

could not be terminated on the basis of adverse remarks in service record of the petitioners without holding an enquiry and by passing the order of termination which was by way of punishment. We do not find any substance in this submission. In *Jarnail Singh's case* (supra) the allegations against the petitioners were that they had embezzled funds and there were serious allegations of misconduct against them. Under these circumstances, it was held by their Lordships of the Supreme Court that the order terminating the services was by way of punishment which could not be passed without holding a regular enquiry. In the present case, petitioners' services have not been terminated on the ground of any misconduct or by way of punishment. Petitioners were assessed to be 'average' workers and as per instructions the services of only these employees could be regularised who were put in 'overall good category'. Since the petitioners case did not fall within the paramaters laid down in the instructions Annexures P9 and P10, their services were not regularised and were terminated in terms of their letter of appointment.

(13) For the reasons, recorded above, we find no infirmity in the impugned orders and dismiss this writ petition with no order as to costs.

J.S.T.

Before Hon'ble Ashok Bhan, J.

ANJU SHARMA,—Petitioner.

versus

KRISHAN KUMAR & OTHERS,—Respondents.

Civil Revision No. 2310 of 1985 (O&M).

18th October, 1995.

East Punjab Urban Rent Restriction Act, 1949—Order 23 Rule (3) C.P.C.—Not applicable to proceedings under the Act—Earlier petitions on same cause of action filed—Not decided on merits—Dismissal of earlier petitions not to debar landlord from filing fresh eviction petitions on same cause of action.

Held, that in Ram Dass v. Smt. Sukhdev Kaur and another, 1981 P.L.R. 440 a Division Bench of this Court held that the provisions

of order 23 rule 1(3) of the Code of Civil Procedure, are not applicable to the proceedings under the East Punjab Urban Rent Restriction Act, 1949. So, the dismissal of the earlier petitions would not debar the landlords from filing a fresh eviction petition on the same cause of action as the earlier petitions had not been decided on merits. Section 14 of the Act would, thus, not come into operation debarring the landlords from filing a fresh petition on the same cause of action as earlier petitions had not been decided on merits.

(Para 12)

East Punjab Urban Rent Restriction Act, 1949—S. 13—Material impairment—Removal of intervening walls—Walls removed were pardi walls—Not weight bearing walls—No evidence that removal of walls have impaired the value and utility of building—Not sufficient to hold that removal of walls has endangered the building in any manner—Ejection on ground of material impairment set aside.

Held, that the question which falls for consideration is as to whether simple removal of the intervening walls (Pardi walls) would entitle the landlord to take possession of the property on the ground of material impairment without further proof that the removal of the walls has endangered the building. In this case, there is no evidence that removal of the walls have impaired the value and utility of the building. Walls removed were pardi walls which were not taking any load of the building.

(Para 15)

Further held, that mere removal of the intervening walls by the tenant, by itself, would not be sufficient to hold that it has materially impaired the value and utility of the building in dispute unless it was further proved by leading cogent evidence that the said walls was supporting the roof and its removal has endangered the building in any manner.

(Para 15)

I. K. Mehta, Senior Advocate with K. K. Mehta, Advocate and M. S. Kohli, Advocate, *for the Petitioner.*

M. L. Sarin, Senior Advocate with Hemani Sarin and Hemat Sarin, Advocates, *for the Respondents.*

JUDGMENT

Ashok Bhan, J.

(1) Tenant-petitioner (hereinafter referred to as 'the tenant'), who has been ordered to be ejected from the premises in dispute,

has filed the present revision petition, which arises out of the following facts :—

(2) Respondent-landlords (hereinafter referred to as 'the landlords') sought the ejection of the tenant from the premises in dispute, consisting of three rooms, situated in Mohalla Iqbal Ganj, Ludhiana, fully detailed in the head note of the petition and shown in red colour in the site plan attached to the petition, on the following grounds :—

“(a) The respondents ceased to occupy the premises for the last 4 years.

(b) The respondents did not pay the rent since 21st May, 1978.

(c) The respondents have converted three shops in one hall and removed the separating walls.

(d) The respondents have also installed wooden cabins in the premises in dispute without consent of the applicants, as such, materially impaired the value and utility of the same.”

