WARYAM SINGH

v.

BALDEV SINGH

OCTOBER 31, 2002

[S.N. VARIAVA AND ARUN KUMAR, JJ.]

Rent Control & Eviction :

East Punjab Urban Rent Restriction Act, 1949—Section 13(2) (iii)—Material alteration—Landlord letting out shop with verandah—Tenant covering the verandah—Eviction Petition on ground of material alteration—Landlord leading no evidence on material impairment of value and utility of the shop—Rent Controller dismissing the petition—Appellate Court allowing the same—High Court without disturbing finding of fact that tenant made alteration, held that alteration not materially impairing value and utility of shop thus, eviction decree could not be passed—On appeal held, since there is no proof of material impairment in value or utility of shop, order of High Court upheld.

Appellant-landlord let out a shop with a verandah to respondent-tenant. Respondent-tenant altered the verandah by enclosing it and putting a rolling shutter in the front without the consent of appellant-landlord. Appellant-landlord filed eviction petition. Rent Controller dismissed the petition as the appellant-landlord could not prove that respondent-tenant made any additions/alterations and also that the alterations made did not impair the value and utility of the shop. First Appellate Court held that respondent-tenant made additions/alterations which materially impaired the value and utility of the shop. Aggrieved, respondent filed a revision. High Court did not disturb the finding of fact that respondent-landlord made alteration but held that the alteration made did not materially impair the value and utility of the shop and allowed the revision. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1. An order for eviction can be passed only if the landlord proves that the tenant had carried out the construction; that the same was without the consent of the landlord; and that the value or utility had been

A **materially impaired. In the instant case, first Appellant Court, concluded on facts that respondent had carried out alteration by enclosing the verandah. On facts, it has been held that this has been done without the consent of appellant. Revisional Court was correct in not interfering with the findings of fact that respondent made alteration. Thus there is no reason to take a different view on a question of fact. [15-H; 16-A]**

B

1.2. On the question of material impairment of value or utility of the shop appellant lead no evidence at all. It cannot be said that no evidence was required to be lead as it has to be inferred that the value or utility had been diminished. In the case of a shop, particularly in a business C **locality, the area of the shop gets increased by the verandah getting enclosed. This would increase the value and utility of the shop. Further, there is no proof, that free flow of light and air has been stopped. On the contrary, by putting up a rolling shutter in the front the flow of light and air is increased. Thus in the absence of any proof of material impairment in value or utility of the shop, High Court was right in concluding that no** D **decree for eviction could be passed and therefore, there is no reason to interfere with the judgment of the High Court. [16-B-D]**

Om Prakash **v.** *Amar Singh,* **[1987] 1 SCC 458, relied on.**

Dewan Chand **v.** *Babu Ram,* **(1980) 2 RCJ 615 and** *Vipin Kumar* **v.** E *Roshal Lal Anand,* **[1993] 2 SCC 614, distinguished.**

Narain Singh **v.** *Bakson Laboratories,* **(1981) CLJ (Civil) 414, disapproved.**

Gurbachan Singh **v.** *Shivalak Rubber Industries,* **[1996] 2 SCC 626;** F *Kartar Singh* **v.** *Kesar Singh and Anr.,* **(1980) 2 RCJ 1;** *Brijendra Nath Bhargava* **v.** *Harsh Wardhan,* **[1988] 1 SCC 454 and** *Om Pal* **v.** *Anand Swarup,* **[1988] 4 SCC 545, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6942 of 2000.

G

From the Judgment and Order dated 14.3.2000 of the Punjab and Haryana High Court in C.R. Nos. 1838 of 1989.

Sudhir Walia and Mahinder Singh Dahiya, for the Appellant.

H Dabasis Misra, for the Respondent.

The Judgment of the Court was delivered by A

S.N. VARIAVA, J. This Appeal is against a Judgment dated 14th March, 2000.

Briefly stated the facts are as follows:

B

The Appellant, who is a landlord of the concerned premises, filed Eviction Petition on two grounds, namely, arrears of rent and secondly that there was material alteration in the shop without the written consent of the landlord. The Appellant claimed that the shop had thus been materially impaired in value and utility. The Respondent immediately deposited the rent in Court and, therefore, the first ground did not survive. The Petition was C contested only on the ground of material alteration.

On 9th November, 1987 the Rent Controller rejected the ejectment Petition holding that the Appellant had not been able to prove that the Respondent had made any additions/alterations. The Rent Controller also held that the alterations were not of such a nature that they had impaired the D value and utility of the shop.

