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Court : Punjab and Haryana

Decided On : Feb-08-2000

Reported in : (2000)125PLR214

Judge : V.S. Aggarwal, J.

Acts : Haryana Urban Control of Rent and Eviction Act, 1973 - Sections 13(2) and 15(6)

Appeal No. : Civil Revision No. 458 of 1986

Appellant : Onkar

Respondent : Sugan Chand

Advocate for Def. : M.S. Jain, Sr. Adv. and; Adarsh Jain, Adv.

Advocate for Pet/Ap. : B.S. Gupta, Sr. Adv. and; Sanjay Bansal, Adv.

Judgement :

V.S. Aggarwal, J.

1. By this common judgment both the revision petitions, namely Civil Revision Nos.458 and 457 of 1986 can conveniently be dispose of together. The question involved in both the petitions is identical.

2. The revision petitions have been filed by Onkar (hereinafter described as 'the petitioner'). The petitioner had filed both the petitions for eviction with respect to shop Nos.6 and 7 in Babu Ram Market, Garh Bazar. Ballabgarh asserting that rent had been settled at Rs.200/- P.M. The ejectment of the respondent was claimed on the ground of non payment of rent and impairment of value and utility of the premises. It had been asserted that respondent has removed the intervening wall and has constructed the two shops into one. The entire arrears of rent had been tendered on the first date of hearing as claimed. Regarding it no controversy had been raised in this Court. Therefore, the sole controversy was if the respondent by his act and conduct has impaired the value and utility of the premises in question.

3. The respondent contended that petitioner is guilty of splitting the tenancy and has filed the petition only with respect to part of the premises. It is a composite tenancy which cannot be splitted by the petitioner. The shop numbers given by the petitioner in respect of the suit premises are fictitious numbers as no number existed on the spot. In fact it is only one shop which was let out at a monthly rent of Rs.140/-. The respondent has been paying the rent at that rate. Thus, it was denied that the respondent has impaired the value and utility of the premises. It was denied that the respondent has removed the middle wall and converted it into one shop. It was insisted that only one composite shop was let to the respondent. The plea was raised that in one part of the shop, there were two electric meters bearing Nos. 341 and 343. Before the premises were let, the petitioner removed Meter No.343 and shifted the same to his residence.

4. The learned Rent Controller found that shops were let at Rs.200/- P.M. each. However, the Rent Controller returned the findings that the petitioner had tried to split the tenancy of one big shop into two. The conduct of the petitioner could not be appreciated and the petition was dismissed. It was held that the respondent has not impaired the value and utility of the premises. The petitioner had preferred an appeal. The learned Appellate Authority held that there were two shops let separately on two different occasions; that shop No.7 was let in the year 1973 and shop No.6 was let in the year 1976. However, with respect to intervening wall, the learned Appellate Authority held that when the second shop was let, the electric meter was removed by the petitioner-landlord. On basis of that inferences were

drawn in terms that it is manifest that the respondent wanted to use two shops without intervening wall and the petitioner had permitted removal of the same. The inference was also drawn for the fact that the petitioner failed to state in the pleadings as to when the wall was removed. Accordingly, the appeals were dismissed. Aggrieved by the same, the present revision petitions have been filed.

5. As pointed out above, the main controversy in both the revision petitions is if the respondent had removed the wall and thereby impaired the value and utility of the premises or not. At the outset it must be stated that this proposition has not been disputed in terms that that this Court would only interfere if the findings of the learned Rent Controller and the Appellate Authority were erroneous or absurd and only if there is some misreading of evidence that may also prompt this Court to interfere.

6. As regards the controversy as to whether one composite tenancy has been created or two shops were let separately, the findings of the Appellate Authority were in favour of the petitioner. The said findings are based on evidence and indeed require no interference.