(3) Grounds A and B were rejected by the courts below and do not arise for consideration in this Court. Reference to facts is, therefore, being made with regard to grounds C and D only.

(4) Niranjan Dass, who was the previous landlord, had let out the premises in dispute to the original tenant Ved Vyas,—*vide* rent note dated 15th April, 1961. After the death of Niranjan Dass, the property was inherited by Mohinder Lal Jain, who sold the same to the landlords by means of a registered sale deed dated 21st March, 1972. Original tenant, Ved Vyas died on the month of October, 1976 leaving Mrs. Anju Sharma as his successor, who is in the exclusive possession of the property in dispute as a tenant. Vishnu Dev. Who was arrayed as respondent No. 2 in the petition, relinquished his tenancy rights in favour of Anju Sharma, tenant.

(5) Regarding material impairment of the value and utility of the building, it has been averred in the petition that the tenant had materially impaired the value and utility of the premises in dispute as she had converted three shops into one big hall by removing the separation walls. It is claimed that due to the removal of the said walls, the building has become weak and there are several cracks in

the walls and the building may fall down at any time. It is further alleged that the tenant has installed wooden cabins in the premises in dispute without the written permission and consent of the landlord.

(6) In the written statement filed, it has been deined that the tenant had materially impaired the value and utility of the premises in dispute, as alleged in the petition. It has been averred that the premises in dispute were in the original condition and when the same were let out to the tenant, the three separation walls were not in existence; that the landlords had earlier filed an eviction petition against the tenant in which the same very grounds of eviction were taken. The said petition was contested but the same was got dismissed as withdrawn with permission to file a fresh petition subject to payment of Rs. 40.00 as costs. Similarly, the other petitions had been filed by taking the same grounds and both were dismissed and that the petition was barred by the principle of *res judicata*.

(7) Rejoinder to the written statement was filed.

On the basis of the pleadings of the parties, following issues were framed :—

- “1. Whether there exists relationship of landlord and tenant between the parties ? OPA.
2. Whether the respondent is liable to be ejected on the grounds mentioned in para No. 2 of the application ? OPA.
3. Whether the application is not maintainable ? OPR.
4. Whether the application is barred by principles of *res judicata* ? OPR.
5. Whether the application has been moved with *mala fide* intention as alleged ? OPR.
6. Whether the applicant is entitled for the enhanced house tax, if so, at what rate and from what period and date ? OPR.
7. Relief.”

(8) Rent Controller decided all the issues in favour of the tenant and the rent petition was ordered to be dismissed. Aggrieved

against the order of the Rent Controller, landlords filed an appeal. Before the appellate authority, the only point argued was with regard to material impairment of the value and utility of the building. Findings recorded by the Rent Controller on other issues were not contested.

(9) The appeal was accepted and it was held that the tenant had removed the three separation walls of the premises in dispute and converted the same into a big hall which amounted to materially impairing the value and utility of the building. The tenant was ordered to be evicted from the premises in dispute, aggrieved against which, the present revision petition has been filed. Before this Court also, the only point canvassed is with regard to the material alterations made by the tenant impairing the value and utility of the building.

(10) At the outset, it may be stated that the previous landlord, Niranjan Dass, has also filed an ejectment petition against the tenant on several grounds including material impairment of the value and utility of the building. The same was dismissed on some technical grounds. No findings no merits were recorded. Later on, after purchasing the property in dispute, the present landlords filed a petition in which they had taken the point regarding material impairment of the value and utility of the building by removing the three separation walls. The said petition was got dismissed as withdrawn with permission to file a fresh petition on the same cause of action. Another petition was, thereafter, filed, which must have been dismissed on some technical grounds but the orders passed by Rent Controller have not been produced. Thereafter, the present revision petition was filed.

(11) Counsel for the tenant argued that filing of repeated petitions by the landlords on the same grounds shows the conduct of the landlords that the pleas taken by them are not *bona fide*, otherwise they would not have got their petitions dismissed as withdrawn and that they are debarred from making repeated petitions on the same grounds.

