Before K. Kannan, J.

SITA RANI W/O SH. SHYAM LAL CHOPRA AND ANOTHER—*Petitioners*

versus

USHA AND OTHERS—*Respondents*

CR No. 5794 of 1998

December 14, 2012

East Punjab Urban Rent Restriction Act, 1949 - S. 13 - Capital of Punjab (Development and Regulations) Act, 1952 - Landlords sought eviction mainly on the ground of material impairment in the building by altering "Show Window" and fixing a rolling shutter in the place - Plea of landlord that activity of tenant has exposed him to an action for resumption under the Act - Tenant sought restoration of amenity under the same Act - Landlord's Petition dismissed and the Tenant's Petition allowed by the courts below - Both Civil Revisions filed by the Landlord dismissed - Held, that unless there is a specific requirement that show window is integral part of building, there is no building violation - Installation of shutter will not amount to material impairment - Revision petition dismissed.

Held, that the building rules, which have been framed, are called the Punjab Capital (Development and Regulations) Building Rules, 1952. It must be noticed that learned Senior Counsel was not able to point out to me any particular rule, which could be said to be violated in order that Section 2 could be attracted. Unless there is specific requirement that the "show window" itself was an integral part of the building, which was absolutely essential for retention, there is no scope for complaining of building violation.

(Para 7)

Further held, that the Senior Counsel argued that any change in the front of the building could constitute a material impairment. I would reject such an argument, for the Supreme Court was considering the particular situation of a substantial change in the front of the structure of

the building. Since the factual situation in the case related to a substantial structural alteration at the front, the Court had made that observation. I do not see the placement of a shutter as a substantial structural alteration. There could be no argument that a shutter impairs the value and utility. It goes to increase the security for a tenant and that is fair for him if he perceives it to enhance its utility.

(Para 8)

Further held, that no one could quarrel with the position that any action of the tenant that makes susceptible the landlord's own occupancy of the building as an owner vulnerable for resumption, he could have found a justifiable ground for eviction against a tenant. The Supreme Court was referring to a situation of a tenant getting affixed some machines in the building, which caused damage to the building itself. The premises had been taken by the tenant for a show room-cum-office but the tenant changed the user which could impact the zoning requirement would certainly be a ground for eviction. I have already examined the definitions under the Act and the Rules to observe that the activity of the tenant is not is not likely to result in an action for ejectment.

(Para 8)

Further held, that if a property is let out for a non-residential purpose where the building in the hands of a tenant was to be used for several hours from morning through evening, it will be wrong by a landlord to obstruct the access to toilet if there was a toilet attached to the building no matter that there was a physical separation between the building and the toilet.

(Para 13)

Further held, that I am aware, the executing court does not make a fresh adjudication but only carries out what is already provided in the decree. It is a common experience that execution in courts in India is really a fresh starting point of litigation. It is time that we move away from the stereotype and find the resourcefulness of the executing court to help the party who has secured the relief through a seamless process to enjoy the fruits of the decree. I am giving no right to the tenant through this order but I only empower the executing court to secure what this decree provides without violence to the integrity to landlord's building.

(Para 14)

M.L. Sarin, Senior Advocate with Himani Sarin, Advocate and Nitin Sarin, Advocate, *for the petitioners.*

Chetan Mittal, Senior Advocate with Kunal Mulwani, Advocate, *for the respondents.*

K. KANNAN J.

(1) The C.R. No.1793 of 1999 is against the concurrent orders of dismissal of petition for eviction sought at the instance of the landlord under the provisions of Punjab Rent Restriction Act. C.R. No.5794 of 1998 was an order of restoration of amenity under the same Act, which had been passed on a petition at the instance of the tenant that the landlord had prevented access to go to the toilet. The relief as sought for was also granted and therefore, both the revisions are at the instance of the landlord.