7. The reasons are not far away. The respondent had been inconsistent in the stance. In the written statement he took the plea that composite tenancy i.e. for both the alleged shops was at the rate of Rs. 140/- P.M. When the respondent appeared, then unmindful of what was stated in the written statement, he added that monthly rent settled was Rs.150/- P.M. The same finding gets fortification from a more important fact. The petitioner proved that before 1973 Shop No.7 had been let to one tenant and shop No.6 was also with another tenant. It could not have been let thus to the respondent as one composite tenancy in 1973.

8. Reverting back to the main contention as pointed above, the Appellate Authority recorded that petitioner had not pleaded as to when the intervening wall had been removed. There is an inadvertent mistake. In the petition the petitioner-landlord has specifically asserted that intervening wall had been removed about a year back. To this extent, there is some misreading of evidence. Similarly, the Appellate Authority went on to record that no notice was given to the respondent regarding removal of the said wall. However, cross-examination of the petitioner indeed

reveals that on being questioned, he had answered that the respondent had been promising that he would set up the wall. Obviously, the question of issuing the notice does not arise.

9. In addition to that the Appellate Authority went on to record that when the second shop was let, the electric meter was removed. This indicates that one electric meter could serve one composite shop and, therefore, inferences were drawn that wall was allowed to be removed with the permission of the landlord. To appreciate the said controversy, reference can well be made to the pleadings of the parties. In the petition, the assertions of the landlord-petitioner are:-

'That the respondent is a tenant of two shops of the petitioner, namely shop No.6 and shop No.7 situated in Baburam Market, Ballabgarh adjacent to each other and the respondent about a year back removed the Middle Wall of the two shops and converted the two shops No.6 and 7 into one shop without the consent of the petitioner and thereby has committed an act which have impaired materially the value and the utility of shop No.6 the subject matter of this petition and shop No.7 the subject matter of other connected eviction petition. The age of the two shops is badly effected by the act of the respondent.'

In the written statement filed, the respondent's contention was:-

'Para 3(ii) of the petition is wrong and denied. It is wrong that the submitting respondent is a tenant of two shops adjacent to each other as alleged. It is wrong that the submitting respondent removed any middle wall of the two shops and converted them into one shop as alleged. The so called two shops were always one shop and were let out to the respondent as a single shop and no intervening wall ever existed at the site. The correct site plan of the shop in question and which is marked by letters ABCD showing the actual possession of the shop is attached. It is wrong that the submitting respondent has committed any act thereby impairing materially the value and utility of the shop as alleged. It is further submitted that in the shop marked by letters BACD in the site plan annexed with the written statt., prior to letting to the submitting respondent, there existed 2 elec. meters bearing No. 341 and 343. Before, it was let out to the respondent, the petitioner got one meter No. 343 shifted to his residence as the alleged shops

No.6 and 7 had been converted into one shop of double size and was let out to the respondent on payment of Rs.140/- P.M. as rent. The rent of the other shops which are of small size was about 70-75/- rupees p.m. each. Just because the shop let out to the respondent is a bigger one rent of Rs.140/- P.M. had been agreed to be paid by the respondent.'

It is abundantly clear that the contention raised by the respondent was that one composite shop was always let and that electric meter had been removed. It was not the plea of the respondent that there was a wall and when the second shop was let, it was allowed to be removed. When this was not the case of the respondent, the learned Appellate Authority obviously fell into an error in recording a finding in the absence of any particular plea and no new case could be drawn.

10. On the contrary one is constrained to observe that plea raised by the respondent was patently incorrect. It had already been noted above that two shops were there and they were let separately in separate years. Obviously, there was an intervening wall. There is no plea that wall was removed with the permission of the landlord. Respondent Sugan Chand during cross-examination admitted that a godown was to be set up. If that was so, one would not be surprised that electricity was not required. The net result, therefore, would be that it must be held that in the peculiar facts, the Appellate Authority fell into a grave error in recording that the wall was removed with the permission of the landlord. There was no such plea. The only conclusion 1n face of the aforesaid would be that the wall had been removed and no permission of the landlord had been taken. Removal of the electric meter in that background is not of any consequence.