(12) I do not find any substance in this submission of the counsel for the tenant. None of those petitions have been decided on merits. In *Ram Dass v. Smt. Sukhdev Kaur and another* (1), a

Division Bench of this Court held that the provisions of Order 23 Rule 1(3) of the Code of Civil Procedure, are not applicable to the proceedings under the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act'). So, the dismissal of the earlier petitions would not debar the landlord from filing a fresh eviction petition on the same cause of action as the earlier petitions had not been decided on merits. Section 14 of the Act would, thus, not come into operation debarring the landlords from filing a fresh petition on the same cause of action as earlier petitions had not been decided on merit.

(13) The next point to be considered is as to whether the tenant had removed the three separation walls.

(14) All through, the case of the tenant was that there were no serving walls and the premises let out to her were a big hall in which she had put certain wooden partitions. Sat Dev Gupta, AW-2, expert witness produced by the landlords, in his statement, stated that there were no physical signs of removal of the walls but with his keen eyes he could observe that those walls had been removed. From this or from the statement made by the landlord, it cannot be concluded that the tenant had in fact, removed any serving walls in the shop.

(15) Even if it is assumed, for the sake of arguments, that the intervening walls had been removed by the tenant, the question which falls for consideration is as to whether simple removal of the intervening walls (Pardi Walls) would entitle the landlord to take possession of the property on the ground of material impairment without further proof that the removal of the wall has endangered the building. In this case, there is no evidence that removal of the walls have impaired the value and utility of the building. Walls removed were pardi walls which were not taking any load of the building. Landlord had constructed first and second floors on the building in dispute and if the value and utility of the building had been impaired, it would not have been possible to construct first and second floors on the building. It shows that the walls removed were only intervening walls and not weight bearing walls. Mere removal of the intervening walls by the tenant, by itself, would not be sufficient to hold that it has materially impaired the value and utility of the building in dispute unless it was further proved by leading cogent evidence that the said wall was supporting the roof and its removal has endangered the building in any manner.

(16) Since, on this point, there was a conflict of opinion in this Court, the matter was referred to a larger Bench. On reference, a Division Bench of this Court in *Bhupinder Singh and others v. J. L. Kapoor and others* (2), held that the whether the construction has materially impaired the value and utility of the building, would depend on the facts and circumstances of each case, depending on the evidence led by the parties. Simpliciter proof of alternation by itself, would not entitled the landlord to have an order of ejection against the tenant. Landlord has further to prove that the alternations made have materially impaired the value and utility of the building. A learned Single Judge of this Court in *Walaiti Ram (Sangrur) v. Sohal Lal* (3), while dealing with the removal of a wall, held as under :—

“I have heard the learned counsel for the parties and have also gone through the pleadings and the case law cited at the Bar. The only allegation in the ejection application was that by removing the intervening wall etc. the tenant has made material alternation for which he has right. *No such allegation was made as to in what manner the said alternation had impaired the value and utility of the demised premises. The learned Appellate Authority after discussing the entire evidence observed that only the landlord stated that the shop had been rendered useless but there was no evidence on the record to show that the intervening wall was supporting the roof and its removal had rendered the premises as dangerous. It was further observed that the tenant had merely removed the intervening wall and had constructed it at a different place. The demolition of a wall does not amount to alteration which materially impairs the value and utility of the building. It is a finding of fact based on the appreciation of evidence. Unless the landlord proves that the wall which was removed was supporting the roof and because of its removal it has damaged the building in any manner, it could not be successfully argued that its removal had impaired the value or utility of the shop in dispute. It will be a question of fact in each case as to whether a particular act or alternation made by the tenant*

(2) 1992 H.R.R. 441.