(2) Against the dismissal of landlord's petition for eviction, although several grounds had been made, the only ground on which the argument was presented before me by the learned Senior Counsel Sh. M.L. Sarin was that the tenant had caused material impairment in the building by altering "show window" and fixing a rolling shutter in the place. This, according to the landlord, was an actionable wrong by the tenant since (i), there was an express recital in the rent deed that the tenant shall not do any act such as alteration or modification in the building without landlord's permission; (ii) The activity of the tenant has exposed him to an action for resumption under the Capital of Punjab (Development and Regulations) Act, 1952 (hereinafter called as the 1952 Act) and the relevant rules. The contentions of the landlord had been rejected by both the Courts below. The authorities had taken note of the evidence given on the side of the tenant that the placement of shutter in the place where there was a "show window" was a temporary fixture, which could be removed and the "show window" restored within 24 hours. The evidence given by an engineer to the said effect was not controverted by any other evidence given by the landlord. The Appellate Authority had also reasoned that a notice of resumption by the public authority had been issued on 15.11.1990 and there was no mention in the notice of violation by fixation of shutter in the place of "show window". This, according to the Appellate Authority, showed that even the public authority was not prepared to take notice of this change as constituting an actionable wrong that could expose the landlord for resumption.

(3) As regards the contention that the tenant had caused a change in the demised building by removing the "show window", there is no dispute at the trial about the fact that the removal was indeed done by the tenant. He was trying to justify it by bringing an evidence of expert that it was merely a temporary fixture, which did not cause any material impairment in the value and utility of the building. Learned Senior Counsel would point to me at the forefront of his arguments that the Appellate Authority had completely misdirected himself to assume that a change had been made by the tenant in the year 1990 when actually the change had been made only subsequently in the year March, 1993. I find that the Appellate Authority was committing an error of fact but the question is whether this would make any difference, for admittedly the action for resumption was not on this basis at all. The authority had pointed out to the division of "hall building" into three parts, which was purported to be against the provisions of the 1952 Act. The partition of the hall into three portions by erection of partition walls had been made even when the landlord himself was a tenant in one of the portions. Admittedly, the landlord himself was a tenant of the building and he had purchased the same subsequently on 11.05.1998 to qualify for his status as landlord vis-a-vis the tenant. It is also an admitted fact that the proceedings before the authorities are still pending on the particular complaint which the public authority has but it has absolutely no bearing to the complaint, which the landlord mounts against the tenant in this case.

(4) Learned Senior Counsel points out to me term of the lease, which stipulates, inter alia, as follows:-

> "8. That the tenant shall not make any additions or alterations in the said building premises without the previous permission in writing of the land ladies or their authorized agents.
>
> 9. That the tenant shall keep and maintain the said premises in a good condition and in substantial order to the entire satisfaction of the landladies. The damages to the building like breaking of the glasses, panes of the doors, windows, show cases, day to day repairs to water pipes, sewerage connections and electricity fittings and fixtures will be borne by the tenant who will either raise the same or make good the losses by paying adequate compensation therefor to the landladies."

(5) This, according to him, empowers the landlord to complain that the tenant's action of removal of the "show window" as constituting an actionable wrong by the tenant and render him liable for eviction. There is no doubt from the recitals that the tenant was not competent to make any alteration, which alteration would include the removal of the show case also. The lease deed does not go as far as to state that if there is any violation of the term relating to the alterations of the landlord will have a right of re-entry. If the principle of law could be culled out from the Transfer of Property Act, although the provisions of Transfer of Property Act themselves are not applicable *proprio vigore* to buildings, which are governed by the 1952 Act as extended to Chandigarh, it would seem clear that every violation of term of lease cannot constitute a ground of eviction itself. Section 111 of the Transfer of Property Act, which sets out the several circumstances under which a determination of lease takes place provides in clause (g) "forfeiture of lease if the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter......." The violation itself, therefore, in law cannot constitute a determination of lease. Such violations which also contemplate the right of re-entry alone would secure to the landlord such a right. In this case, therefore, the landlord may have other rights such as a demand for restoration to the original condition at the time of ejectment or may have a claim for damages but the right of ejectment itself is not a *sine qua non* by the fact that the tenant has carried out an alteration without the concurrence of the landlord.

