
(2002) 12 P&H CK 0060
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3657 of 1985

Dr. Paul S. Sandhu, alias Sarabjit Singh Paul Singh Sandhu, APPELLANT
alias Surjit Paul Singh Sandhu alias Sarjit Paul Singh Sandhu
through Dr. Bhagat Singh Sandhu, father and General
attorney

Vs

Som Nath RESPONDENT

Date of Decision : 04-12-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
East Punjab Urban Rent Restriction Act, 1949 — Section 13(2), 15(5), 15(6), 5(5)

Citation : (2002) 12 P&H CK 0060

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Alka Sarin, for the Appellant; Shailender Sharma, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This is a landlord's petition filed u/s 15(5) of East Punjab Urban/Rent Restriction Act, 1949 (for brevity "the Act") challenging the order dated 19.8.1985 passed by the Appellate Authority, Jalandhar dismissing his appeal in which the order dated 5.3.1984 passed by the Rent Controller, Nawanshahar was impugned. The Rent Controller in his order had dismissed the application of the landlord-petitioner in which prayer was made for ejectment of the tenant-respondent on the grounds of personal necessity, change of user and the material alterations impairing the value and utility of the demised premises.

2. Brief facts of the case, which have led to filing of the present petition are that the landlord-petitioner leased the demised premises on 2.10.1960 to the tenant-respondent. A rent note of the (SIC) instant.... (SIC) instant date was executed between the parties wherein it has been recorded that three rooms are being given on rent to the tenant-respondent. The landlord-petitioner filed an application on 15.3.1982 alleging that the demised premises were required for

his personal use and occupation. The other ground taken was that the tenant-respondent had put the demised premises to a use different than the one for which it was leased to him. Still another ground pleaded in the application was that there are material alterations caused by the tenant-respondent by removing the central wall converting three rooms into two and thereby impairing the value and utility of the building. The Rent Controller, Nawanshahar rejected all the three grounds by recording findings that the demised premises were not required for personal use and occupation of the landlord-petitioner; and that there was no change of user attracting the provisions of Section 13(2)(ii)(b) of the Act. Even the third ground that there was material alteration, did not find favour with the Rent Controller.

3. On first two grounds of personal necessity and change of user no challenge has been made by the learned counsel for the landlord-petitioner and, therefore, the findings recorded by the Rent Controller as well as by the Appellate Authority have attained finality in that regard. The only issue on which submissions have been made by the learned counsel for the landlord-petitioner is the ground concerning material alteration (sic) the demised premises which is issue No. 4. On the issue, the finding recorded by the Rent Controller, reads as under:

"The petitioner has only alleged that the respondent has made 3 rooms into 2 rooms and has removed the intervening door between two rooms thereby impairing its value and utility. The respondent has maintained that there was no intervening door though the rooms are 3 in number and as such there is no question of his removing any door. If the respondent has made any demolition or made any material alteration there must have been some cracks on the roof. Admittedly, there are chobaras on this shop where there are other tenants. It is also not possible to make material alterations in the roof without any damage to the roof. There is no evidence that there was any damage to the roof of this shop. Therefore, the petitioner has failed to prove that the respondent has impaired the value and utility of the shop in dispute. This issue is also decided against the petitioner and in favour of the respondent."

4. The Appellate Authority affirmed aforesaid finding on Issue No. 4 concluding that there was no evidence to conclude that the tenant-respondent had converted three rooms into two by removing the central wall and the door about a year prior to the filing of the ejectment petition. It was further held that no cogent evidence had been produced on the record by the landlord-petitioner to substantiate any structural alteration by the tenant-respondent. The statement made by the tenant as RW4 and the statement of Ved Parkash, PW2 were taken into consideration to affirm the finding of the Rent Controller.

5. Ms. Alka Sarin, learned counsel for the landlord-petitioner has argued that a sound foundation has been laid down in the ejectment application in ground No. VI of para 5, where specific averments have been made that the tenant-respondent has demolished the central wall and the door; and that he has converted three rooms into two rooms, without any written consent of the

landlord-petitioner. It has further been pointed out therein that this act of the tenant-respondent has caused damage to the landlord-petitioner resulting in material alterations in the structure of the demised premises and impairing its value and utility within the meaning of Section 13(2)(ii)(b) of the Act. She has further referred to the statement of Som Nath, RW4 to argue that there was sufficient evidence on record for both the Courts to reach at a conclusion different than the one recorded by them, namely, that the tenant-respondent has not materially altered the structure of the demised premises and nor has he impaired its value and utility. On the aforementioned basis, learned counsel has submitted that the findings recorded by both the Courts below are liable to be reversed.

6. Mr. Shailender Sharma, learned counsel for the tenant-respondent has argued that no credible evidence has been led, apart from making averment in the ejectment petition with regard to material alteration. He has further submitted that the scope of interference in revisional jurisdiction would not go to the extent of reversing the concurrent findings recorded by both the Courts below unless it is shown that the Courts below have committed such a grave error that a document has been completely left out of the consideration, and had it been considered, then it would have materially affected the findings.