(3) 1986 H.R.R. 137.

has materially impaired the value and utility of the demised premises or not. On the facts of the present case, it could not be successfully argued that the mere removal of the intervening wall has impaired the value and utility, unless it was further proved that in what manner it has endangered the building. No cogent evidence has been led by the landlord in this behalf except a bald statement that the shop had been rendered useless. In somewhat similar case reported in *M/s Ram Dhan Dass Ramji Dass Sethi, Ferozepur City's case* (supra) it was held by me that since the wall was only 7/8 feet above the ground and was not upto the roof level it was for the landlord to prove as to in what manner the removal thereof has impaired the value and utility of the building for which no evidence was led on behalf of the landlord. Similarly, in the present case there is nothing on the record to prove as observed by the Appellate Authority as well, that the intervening wall was supporting the roof and its removal has rendered the premises as dangerous. In the absence of any such allegation or proof it could not be successfully argued that the mere removal of the intervening wall has materially impaired the value and utility of the demised premises. The authorities relied upon by the learned counsel for the petitioner are clearly distinguishable and are not applicable to the facts of the present case. The nearest case to the facts of the present case is reported in *Rajagopaliah Setty's case* (supra). The head note A is somewhat misleading. In that case the learned District Judge reversed the finding of the trial Court and came to the conclusion that it was not proved that the tenant had demolished the previous existing wall or put up a new wall. The High Court agreed with the bald proposition laid by the District Judge that the demolition of the existing wall or putting up a new one in another place would amount to material alternation but on facts as noticed above the position was different. Moreover, whether the removal of a wall amounts to materially impairing the value or utility of the demised premises or not is a different matter. The question to be decided under the Rent Restriction Act is as to whether an alteration is of such a nature which is likely to impair the value or utility of the demised premises. Such was not a question before the Karnataka High Court. The landlord in order to eject the tenant on this ground is

required to prove that the tenant has committed such Acts as are likely to impair the value or utility of the building or rented land. The mere removal of the wall by the tenant by itself will not be sufficient to hold that it has materially impaired the value and utility of the shop in dispute unless it was further proved by cogent evidence that the said wall was supporting the roof and its removal has endangered the building in any manner. Such an evidence is lacking in the present case. Thus I do not find any illegality or impropriety in the findings of the Appellate Authority as to be interfered with in revisional jurisdiction. Consequently, the petition fails and is dismissed with no order as to costs."

(17) I respectfully subscribe to the views expressed by the learned Single Judge of this Court in *Walaiti Ram's case* (supra). In the present case, except the bald statement of the landlord, there is no other evidence on the record to show that the removal of the separation walls, in any way, has materially impaired the value and utility of the building. Sat Dev Gupta, AW-2, expert witness produced by the landlords, has not categorically stated that removal of the wall have, in any way, materially impaired the value and utility of the building. I have examined the site plan which has come on the record. It shows that the weight of the building is on two pillars and the beam. The walls which have been removed did not take the weight of the building which had been constructed on the first and the second floors. They are pardi walls, which have been removed.

(18) As against this, the evidence of the tenant is that there has been no material impairment of the value and utility of the building in dispute. Tenant also produced Bodh Raj Dhall, RW-1, as her expert witness, who stated that removal of the walls, in any way, would not cause any material impairment of the value and utility of the building.

(19) Counsel appearing for the landlords relied upon *Kartar Singh v. Kesar Singh and another* (4), *The Hosiery Industry Federation (Regd.), Ludhiana v. Shri Ram Maini* (5), and *M/s Suman*

(4) 1980 (1) R.C.J. 1.

(5) 1988 (1) P.L.R. 611.

Light Hosiery v. Jaswant Singh (6), to contended that where-ever any intervening wall is removed, that itself, would amount to impairing the value and utility of the building. In *Shri Ram Maini's case* (supra) and *Jaswant Singh's case* (supra), findings had been recorded by the learned Judges on the evidence produced in these cases that removal of the wall would materially impair the value and utility of the building. So far as *Kartar Singh's case* (supra) is concerned, that was considered by the Division Bench in *Bhupinder Singh's case* (supra) and the reasoning given by the learned Single Judge was not approved. In the present case, there is no evidence to show that removal of the walls caused any materias impairment of the value and utility of the building. The burden of proof was on the landlords, which they have failed to discharge and the findings recorded by the appellate authority are liable to be reversed, on this ground.

(20) For the reasons stated above, this revision petition, is accepted. Order of the appellate authority is set aside and that of the Rent Controller is restored. The eviction petition filed by the landlord-respondent has is ordered to be dismissed with no order as to costs.

J.S.T.

(6) 1985 (2) R.C.J. 20.