11. Confronted with that position, on behalf of the respondent it had been urged that the ground of eviction still would not be available because removal of such wall is not impairing the value and utility of the premises.

12. The Supreme Court in the case of Shri Om Pal v. Shri Anand Swarup (dead) by LRs., (1988-2) P.L.R. 699 (S.C.) was dealing with similarly worded provisions under the East Punjab Urban Rent Restriction Act, 1949. The expression 'as to what is meant by impairing the value and utility of the property' was explained and it was held:-

'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 impairment to the value or the utility of the building. In order to attract Section 13(2)(iii) the construction must not only be one affecting or diminishing the value or utility of the building but such impairment must be of a material nature i.e. of a substantial and significant nature. It was pointed out in Om Parkash v. Amar Singh, 1987(1) S.C.C. 458 at 463 that the legislature had intended that only those constructions which brought about a substantial change in the front and structure of the building that would provide a ground for the tenant's eviction and hence it had taken care to use the word 'materially altered the accommodation' 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.'

In other words, minor alterations to make the property habitable will not be impairing the value and utility of the property. The setting up of small partition wall is not impairing the value and utility of the property.

13. The other decision of the Supreme Court is that of Shri Balak Ram v. Shri B.N. Gupta, 1978(1) Rent Control Reporter 618. The provisions of Himachal Pradesh Urban Rent Control Act, 1971 were under consideration as to what would be impairing the value and utility of the premises. The tenant had set up small cabins in the property in question. The landlord therein alleged that he had impaired the value and utility of the same. It was held that these alterations cannot be taken to be impairing the value and utility of the property and the eviction petition in that

case did not succeed. The cited decision obviously is confined to its peculiar facts and will be of little avail to either party.

14. In the case of Sadhu Ram of Patiala v. Niranjan Dass and Ors. (1983)85 P.L.R. 673 there was a rent note executed between the parties. It had been mentioned that the tenant will raise construction without written consent of the landlord. The tenant had converted, a chhappra into a regular room. His eviction was claimed on the ground that he has impaired the value and utility of the property. This Court held that it is not proved that the construction has materially impaired the value and utility of the property. In the cited case the question was of proof. There was no specific allegation that the alleged construction had impaired the value and utility of the property. This fact weighed with this Court and the petition filed. Indeed it will have no reflection on merits of the present case because this decision is confined to the facts of that particular case.

15. Similarly in the case of Charan Singh v. Shrimati Ananti and Ors., (1966)68 Punjab Law Reporter 780 the tenant had made small alterations for his convenience in the tenanted premises. This Court held that this will not amount to impairing the value and utility of the property and observed:-

'It is of course understood that he cannot make material changes in the building or alter the nature of the accommodation. The small alterations that he makes for the proper enjoyment of the premises should be such as the tenant may be able to remove by incurring a small expenditure and without in any way causing damage to the rented building. If the alteration made by the tenant in the building is not significant and can be easily repaired, the landlord cannot ask for his eviction on that ground. Further, the appellate authority has ignored the words 'impair materially' occurring in this clause. If the opening made by the tenant could be closed by spending a nominal amount of Rs.15/- or Rs.20/-, it could not be said that he had done such an act which was likely to impair materially the utility of the building.

In the broad principles, there is no controversy of this proposition of law. But herein only a small opening had been made and, therefore, it could not be termed that materially the property in question was impaired. The Supreme Court in the

case of Om Parkash v. Amar Singh and Anr., A.I.R. 1987 S.C.C. 617 considered the similar expression under the U.P. Cantonments (Control of Rent and Eviction) Act as to what would be the meaning of 'material alteration'. It was held:-

'The material alterations contemplate change of substantial nature affecting the form and character of the building. Many a time tenants make minor constructions and alterations for the convenient use of the tenanted accommodation. The Legislature does not provide for their eviction instead the construction so made would furnish ground for eviction only when they bring about substantial change in the front and structure of the building. Construction of a Chabutra, Almirah, opening a window or closing verandah by temporary structure or replacing of a damaged roof which may be leaking or placing partition in a room or making similar minor alterations for the convenient use of the accommodation do not materially alter the building as in spite of such constructions the front and structure of the building may remain unaffected. The 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.'

