
(2011) 11 P&H CK 0196

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 7469 of 2010 (O and M)

Vijay Kumar

APPELLANT

Vs

Rajeev Kumar Murria

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A
East Punjab Urban Rent Restriction Act, 1949 — Section 13(2)

Citation : (2012) 1 CivCC 428 : (2012) 1 RCR(Civil) 266

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—This is tenant's revision petition challenging the impugned judgment dated 20.8.2010 of the Appellate Authority, Jalandhar, whereby eviction of the petitioner was ordered from the demised premises while accepting the appeal filed on behalf of the respondent-landlord against order dated 25.2.2009 of the Rent Controller, Jalandhar, dismissing the ejectment petition.

2. Shorn of unnecessary details, it is suffice to say that ejectment of the petitioner-tenant was ordered by the Appellate Authority on the ground of personal necessity of the respondent landlord and that the petitioner had impaired the utility and value of the demised premises. While discussing the grounds of impairment of the value and utility of the building, the lower Appellate Court observed as under:-

17. This bone of controversy can be decided after perusing the evidence led by both the parties. In this regard, cross-examination of respondent Vijay Kumar is very much relevant because he has admitted in his cross-examination that previously there was wooden self in the shop in dispute. He has further admitted that in place of wooden shelf a concrete shelf has been constructed. He also admitted that floor tiles were fixed and at present there is flooring marble tiles.

He also admitted that for fixing marble tiles walls were broken. This admission on the part of the respondent shows that for fixing marble tiles on the floor and on the wall, the floor and walls were broken, but he has not taken any permission from land lord and from rent controller from doing so. He also admitted that in the civil suit filed by the appellant/petitioner in which stay was granted. He also admitted that contempt proceedings were also initiated against him for violation of the order of the civil court when the respondent did not stop making the addition and alteration in the demised shop, then the petitioner/appellant was compelled to file civil suit for permanent injunction which was titled as Sanjiv Maria and others v. Vijay Kumar and others which was decided by the court of Shri Jaspinder Singh, the then Civil Judge (Jr. Divn.), Jalandhar, copy of said Judgment and decree is Ex. PX and Ex. PY and vide this decree, present respondent was restrained from causing any damage and making any addition alterations in the shop forming part of building No. 115, Adarsh Nagar, Jalandhar. During the pendency of the suit, Local Commissioner was also appointed to tell whether Vijay Kumar respondent has made material alterations in the shop in dispute. Local Commissioner visited the shop on 4.5.2002 at about 4 PM and has reported that black granite marble has been placed on the slab/shelf. The slab has been supported from the ground by layers of bricks. Three wash basin have been fixed on the slab. Three taps with hand showers have been fixed with the wall. A mirror has also been fixed with the wall marked D to C for vision of the customer. A T.V. Make Joymax in running condition has been put on the slab and a stereo (Universal) with some cassettes has been put on the slab. Two baskets from which one filled with water and other empty have been laying on the ground under the slab. Water tanky (200 liters make Hindustan) was placed on the frame build with iron angles fixed with the wall. Out side the shop in dispute on the front side inserted with concrete material in the wall two pipes through which water is supplied to the shop in question. He also reported that the ground floor was built of white marble with different pieces of marble. A cement was filled in the joints of the marbles. While marble was also affixed with the wall upto the level of four feet from the ground floor. The joints were also filled with cement. White marble was not polished. Some portion of the ceiling of the shop in question has dampness. The slab and marble constructed seems to be newly. This report shows that respondent has made material addition and alteration in his shop during the pendency of the present petition. The petitioner/appellant has leveled allegations that respondent has made material addition and alteration during the pendency of the suit despite the fact that injunction was granted against him not to do any material addition and alternation, but he has no respect for the order of the court and continued to do his illegal alteration. Even after passing of the decree, he did not stop his illegal act despite showing of the order by the appellant/petitioner which lead to the alteration between the parties, as a result of which matter was reported to the police and the police lodged DDR against the respondent. Thereafter, when the respondent did not stop, then the petitioner/appellant has filed contempt petition under Order 39 Rule 2-A CPC against the respondent which was also decided in favour of the

petitioner/appellant. All these facts shows the high head ness on the part of the respondent.

