

Before K. Kannan, J.

HARPAL SINGH—Petitioner

versus

**JOINT HINDU FAMILY M/S KISHORE LAL RAJINDER
KUMAR, KALKA AND ANOTHER—Respondents**

CR No. 1750 of 1996

September 4, 2012

Haryana Urban (Control of Rent and Eviction) Act, 1973 - East Punjab Urban Rent Restriction Act, 1949 - S.13(2)(iii) - Eviction order on ground of impairment of value and utility - Rented shop that had a doorway was removed and veranda enclosed by glass sheet to make room for showcase of scooters - Whether such alteration would necessarily impaired the value or utility of the building - Eviction order upheld - Landlord's perception of what constituted the impairment of value and utility would be relevant and the High Court will not normally substitute its own subjective appreciation of what would go the reduce the value and utility - A tenant who enhances the value to showcase his wares, to the landlord, it might appear as a vulgar display - Landlord's perception must gain precedence - It would require a secondary role for the Court only to see that a landlord's view was not whimsical.

(K. Kannan, J.)

Held, that it would be seen that the construction of a wall which impaired the flow of air and light would always be taken as constituting the enhancement of the value and utility. The landlord's perception of what constituted the impairment of value and utility would be relevant and the High Court will not normally substitute its own subjective appreciation of what would go to reduce the value and utility, if the Appellate Court had already taken a particular view.

(Para 9)

Further held, that in this case the facts clearly bring out that the shop that had a door way was removed and a verandah was enclosed by glass sheets from two sides to make room for a showcase for the scooters. It was not the original business that the tenant was having and surely the new business had brought about a situation where the tenant wanted to modify the facade of the building. The case of aesthetics of a building of what satisfies the beholder is invariably a matter of personal choice. If we must understand the law that the landlord's perception must gain precedence it would require a secondary role for the Court only to see that a landlord's view was not whimsical. Altering the door for a shutter may not constitute impairment, but if a verandah is converted differently with glass cases, it surely alters the appearance of the construction. A tenant who enhances the value to showcase his wares, to the landlord, it might appear as a vulgar display. Between the two, if the Appellate authority had approved the landlord's perception, I will not superimpose my view to alter the decision entered by the Appellate authority.

(Para 10)

Amit Jain, Advocate and Harkesh Manuja, Advocate, *for the petitioner*.

C.B. Goel, Advocate, *for the respondents*.

K. KANNAN, J.

(1) The tenant against whom an order of eviction has been passed is the revision petitioner before this Court. The contention of the petitioner is that his father Pritam Singh was the tenant in the demised premises at monthly rent of Rs. 200/-. After his death, he continued as a tenant but at

a higher rate of rent at Rs.300/- per month. This was further increased to Rs. 450/- per month from 01.08.1990.

(2) The respondents filed a petition for eviction alleging that the petitioner had effected additions and alterations without concurrence of the landlord that materially altered the value and utility of the building, a ground available under the Haryana Urban (Control of Rent and Eviction) Act for eviction. The Rent Controller originally dismissed the petition. The Appellate Court on appeal by the landlord, however, reversed the decision and ordered the ejection and hence the revision.

(3) The grounds of material alterations have been set out in the petition where the tenant had converted the verandah/chabutra without concurrence of the landlord. The contention of the tenant, however, was that the landlord himself carried out some alterations to justify the increase of the rent from Rs.350/- p.m. to Rs. 450/- p.m. The fact that the rent was increased to Rs.450/- p.m. itself was an important circumstance to show that the changes were effected by the landlord himself for increasing the rent. The manner in which the property was put to use after it was originally let would give an idea of whether the changes had been made by the tenant or the landlord.

(4) It had come in evidence that the tenant had got sub-dealership of scooters in the year 1990 and this could be understood that why certain changes had been made. It is not very clear from the petition itself about when the changes were brought about. The nature of change was that at the facade of the building where there was a pillar making it look like two khans had been altered to make possible for a better exhibition of the scooters from outside by a glass showcase made alongside the front portion of the building. Adverting to the crucial point, who could carry out the alterations, the Appellate Court referred to the evidence of PW1 Vinod Kumar. He had produced a site plan for demised premises as P-2 that has been sanctioned by the Municipal Committee regarding the construction of the first floor of the building. Another witness Vishav Mohan Mangla was examined on 13.12.1993 and corroborated the same version of PW1 that the tenant converted the verandah. The respondents also admitted that there was a conversion of room in August, 1990 but the only difference in evidence was that landlord had converted the same to justify the increase

(K. Kannan, J.)

in rent. If there were two views possible in relation to appreciation of evidence and Appellate Court has held on consideration of the evidence of the witnesses PW1 and PW2 as well as RW1 and RW2, I would uphold the finding of the fact recorded by the Appellate Court as governing the case and I find no reason to make a modification to the said finding.

