioner, is wholly misconceived. The case of the tenant/petitioner was that the intervening wall between the two shops was removed by the landlord himself and this fact was stated by the petitioner in his written statement, the courts below rightly observed that the burden to prove the same was upon the petitioner, which he failed to discharge.

14. During the course of arguments, learned Counsel for the petitioner has restricted his submission to the fact that the structural alteration so caused by no stretch of imagination has diminished the value or utility or disfigured the tenanted premises and has relied upon the judgment, as referred to above. Further, the landlord is not in need of the premises and as such the relief for eviction is wholly unjustified.

15. There is no dispute to the fact that the answering respondents have instituted the suit under Section 20(2) of the provisions of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred as U.P. Act No.13 of 1972). Clause (a) of sub-section (2) of Section 20 of U.P. Act No. 13 of 1972 allows a landlord to seek eviction of tenant from a building after determination of his tenancy, on the ground that the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within a month from the date of service of notice of demand upon him.

16. It may be added that under U.P. Act No. 13 of 1972, there are various provisions dealing with different aspects of Letting and Eviction. Under Section 21 of the Act, a release application may be moved before the Prescribed Authority if the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust.

17. Clause (a) of sub-section (2) of Section 20 of U.P. Act No. 13 of 1972 allows a landlord to seek eviction of tenant from a building after determination of his tenancy, on the ground that the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service of notice of demand upon him. Section 20(2)(c) of the Act permits for eviction if the tenant has without the permission in writing of the landlord made or permitted to be made may such construction or structural alteration in the building as is likely to diminish its value or utility or to disfigure it. In clause (c) of subsection (2) of Section 20 of the Act the use of the word "or" towards the end of this clause on two places, namely, before the word "utility" and the word "disfigure" makes it clear that the recruitment of Section 20 (2) (c) of the Act will be fulfilled even if the case is brought under any of the three categories mentioned therein, namely :

- (1) diminishing the value of the accommodation :
- (2) diminishing its utility ; and
- (3) disfiguring it.

18. Under law, the court was required to weigh the entire fact and circumstances of the case for examining the question whether the removal of partition wall in the present case resulted attraction of clause (c) of Section 20(2). Since it was a mixed question of fact and, law, the revisional court went into this question and concluded that the removal of partition wall has diminished the utility of the building. Moreover, in the proceedings initiated by the landlord there was no need at any stage to prove bona fide need of the rented premises and there was no obligation upon the court below to record a finding in this context. It may further be added that the plea of bona fide has been raised orally during the course of arguments and it does not find place neither in the memo of the writ petition nor before the court below. The law is well settled that the plea which has not been raised at the initial stage cannot be permitted to be raised at a later stage.

19. Now, I proceed to examine the second assertion of the petitioner as to whether structural alteration so caused by the tenant by removing the intervening wall is likely to diminish its value or utility or disfigure it. The word "disfigure" has not been defined in the Act. According to Webster's Dictionary "disfigure" means, "To make less complete, perfect or beautiful or defence, deform or disguise by changing the figure or appearance"

Deform-to spoil the form or shape of, to distort, mar the excellence or perfection.

Deface-To destroy or mar the face or external appearance, injure, spoil or mar by effecting important features or portions.

Thus, the word "disfigure", as a common man understands, means that it has spoiled the external appearance of the building.

20. At this juncture, it would be useful to mention that scope of Section 20(2)(c) of the Act has been examined by this Court in Yusuf Ali v. Additional District Judge and another {2012(30) LCD 2422} wherein it has been held that whether value or utility has diminished or not, is to be seen not from the perception of an individual but it has to be seen from the general point of view and in particular with that of the landlord. In G.Raghunathan v. K.V.Varghese (AIR) 2005 SC 3680, which has been relied upon by the petitioner, it has been held in clear words that the question of eviction on the ground of structural alteration depends on the facts of each and every case. In the instant case by removing the intervening wall of two shops the tenant has caused an structural alteration, which has disfigured the shops in question and its utility has also diminished since the landlord had two distinct shops having specific existence, which now does not exist.

21. In *Ravi Agarwal v. Anil Kumar* [2009(77) ALR 94], this Court refused to exercise jurisdiction under Article 226 of the Constitution when it was found that there were material alteration without the permission of the landlord, which has resulted in effacing the front view of the shop. Similarly, in *Ramji Gupta v. Gopal Krishna Agarwal and others* [2002(49) ALR 298] the trial court had recorded the finding that tenants are in arrears of rent and have also made material alteration in the accommodation in dispute thereby diminishing the value of the building. Similar view has been reiterated in *Bas Deo Gupta v. Smt. Savitri Devi and others* [2007(69) ALR 1] wherein the court held that converting Verandah into a room is a material alteration. Here, by removal of the wall by the tenant, the landlord has lost the identity of his shops. Removal of the intervening wall of two shops by the tenant has caused an structural and material alteration which has disfigured the shops in question and the utility has also diminished. Therefore, the findings recorded by the courts below in this context are perfectly justified and based on cogent evidence.

22. Even otherwise, it is not justified for this Court to reappraise the findings of facts recorded by the courts below by merely stating that the findings of fact recorded by the authorities below are not correct. The above view of mine is fortified by the decision rendered in 1993 (suppl.) (4) SCC 1 *O.T.M.O.M. Meyyapa Chettiar v. O.T.M.S.M. Kasi Viswanathan Chettiar and another*. The Court issuing a writ of Certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if these are erroneous.

23. Further Hon"ble Apex Court in several decisions has held in explicit words that there should be judicial restraint while interfering with the concurrent finding of facts. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision-making authority exceeded its powers; (c) committed an error of law; (d) committed breach of the rules of natural justice; and (e) reached a decision which no reasonable tribunal would have reached; or (f) abused its powers. No such plea has been raised by the petitioners in the present case.

24. The petitioner has failed to show any good ground to warrant interference by the Court in the concurrent finding of fact recorded by the courts below. Accordingly, the petitioner is not entitled for any relief. It may be added that since the writ petition is being dismissed as the petitioner has failed to establish any legal and justifiable ground for interference, this court has not delve into the other grounds of attack raised by the respondent"s Counsel.

25. The writ petition being devoid of merits, is hereby dismissed. No order as to costs.