18. In addition to this witness of the respondent admitted that the respondent has made addition and alteration in the demised premises. Regarding the cross-examination of RW-3 Ashwani Kumar is very much relevant, because he has admitted in the crosse-examination that flooring of the demised premises has been changed by the respondent. He further admitted that water tank hanged on the outer wall of the demised premises. He also admitted that respondent has affixed the marble tiles on the walls of the shop in dispute by putting tucks on the plaster. This admission on the part of the RW-3 supported the version of the appellant/petitioner that respondent has made addition and alteration in the demised shop...

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In the present case respondent by making addition and alteration in his shop. The detail of which has been mentioned by the local commissioner in his report Ex. PB which is material in nature and to attract provision Section 13(2)(iii) of East Punjab Urban Rent Restriction Act and as per said act alleged impaired value and utility of the building has to be seen from the point of view of landlord and not from the point of view of tenant and I am of the view that the addition and alteration made by the respondent in the shop in dispute as reported by the local commissioner and also admitted by the respondent and his witness in the cross-examination, it has proved that the respondent has made material addition and alteration without the permission or consent of land lord or rent controller which leads to impairment of utility and value of the shop in dispute.

3. With regard to the grounds of personal necessity, following argument was raised by the petitioner-tenant before the Appellate Authority:-

On the other hand, counsel for the respondent submitted that there is no pleadings as to the demised premises i.e. shop No. 6 having been fallen to the share of the petitioner in a family settlement. Rather as per the petitioner, it has come in the pleadings that the properties No. 114 and 115, Adarsh Nagar, Jalnadhar were purchased jointly by all three brothers i.e. Sanjeev Kumar, Rajiv Kumar and Rajan Murria, all sons of Kishan Chand Murria to the extent of 1/3rd share each and no specific portion was purchased out of the properties individually. He also submitted that out of total shops which 11 in number, four shops are lying vacant. He also submitted that petition in question has been filed simply to harass the respondent who had been inducted as tenant by the earlier land lord and is in possession of the shop for the last more than 20 years. He further submitted that there is no bonafide requirement of the petitioner.

Thus, a perusal of the aforesaid submissions would show that an objection was taken by the petitioner-tenant with regard to right of respondent-landlord to seek

vacant possession of the demised premises on the ground that the respondent-landlord was not the full owner of the property in dispute and was only a co-owner. However, counsel appearing on behalf of the petitioner-tenant could not dispute the settled proposition of law that even a co-owner can maintain the eviction petition for his personal necessity of the demised premises. The other objection of the petitioner that other shops belonging to the co-owners are lying vacant, is also devoid of any merit, as it is well settled that the landlord is the best judge of his needs and the tenant cannot dictate his terms with regard to suitability of the accommodation in question. Thus, this Court finds no merit in the instant revision petition. In fact, both the grounds taken for ejectment of the petitioner-tenant are essentially questions of fact and the aforesaid findings have been recorded on the basis of the evidence on record. No material evidence could be produced before this Court to show that the aforesaid findings are perverse.

4. Faced with this situation, learned counsel for the petitioner has prayed that some time be given to hand over the vacant possession of the demised premises to the respondent-landlord.

5. Learned counsel appearing on behalf of the respondent has no objection if sufficient/reasonable time is granted to the petitioner for vacating the demised premises and handing over the vacant possession of the same to the respondent landlord.

6. Keeping in view the facts and circumstances of the case and submissions made on behalf of the petitioner, this petition is dismissed with the observations that the petitioner shall hand over the vacant possession of the demised premises to the respondent-landlord on or before 9.8.2012, subject to the condition that he shall make the payment of arrears of rent, if any, within two months from today and shall keep on paying the entire future rent in advance by the 10th of every month and also that he shall file an undertaking before the Rent Controller within one month from today to the aforesaid effect and that he will hand over the vacant possession of the demised premises to the respondent-landlord on or before the expiry of the time granted by this Court.

7. In case of any violation of the aforesaid conditions, the eviction order shall come into force immediately. It is also made clear that if the petitioner fails to hand over the vacant possession to the respondent-landlord, as stipulated above, the respondent-landlord may initiate contempt proceedings against him, in addition to execution of the impugned order.