The Appellant filed an Appeal which was allowed by an Order dated 26th May, 1989. The Appellate Court held that the additions/alterations had been made by the Respondent-tenant and that they materially impaired the E value and utility of the shop. The Respondent then filed a Civil Revision before the High Court which has been allowed by the impugned Judgment. The High Court has not disturbed the finding of fact that the alteration was made by the Respondent. The High Court has, however, concluded that the alteration was such that it had not materially impaired the value and utility of the shop. Hence this Appeal. F

Before we consider the submissions, the necessary provisions need to be set out. Sections 13(2)(iii) of the East Punjab Urban Rent Restriction Act, 1949 reads as follows:

"13. Eviction of tenants.- G

xxx xxx xxx

xxx xxx xxx

(2) A landlord who seeks to evict his tenant shall apply to the H

A Controller for a direction in this behalf. If the Controller after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied:

xxx xxx xxx

B xxx xxx xxx

(iii) that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land,

xxx xxx xxx

C xxx xxx xxx"

Thus it is to be seen that the act of the tenant must be one which is likely to impair, materially, the value of utility of the building or the rented land.

D In this case what was let out was a shop with a verandah. The alteration is that the verandah has been covered up by construction of walls on the two sides and a rolling shutter in the front. The original door has also been removed. The question would be whether enclosing the verandah would amount to impairing materially the value or utility of the shop. A number of authorities have been cited. We therefore need to consider those authorities.

E Mr. Sudhir Walia first relied upon the case of *Dewan Chand* v. *Babu Ram,* reported in 1980 (2) RCJ 615. In this case the tenant had removed rafters of the shop from the wall and placed a lintel thereon. The tenant had also constructed two walls on two sides of the verandah and fixed a door on the outer wall of the two sides. It was found, as a matter of fact, that the F changes had caused cracks on the walls of the first floor. Because of this the Court held that the changes had impaired materially the value and utility of the shop. This case therefore would be of no assistance to the Appellant as, admittedly, in the present case, it has not been shows that as a result of the changes the shop is damaged in any manner.

G Mr. Walia next relied upon the case of *Vipin Kumar* v. *Roshal Lal Anand,* reported in [1993] 2 SCC 614. In this case, the tenant had constructed a wall on the verandah and put up a door. The tenant had also removed certain fixtures. This Court held as follows:

H "Clause (iii) of sub-section (2) of Section 13 provides that" if

the tenant has committed such acts as are likely to impair materially the value of utility of the building or rented land", the Rent Controller may make an order directing the tenant to put the landlord in possession of the building or rented land. If the Controller is not so satisfied, he shall make an order rejecting the application. It is, therefore, clear that if the tenant had committed such acts as are likely to impair materially the value of utility of the building, he is liable to ejectment. The finding recorded by the Controller is that on account of the construction of the wall and putting up a door the flow of light and air had been stopped. He removed the fixtures. So the value of the demised shop has been impaired and utility of the building also is impaired. The impairment of the value or utility of the building is from the point of the landlord and not of the tenant. The first limb of Clause (iii) of sub-section (2) of Section 13 is impairment of the building due to acts committed by the tenant and the second limb is of the utility or value of the building has (sic having) been materially impaired. The acts of the tenant must be such that by erecting the wall he had materially impaired the value or utility of the demised premises. It is contended by Mr. Prem Malhotra that the landlord should prove as to how it is materially affected and that there is no evidence adduced by the landlord. We find no force in the contention. By constructing the wall, whether the value or utility of the building has materially been impaired is an inferential facts to be deduced from proved facts. The proved facts are that the appellant without the consent of the landlord had constructed the wall and put up a door therein as found by the Rent Controller, the flow of air and light has been stopped. He removed the fixtures."

Thus, it is to be seen that it was proved that fixtures had been removed and that by constructing the wall and putting up of a wall flow of air and light had been stopped. In the present case, there is absolutely no proof that any fixtures has been removed and/or that the flow of air and light has been stopped. To be noted that all that has been put up in the front is a rolling shutter. The rolling shutter would be locked only in the night. During the day the shutter would be kept open. Therefore, there would in fact be more light and air in the shop. This case also therefore does not assist the Appellant.

Mr. Walia then relied upon the case of *Gurbachan Singh* v. *Shivalak Rubber Industries,* reported in [1996] 2 SCC 626. In that case a number of shops had been let out to the tenants. Along with the shops there were some

A open spaces also. The tenants removed the roofs of the shops, the partition walls and the doors. They then laid a new roof merging the verandah with the shops, closing the doors and opening new doors and windows. They also enclosed the open spaces. Result of all the alterations was that the premises was converted altogether into a new and different shape. On these facts it was held that the tenant had committed acts which impaired materially the value B or utility of the premises. It was held that impairment of value or utility must be judged from the point of view of the landlord and no one else. It was held that the question whether the additions amount to material impairment in value or utility depends upon the facts which have to be proved. In other words merely because some additions/alterations have been made would not C itself amount to impairment in the value or utility of the premises, much less material impairment.