(5) The second point for consideration is whether the conversion of verandah into a large room by removal of the door and chogat and the side wall constituted a material impairment in the value and utility of the building. Both the counsel have referred to a large number of decisions and it becomes necessary to test their relevance and applicability to this case. The tenant would refer to a judgment of the Supreme Court in *Waryam Singh* versus *Baldev Singh* (1) which considered the issue whether the act of the tenant covering the verandah by constructing two side walls and putting a rolling shutter at the front instituted material impairment. No fixture had been removed nor flow of air and light stopped. The decision was in the context of East Punjab Urban Rent Restrict Act while considering Section 13(2)(iii) and held that such an alteration did not impair the value or the utility of the building. The Supreme Court was actually distinguishing the earlier ruling of this Court reported in *Dewan Chand* versus *Babu Ram* (2) and *Narain Singh* versus *Bakson Laboratories* (3). The Court was holding that every addition and alteration did not necessarily get to impair the value or utility of the building and that merely because of some alterations, it could not be presumed that the value and the utility had been impaired. The Supreme Court has actually cited itself in *Om Parkash* versus *Amar Singh* (4) that examined what constituted the impairment of value and utility.

(6) The counsel would also refer me to a decision of this Court in *Kala Wati* versus *Ram Piari and others* (5) that held that temporary addition and alterations made by the tenant could not be treated as impairing the value. In *Jawahar Lal* versus *Bal Krishan* (6) the Court held that

(1) (2002)2 RCR (Rent) 594

(2) (1980)2 RCR 629

(3) (1981)1 RCR 237

(4) (1987) 1 RCR 326

(5) (2005) 2 PLR 570

(6) (2005) 3 PLR 665

the fact that the landlord was not able to give the actual time and alterations were made as itself sufficient to hold that the landlord's contention regarding the material impairment could not be accepted. In *Suraj Bhan versus Daljit Singh (7)*, the Court held that when the tenant replaced the front door with shutter it ought not to be taken as an alteration of demised premises. Such a new fixture would allow for the shop to be open at all times would not diminish air or light for the back portion. This was perceived by this Court as constituting an enhancement of the value and utility of the building instead of impairing the same.

(7) All the above judgments could be seen to be rendered on a proposition that the nature of construction as temporary or permanent, the definite details of when the construction or alteration was made were the tests of value and impairment and that every alteration or addition ought not to be taken as constituting an impairment of value or the utility.

(8) The above decisions ought to be matched with the citations given by the learned counsel appearing on behalf of the respondents. In *Om Parkash versus Mohinder Singh and others (8)*, which has actually been considered by the Supreme Court in *Waryam Singh's case* (supra) itself, the Court set out the jurisdictional ambit of the High Court in revision. It said that merely because the High Court was inclined to take a different view from that which appellate authority took, it would not justify the interference in revision. If the tenant had made substantial structural alterations without the consent of the landlord by unauthorizcdly demolishing a common wall and constructing a new wall, the structural design of demised premises will be completely changed and the tenant would be liable for eviction. In *Vipin Kumar versus Roshan Lal Anand and others (9)* the Court held that where a tenant constructed a wall and arrested the flow of air and light, an inference of impairment of value and utility of the building was justified. The Court observed that the burden was on the tenant to plead and prove that circumstances did not warrant eviction. The perception of the landlord that a construction impaired the value and utility must obtain precedence. In *Vithal N. Shetti and another versus Prakah N. Rudrakar and others (10)*, the Supreme Court was examining the provisions of the

(7) 2012 (3) PLR 90

(8) 1987 HRR 331

(9) (1993)1 RCR 675

(10) (2002) 2 RCR 708

Bombay Rent Control Act, 1947, where the Court observed that the tenant raising a permanent structure without written consent of landlord would render himself liable for eviction and Court granted for eviction. In *Narain Singh versus Bakson Laboratories etc. (11)*, a Division Bench of this Court held that tenant converting a verandah portion of the residential building into a room by brick walls impaired the value and utility of the building.

(9) From a reading of all the judgments referred to by the landlord, it would be seen that the construction of a wall which impaired the flow of air and light would always be taken as constituting the enhancement of the value and utility. The landlord's perception of what constituted the impairment of value and utility would be relevant and the High Court will not normally substitute its own subjective appreciation of what would go to reduce the value and utility, if the Appellate Court had already taken a particular view.

(10) In this case the facts clearly bring out that the shop that had a door way was removed and a verandah was enclosed by glass sheets from two sides to make room for a showcase for the scooters. It was not the original business that the tenant was having and surely the new business had brought about a situation where the tenant wanted to modify the facade of the building. The case of aesthetics of a building of what satisfies the beholder is invariably a matter of personal choice. If we must understand the law that the landlord's perception must gain precedence it would require a secondary role for the Court only to see that a landlord's view was not whimsical. Altering the door for a shutter may not constitute impairment, but if a verandah is converted differently with glass cases, it surely alters the appearance of the construction. A tenant who enhances the value to showcase his wares, to the landlord, it might appear as a vulgar display. Between the two, if the Appellate authority had approved the landlord's perception, I will not superimpose my view to alter the decision entered by the Appellate authority. On an over all consideration of the case as regards the law and the points brought before me, I affirm the decision of the Appellate authority and dismiss the revision.

V. Suri