7. I have thoughtfully considered the submissions made by the learned counsel for the parties and am of the view that the concurrent findings of fact recorded by both the Courts below with regard to the material alterations cannot be interfered with because there is hardly any evidence produced by the landlord-petitioner before the Courts below to come to such conclusion. The statement of Som Nath, referred to by the learned counsel for the landlord-petitioner, in fact, contradicts the claim made by the landlord-petitioner in his ejectment petition. No expert has been produced showing tat there were some cracks in the roof after the removal of the wall, impairing the value of the demised premises.

8. The revisional power of this court u/s 15(5) of the Act cannot be equated with the power of appeal. It is true that power in revision u/s 15(5) of the Act is wider than the power of revision conferred on this Court u/s 115 of the Code of Civil Procedure, 1908 but still it would fall short of the power of the appellate Court. Sub-section 5 of Section 5 of the Act is reproduced below for facility of reference:

"15. Vesting of appellate authority on offers by State Government.-

(1) to (4) xx

(5) The High Court may, at any time, on the application of any aggrieved party or on its own motion, call and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying himself as to the legality or propriety of such order or proceedings may pass such an order in relation thereto as it may deem fit."

9. A similar provision made in the Haryana Urban (Control of Rent and Eviction)

Act, 1973 (for brevity "the Haryana Act") came up for consideration before the Supreme Court in the case of Vaneet Jain v. Jagjit Singh 2000(5) SCC 1. Dealing with Sub-section 6 of Section 15 of the Haryana Act which is *pari materia* to Sub-section 5 of Section 15 of the Act, their Lordships observed as under:

"Sub-section (6) of Section 15 of the Act empowers the High Court to exercise its revisional jurisdiction for the purpose of satisfying itself if an order passed by the Rent Controller or the appellate authority is in accordance with law. The question that arises for consideration is whether the High Court in its revisional jurisdiction can reassess or re-evaluate the evidence only to come to a different finding than what has been recorded by the Court below. This Court in the case of Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, held, that the High Court cannot enter into appreciation or reappraisal of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of whether such an order is in accordance with law. For that limited purpose the High Court would be justified in reappraising the evidence. In Sarla Ahuja Vs. United India Insurance Company Limited, it was held that the High Court while exercising the jurisdiction can reappraise the evidence only for a limited purpose for ascertaining as to whether the conclusion arrived at by the fact-finding court is wholly unreasonable.

A perusal of Sub-section (6) of Section 15 of the Act shows that the power of the High Court to revise an order is not an appellate power, but it is also true that it is not akin to power exercisable u/s 115 of the Code of Civil Procedure. It is no doubt true that the High Court would be justified in interfering with the order passed by the appellate authority if the legality or propriety of such order demands such interference. We are, therefore, of the view that it is not permissible for the High Court to reassess or reappraise the evidence to arrive at a finding contrary to the finding of fact recorded by the Court below."

10. Similar view has been taken in the case of Shiv Lal v. Sat Parkash, 1993 2 SCC 345 and Bhoolchand and Another Vs. Kay Pee Cee Investments and Another, . Sub-section 6 of Section 15 of the Haryana Act also fell for consideration in the case of Lachhman Dass v. Santokh Singh (1995) 4 SCC 201. Placing reliance on Hari Shankar v. Rao Girdhari Lal Chowdhury AIR 1963 SC 698; State of Kerala Vs. K.M. Charia Abdullah and Co., and Neta Ram Vs. Jiwan Lal, , their Lordships pointed out the distinction between the revisional power under the Rent Act and the appellate power which reads as under:

"From the use of the expression "Legality or propriety of such order or proceedings" occurring in Sub-section (6) of Section 15 of the Act, it appears that no doubt the revisional power of the High Court under the Act is wider than the power u/s 115 of the CPC which is confined to jurisdiction, but it is also not so wide as to embrace within its fold all the attributes and characteristics of an appeal and disturb a concurrent finding of fact properly arrived at without recording a finding that such conclusions are perverse or based on no evidence

or based on a superficial and perfunctory approach. If the High Court proceeds to interfere with such concurrent findings of fact ignoring the aforementioned well-recognised principles, it would amount to equating the revisional powers of the High Court as powers of a regular appeal frustrating the fine distinction between an appeal and a revision. That being so unless the High Court comes to the conclusion that the concurrent findings recorded by the two courts below are wholly perverse and erroneous which manifestly appear to be unjust there should be no interference."

11. When the facts of the present case are examined in the light of the principles laid down in the binding precedents referred to above, no doubt is left that there is no scope for this Court to interfere in the finding of fact recorded by both the Courts below. It cannot be concluded that the concurrent finding of facts recorded by both the Courts below are superficial and perfunctory in nature. It can also not be said that the material pieces of evidence have not been considered by both the Court below. The landlord-petitioner has miserably failed to produce any evidence to establish the averments made in the ejectment application with regard to material alteration. From the perusal of the order of the Rent Controller as well as of the Appellate Authority it becomes evident that the whole emphasis by the landlord-petitioner has been in the first two grounds namely personal necessity and change of user. Ground of material alteration appears to have been neglected and remain unsubstantiated. Therefore, the revision petition is devoid of any merit and is thus liable to be dismissed.

12. For the reasons recorded above, this petition fails and the same is dismissed.