Mr. Walia next relied upon the case of *Kartar Singh* v. *Kesar Singh and Anr.*, reported in (1980) 2 RCJ 1. In this case the alteration was that a partition wall between two rooms had been demolished turning the two shops D into one. The tenant had also made an opening in the partition walls of the rooms behind the front room. The tenant had removed the ''Chutkhats'' and ''Takhtas'' of four doors and had included the verandah in the front room and fixed a shutter on one of the doors in verandah and a tin door on the other. It was held that this amounted to additions and alterations which E impaired materially the value and utility of the building. To be noted that here also the additions and alterations were of a substantial nature and the finding is given on the facts of the case. The finding is based on the fact that the substantial changes had resulted in the premises being totally different from that which had been rented out. On facts it was held that the alterations were of far-reaching nature and the utility had been diminished from the F point of view of the landlord.

Mr. Walia next relied upon the case of *Narain Singh* v. *Bakson Laboratories,* reported in 1981 CLJ (Civil) 414, In that case, the tenant had enclosed the verandah on the front and back side of the building and had G opened a door by breaking the wall of the room. It was held that this diminished the value of the premises. With great respect to the learned Judges concerned, we find ourselves unable to accept this proposition . As stated above it is not every addition or alteration which could be said to materially impair value or utility. It has to be proved that the value or utility has been materially impaired. Merely because some additions or alterations are made it cannot be presumed H or inferred that the value or utility of the building has been impaired. This

authority cannot be said to be laying down the correct proposition of law. A

We find support for our point of view from the case of *Om Prakash* v. *Amar Singh* reported in [1987] 1 SCC 458. In that case, a temporary partition wall of 6 feet height was put up in a big hall. This partition was made without digging any foundation on the floor and the partition did not touch the selling. The tenant had also extended the pre-existing tin shed on the open land by B constructing a wall of mud and enclosing that wall with bamboo tatters. It was held that before a landlord could get a decree it must be established (1) that the tenant had made the construction, (2) that such construction was without the consent of the landlord and (3) that such construction had materially affected the premises. It was held that these three conditions were C cumulative in nature and each one of them was necessary to be established before a decree of eviction could be passed. It was held that the construction which had been carried out did not materially alter the premises and that therefore no ground for eviction had been made out.

In the case of *Brijendra Nath Bhargava* v. *Harsh Wardhan* reported in D [1988] 1 SCC 454, the tenant put up a "dochatti" for storing the goods on the roof of the cabin with a wooden staircase from inside the cabin to go to the balcony. The question was whether this materially impaired the value or utility of the building. It was held that in order to attract Section 13(2) (iii) the construction must not only impair the value or utility of the building but must also be of a material nature, i.e. the changes must be of substantial or E significant nature. It was held that the burden of proving such material impairment was on the landlord. It was held that the constructions put up were of a temporary nature and that therefore they did not materially affect the value or utility of the premises.

In the case of *Om Pal* v. *Anand Swarup,* reported in [1988] 4 SCC 545, F the tenant had put up a wooden balcony in the showroom. It was held that the answer to the question whether there was a material alteration or not depended upon the facts and circumstances of each case. It was held that the constructions must be substantial and permanent in nature. In this case it was held that constructions did not materially alter the premises. G

Thus an Order for eviction can be passed only if the landlord proves (a) that the tenant had carried out the construction, (b) that the same was without the consent of the landlord and (c) that the value or utility had been materially impaired. In the present case, the First Appellate Court, on facts, H

A concluded that the Respondent had carried out alteration by enclosing the verandah. On facts it has been held that this has been done without the consent of the Appellant. The Revisional Court has correctly not interfered with the findings of fact. We also see no reason to take a different view on a question of fact.

B However, the question still arises whether merely because a verandah is enclosed it can be inferred, without any further evidence or proof, that the value and utility is affected. On the question of material impairment of value or utility the Appellant has lead no evidence at all. The submission has been that no evidence was required to be lead as it has to be inferred that the value C or utility had been diminished. We are unable to accept such a submission. In the case of a shop, particularly in a business locality, the area of the shop gets increased by the verandah getting enclosed. This would increase the value and utility of the shop. In this case there is no proof, like in *Vipin Kumar's* case (supra), that free flow of light and air has been stopped. On the contrary, by putting up a rolling shutter in the front the flow of light and air D is increased. In the absence of any proof of material impairment in value or utility, the High Court was right in concluding that no decree for eviction could be passed. We, therefore, see no reason to interfere with the Judgment of the High Court.

E Accordingly the Appeal stands dismissed. Therewill be no order as to costs.

N.J. Appeal dismissed.