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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-1748-2024 (O&M)

Date of decision : 13.02.2025

LAXMAN KHARADIA DECEASED THR LRS

....Petitioner

Versus

KAILASH CHAND AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Shalender Mohan, Advocate for the petitioner.

Mr. Nitin Kant Setia, Advocate
for respondent No.1/caveator (through V.C.)

PANKAJ JAIN, J. (ORAL)

Tenant is in revision petition aggrieved of the order passed by the Appellate Authority, Hisar whereby the appeal of landlord was allowed and the tenant has been ordered to be evicted from demised premises on the ground of the same having been rendered unfit and unsafe for human habitation.

2. For convenience, the parties hereinafter are referred to by their status i.e. the petitioner as tenant and respondent No.1 as landlord.

3. Landlord filed eviction petition seeking ejection of the petitioner/tenant from the shop bearing No. 537/17 (hereinafter referred to as 'the demised premises'). The eviction was sought on the grounds of non-payment of arrears of rent and that the demised premises which is part of a big building has become unfit and unsafe for human habitation. Major



portion of the building had already fallen and the remaining portion, thereof including the one in possession of the tenant may fall any time. The mortar has lost strength. The walls have developed cracks. Wooden battens comprising roof of the demised premises are in damaged condition having been eaten by termites and insects.

4. The eviction petition was contested by the tenant claiming that the demised premises was well built *pucca* shop and is good for next 100 years.

5. On the basis of pleadings, Rent Controller framed the following issues :

- “1. Whether the respondent is liable to be ejected on the ground of arrears of rent as mentioned in para No.3A of the petition? OPP.
2. Whether the premises in question has become unfit and unsafe for human habitation as alleged in Para No.3 of the petition? OPP.
3. Whether the petitioner has no cause of action and locus-standi to file the present petition? OPR.
4. Whether the petition is bad for non-joinder and mis-joinder of necessary parties? OPR.
5. Relief.”

6. Arrears of rent were tendered and thus the ground w.r.t. non-payment of arrears of rent ceased to exist.

7. While returning finding on the issue of the demised premises having been rendered unfit and unsafe, Rent Controller came to the conclusion that there exists a public drain running outside the shop. The demised premises was on lower level. The rainy water from the drain gets



accumulated in the shop. However, the condition of walls was not such that the same would fall. Some of the plaster has been removed. The same can be repaired. Roof has no hole and the same is supported by three iron guarders. Building expert, Sh. B.D. Singh, who was examined by the tenant proved that building was safe. Rent Controller, thus finding that the condition of the demised premises was neither unfit nor unsafe for human habitation, dismissed the eviction petition filed by the landlord.

8. Dissatisfied landlord preferred appeal before the Appellate Authority. The same was also dismissed vide order dated 31.01.2013 holding that the landlord has failed to prove that the shop in dispute is likely to fall immediately and is beyond repair.

9. Landlord approached this Court by way of CR No.2398 of 2013. This Court vide order dated 04.09.2023 set aside the order passed by Appellate Authority, dated 31.11.2013 and remitted the matter back to the Appellate Authority to consider and decide the application for additional evidence filed by the landlord and to decide the appeal afresh thereafter.

10. The Appellate Authority after re-appreciating the evidence came to the conclusion that the demised premises was part of a bigger building. Major portion of the building had already fallen down. It is the instant shop only which is standing. Appellate Authority found that the room on the first floor of the shop in question had already been declared as unfit and unsafe for human habitation by the local authority and the shop in question was also showing signs of deterioration and decay. The appellate authority thus



reversed the findings recorded by Rent Controller and allowed the eviction petition filed by the landlord.

11. Counsel appearing for the tenant while assailing the impugned judgment passed by the Appellate Authority submits that the Appellate Authority erred in reversing the findings recorded by the Rent Controller. It has been contended that as per record, the shop was constructed using big bricks. Age of the building was only 45-50 years. The roof of the demised premises had three steel garters and is in good shape. Thus, Appellate Authority should not have reversed well reasoned findings recorded by the Rent Controller to the effect that the demised premises was not in a situation wherein it can be said to be unfit and unsafe for human habitation. He has also produced copies of the photographs to show the condition of the shop.

12. Per contra, Mr. Setia submits that from the bare perusal of the photographs it is evident that the building is in bad shape. He further submits that as per settled law the parties should not wait for the moment the shop falls. Expert evidence has come on record to prove that the building was in fact in a bad condition. The same is evident from the fact that major portion of the building of which the demised premises is part has already caved in. Thus, appellat authority rightly ordered eviction of the tenant.

13. I have heard counsel for the parties and have gone through records of the case.

14. Tenant has filed instant revision invoking Section 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973. The scope of the



revisional power came up for consideration before Constitution Bench of Supreme Court in the case of '**Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh**', (2014) 9 SCC 78. Supreme Court explaining the scope of the revisional power, observed as under :

“45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”



15. In the present case, Lower Appellate Court after analysing the evidence on record in shape of house tax assessments came to the conclusion that the demised premises is an integral part of a big building. It is admitted case that the major portion of the main building has caved in and withered away. Exhibit P-53 to Exhibit P-60 are the orders passed in various eviction petitions preferred by the landlord against other tenants. The orders have been passed against the tenants holding the right of the landlord to eject them on the ground of the premises having become unfit and unsafe for human habitation. Building Expert Suresh Kumar Gupta PW1 was examined by the landlord to prove that the building has become unfit & unsafe. Building Expert examined by the tenant, admitted that he never examined roof of the shop. Pure findings of fact have been recorded by the Appellate Authority holding that the shop has been rendered unfit and unsafe for human habitation.

16. In view of above, this Court does not find any ground to interfere in the instant revision petition as re-appreciating evidence in the absence of any misreading or non reading thereof, is beyond scope of revisional jurisdiction under Section 15(6) of the 1973 Act.

17. As a sequel of the discussion held hereinabove, instant revision petition is ordered to be dismissed being without merit.

February 13, 2025

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No