(6) The most potent argument, however, is that if the act of the tenant had exposed the landlord to a prospect of resumption by the public authority, then it was surely a ground, which the landlord would have to secure an eviction. It is not necessary that an actual order of resumption must have been passed by the authority. A prospect of resumption for an act, which is actionable, if established before this Court is good enough for a landlord to vindicate his claim. Admittedly, as of now, the action taken by the public authority under the 1952 Act for resumption was not for any activity of the tenant as we have already observed. Section 5 of the Act debars the erection of buildings in contravention of the building rules. It states that "no person shall erect or occupy any building at Chandigarh in contravention of any building rules under sub-section 2." Sub-section 2 empowers the Central Government to notify in the official gazette any rule

to regulate the erection of buildings, which could provide for various contingencies which are set out in clause (a) to (i), which are as follows:-

> "(a) the materials to be used, for external and partition walls, roofs, floors, stair-cases, lifts, fire places, chimneys and other parts of a building and their position or location or the method of construction;
>
> (b) the height and slope of the roofs and floors of any building which is intended to be used for residential or cooking purposes;
>
> (c) the ventilation in, or the space to be left about, any building or part thereof to secure a free circulation of air or for the prevention of fire;
>
> (d) the number and height of the storeys of any building;
>
> (e) the means to be provided for the ingress or egress to and from any buildings;
>
> (f) the minimum dimensions of rooms, intended for use as living rooms, sleeping rooms or rooms for the use of cattle;
>
> (g) the ventilation of rooms, the position and dimensions of rooms or projections beyond the other faces of external walls of a building and of doors or windows;
>
> (h) any other matter in furtherance of the proper regulation of erection, completion and occupation of buildings;
>
> (i) the certificates necessary and incidental to the submission of building plans, amended plans and completion reports.

(7) The building rules, which have been framed, are called the Punjab Capital (Development and Regulations) Building Rules, 1952. It must be noticed that learned Senior Counsel was not able to point out to me any particular rule, which could be said to be violated in order that Section 2 could be attracted. Unless there is specific requirement that the "show window" itself was an integral part of the building, which was absolutely essential for retention, there is no scope for complaining of building violation. As a matter of common sense a "show window" is a show piece in a shop. It is to make possible for a customer to 'window shop'

or view the products of a shop owner that entices him to buy. It could never be a necessity. The building regulations contemplate various type of situations, which are necessary for the proper regulation of constructions and the manner of user of the buildings. When I pointed out to the learned Senior Counsel that there was no particular clause, which was violated, he would argue that even a show case becomes a part of the building plan and if any part of the building is altered, it amounts to alteration of the building plan itself. Rule 5 contemplates the consequence of erection without permission. It states that "no person shall commence or erect or re-erect any building without previous sanction of the Chief Administrator." Building is also defined under Rule 2(x) of the Rules. Building means any construction or part of construction in Chandigarh, which is transferred by the Central Government under Section 3 of the Act and which is intended to be used for residential, commercial, industrial or other purposes whether in actual use or not. The issue, therefore, shall be whether the placement of a shutter constitutes erection of a building. In my view, it does not.

(8) Learned Senior Counsel placed before me a large number of citations of what constitutes actionable material alteration and whether doing of an act of replacing a show window could afford a justifiable ground for eviction. No two cases could be similar and inevitably, there is no one case that deals specifically with the situation of replacement of a show window with a shutter. It is not the congruity of facts that I am looking but whether there is any proposition that could be culled out from any of the citations that could fit into the factual matrix that obtains in this case. I would state them in brief one after another to show as to how none of these decisions is attracted. The judgment of the Supreme Court in ***Om Parkash* versus *Amar Singh and another (1),*** that dealt with the case of UP Cantonments (Control of Rent and Eviction) Act in which the Supreme Court observed that in an action for eviction, the Court must address itself to the nature, character of the construction and the extent to which they make changes in the front and structure of the accommodation, having regard to the purpose for which the accommodation may have been let. The Senior Counsel argued that any change in the front of the building could constitute a material impairment. I would reject such an argument, for the Supreme Court was considering the particular situation of a substantial change in the