This Court in the case of Devi Chand Kakar (deceased) represented by his L.Rs. v. Shri Amar Nath (deceased) represented by L.Rs. of the deceased, 1983(1) Rent Control Reporter 672 again was concerned with a matter where construction was of a small Kotha for proper use of the premises. The landlord did not state the manner as to how it impaired the value and utility of the premises. The petition was rejected. Once again it is obvious that petition failed because of failure to plead necessary facts and proving the same. Similarity, in the case of Mohinder Singh v. Om Parkash and Ors., (1978)80 P.L.R. 2 (S.N.) = 1978(2) Rent Control Reporter 401, it was held that fixing of a shutter in place of a wooden door will not amount to impairing the value and utility of the premises.

16. On the contrary reference with advantage can well be made to the decision of this Court in the case of Hukam Singh v. Raman Lal Aggarwal, 1981(2) Rent Control Reporter 375. Two shops were let. The tenant had removed the intervening wall and converted the same into one shop. The Allahabad High Court held that this amounts to making substantial changes or material alterations. The

order of eviction was passed. Similarly, in the case of Harbans Sharma v. Smt. Pritam Kaur, 1982(1) Rent Law Reporter 247 where the intervening wall was removed in a decision under the East Punjab Urban Rent Restriction Act, it was held that it amounts to materially impairing the value and utility of the premises. This Court held:-

'The facts found in that case were that the tenant without the permission of the landlord converted the verandah of the premises in closed rooms and rooms into cabins to be used as rooms and living room. It is not necessary for me to discuss in detail the ratio of this decision because in Narain Singh's case (supra) the Division Bench of this Court has taken a contrary view and closing of the verandah and the making of any material alterations in the building have been held to be such acts as would impair the utility of the building. Though Mohinder Singh's case (supra) was not noticed by the Division Bench but it also stands impliedly overruled as the view expressed by R.N. Mittal, HJ. in Bawa Singh v. Smt. Pushpa Wati and Ors., 1980(2) Rent Control Reporter 492 that any material change in the building would necessarily impair its value and utility, was expressly approved. As already noticed above, even in the present case, the wall intervening the two rooms has been removed converting them into a big room. The utility of the building as it existed prior to the removal of the wall has certainly been impaired so far as the landlord is concerned though it may have been enhanced so far as the tenant is concerned.'

Same was the view expressed in the case of Sarpat Singh v. Smt. Kans Rani alias Kanso and Anr., 1986(1) Rent Law Reporter 397.

17. From the perusal of these precedents it is obvious that it is not every change in the property that makes the ground of eviction available. Each case has to be examined on its own merits. The impairment of the value and utility of the property has to be the material. It has to be seen from the point of view of the landlord and not from the view point of the tenant. If he makes changes of substantial character without permission of the landlord and the property becomes of different nature and dimensions, unless contrary is shown, it would infer that value and utility of the property has been impaired.

18. In the present case as held above, the intervening wall has been removed. No consent of the landlord had been taken. It is not the case of the respondent that it was a parda wall. Consequently, it must follow that the respondent has impaired the value and utility of the property. Similar view had been taken by this Court in the case of Ashok Kumar and Ors. v. Shri Banarsi Dass and Ors., (1999-1)121 P.L.R. 551.

19. Keeping in view the aforesaid, it must follow that the findings of the authorities under the Act cannot be sustained. An order of eviction on the above said ground is liable to be passed.

20. Accordingly, the revision petitions are accepted and the impugned orders are set aside. Instead an order of eviction is passed in both the petitions. The respondent is granted three months time to vacate the premises.

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