(1) 1987 (1) RCR 326

front of the structure of the building. Since the factual situation in the case related to a substantial structural alteration at the front, the Court had made that observation. I do not see the placement of a shutter as a substantial structural alteration. The counsel would also rely on a judgment in ***Gurbachan Singh and another*** versus ***Shivalak Rubber Industries and others (2),*** where the Court was considering the meaning of the expression "impair materially" under the East Punjab Rent Restriction Act. The Court said that it would mean to diminish in quality, strength and value and it does not have a fixed meaning but is a relative term having different meanings in different contexts. The proposition of what is stated is well taken but I will still find that there could be no argument that a shutter impairs the value and utility. It goes to increase the security for a tenant and that is fair enough for him if he perceives it to enhance its utility. ***Vipin Kumar*** versus ***Roshan Lal Anand and others (3),*** was a case where a tenant constructed a wall and erected a door which stopped the flow of air and light. The removal of show case and having a shutter, which is always rolled up allows for more air and light. On the token of such logic, it cannot be assumed that there has been an impairment. In ***Durga Seed Farm*** versus ***Raj Kumari Chadha (4),*** the Supreme Court was considering the nature of activity of a tenant, which would expose a landlord for resumption action by the authorities. No one could quarrel with the position that any action of the tenant that makes susceptible the landlord's own occupancy of the building as an owner vulnerable for resumption, he could have found a justifiable ground for eviction against a tenant. The Supreme Court was referring to a situation of a tenant getting affixed some machines in the building, which caused damage to the building itself. The premises had been taken by the tenant for a show room-cum-office but the tenant changed the user for establishing a factory by fixing machines. The change of user which could impact the zoning requirements would certainly be a ground for eviction. I have already examined the definitions under the Act and the Rules to observe that the activity of the tenant is not likely to result in an action for ejectment. This observation is made without reference to the pendency of proceedings at the instance of the authority under the Act for some other violations, which have come about even prior to the filing of the petition.

---

(2) (1996) 2 SCC 626
(3) 1993(1) RCR 675
(4) 1995(2)All India Rent Control Journal 258

(9) The learned Senior Counsel would argue that the action of the public authority to complain of the change effected by the tenant by fixing the shutter has been put on hold only on account of pendency of this case. I cannot presage what the authority intends to do but I will let it reside there that my observation that the tenant has not done any act which could expose a landlord for resumption is confined to the situation of a complaint of change of the show window. This observation will bind the parties and may not necessarily apply to the authority, who is not a party before me.

(10) The eviction sought by the landlord on the ground of alleged material alteration, therefore, cannot survive favourable consideration in C.R. No.1793 of 1999 and it is dismissed.

(11) As regards the C.R. No.5794 of 1998, the contention of the landlord is that the tenant's action for restoration of amenity was a counter blast to his own petition for eviction. He would point out to the clauses in the rent deed to show that the toilet was not an integral part of the building but it was situate away from the building by a few feet. The description of property in the lease does not include the toilet and there is also no specific recital under the term for use of the toilet by the tenant. He would bring in comparison to his own lease deed from the landlord at the time when he was still a tenant where there was a specific reference to the toilet and his right of user. The learned Senior Counsel would point out to me several inconsistencies in the version of the tenant to discredit his claim that he enjoyed the amenity of using the toilet which had been subsequently withdrawn. In evidence, he wanted to contend that the landlord had prevented the access to the toilet by erecting a wall and locking the door. Learned Senior Counsel would refer me to the plan and showed that the place where the wall is said to have been erected is not shown and the access to the toilet itself is only from his own shop. The tenant cannot demolish the remove any wall to create an opening to go to the toilet.

(12) The tenant, on the other hand, was bringing to proof of the fact of user of the toilet as an amenity by examining a sweepress who gave evidence to the effect that she used to clean up the toilet and got remuneration from the tenant. He also examined a previous tenant of the building who was in occupation to say that he also had the benefit of the toilet.

(13) The fact that the rent deed does not make a specific recital about a toilet is not in my view very material. If there was a recital relating to toilet in the landlord's own rent deed when he was a tenant, is again of

no consequence because when he became the owner subsequently, admittedly he became the owner of the building as well the toilet. When the particular building, which the landlord himself was in occupation of enjoyed the amenity of toilet and another portion of the building in the hands of the tenant was in the proximity that was divided only through a temporary partition, it would be far-fetched to say that the user of the toilet must be confined only to his own portion and not to another portion. A toilet must be seen to be at all times an absolute necessity. Open space urination is a serious nuisance and a pernicious practice that must end. I would find a need for adopting an interpretation, which will be reasonable and which will advance the cause of public health and hygiene. If a property is let out for a nonresidential purpose where the building in the hands of a tenant was to be used for several hours from morning through evening, it will be wrong by a landlord to obstruct the access to toilet if there was a toilet attached to the building no matter that there was a physical separation between the building and the toilet. We have probably come a long way where bath rooms are seen as 'glamorooms'. This was not a new construction and therefore, if there was a physical separation of the toilet from the building, there was nothing unusual.

(14) However, I definitely see a point in the argument for the landlord that the tenant had no consistent case about the so-called erection of wall to obstruct the access to the toilet. He would plead that if the landlord's contention were to be rejected, at least, the right of tenant to secure access shall be not be to demolish any wall which exists and allow for his own customers to use the toilet. The learned counsel would argue that there has been now recently a change in the user of the premise itself and by securing this right, he will allow for his own customers to use the toilet. Thankfully, in the market places in Chandigarh, there is a public toilet as well and it is made clear that the right to obtain an amenity of a toilet ought not to be understood as allowing for any demolition of any wall or making a new way to enter the toilet. The accustomed way to toilet shall alone govern the rights of parties. I am unable to stipulate any particular passage to go to the toilet in the rent control proceedings. If there is in any way still a dispute between the parties as to what shall be the way to enter the toilet, it shall be carried through in the execution proceedings after allowing for parties to let in evidence about how it shall be exercised. I am aware, the executing court does not make a fresh adjudication but only carries out what is already provided in the decree. It is a common experience

that execution in courts in India is really a fresh starting point of litigation. It is time that we move away from the stereotype and find the resourcefulness of the executing court to help the party who has secured the relief through a seamless process to enjoy the fruits of the decree. I am giving no right to the tenant through this order but I only empower the executing court to secure what this decree provides without violence to the integrity of landlord's building. In so doing, I would uphold the finding already rendered by the Courts below that the toilet was a part of amenity which the tenant had and therefore, he shall be entitled to restoration of that amenity.

(15) Learned Senior Counsel appearing on behalf of the landlord wanted to downplay the imminence of its user by the fact that the tenant had after all not been using the toilet for more than 20 years ever since the petition was filed and when the tenant was complaining of withdrawal of amenity. That according to the landlord would show that there is no serious prejudice to the tenant. I cannot allow for such an interpretation to be made, for it is an unfortunate experience that Court cases take long number of years for conclusion. If the pendency of a case or order of stay itself ought to give room for an argument for retention of status quo then a recalcitrant party may obtain undue advantage by some of the pitfalls in the defects in the system of administration of justice itself. This cannot, therefore, be an argument to deny the right of use of the toilet.

(16) Learned Senior Counsel refers to me a decision of this Court in ***National Insurance Company Ltd.*** versus ***R. Harcharan Singh Bhullar (5),*** which held that if a lease prescribed specifically a particular amenity, by the fact that certain other amenities were not prescribed would themselves prove that the unspecified portions could not be claimed by the tenant. This was in the context of user of an open terrace where the tenant's claim for an amenity to use the terrace was denied by the fact that it was not specifically spelt out in the lease. This argument was placed in the context of a non-mention of the toilet in the lease deed. I have already observed that the toilet must be seen to an absolute necessity and not an amenity in the same way as a terrace.

(17) Both the revision petitions would, therefore, require to be dismissed and accordingly dismissed.

A. Jain

---

(5) 1992 1 CLJ 82