

NON REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 480 of 2018

SURINDERAPPELLANT(S)

VERSUS

NAND LALRESPONDENT(S)

WITH

CIVIL APPEAL NO. 481 of 2018

AND

CIVIL APPEAL NO. 482 of 2018

J U D G M E N T

A.K. SIKRI, J.

These matters were listed for hearing on January 18, 2018. The counsel for the respondents did not appear though the matters were passed over once and were called again for the second time. In these circumstances, we heard the learned counsel appearing for the appellant and reserved the judgment. However, in order to give an

opportunity, this Court granted one week's time to the respondents to file their written submissions. Even when more than one week has lapsed, no written submissions have been filed by the respondents. In these circumstances, we have ourselves perused the entire record while considering the submissions of the appellant's counsel.

- 2) The appellant herein is the owner of the premises situated in Main Bazar, Old Najafgarh Road, Bahadurgarh, Haryana. In these premises few shops were constructed in mid 1960s¹ by the father of the appellant and one shop each was let out by the respondents in these appeals. The premises are governed by the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the 'Act') as per which tenants can be evicted only on certain specified grounds. One of the grounds for eviction is that the premises let out is in dilapidated condition and cannot be repaired/reconstructed without evicting the tenant. The appellant filed eviction petitions against the respondents before the Rent Controller, Bahadurgarh, under Section 13 of the Act on the ground that the shops which are built up on mud had become unsafe, inhabitable and were in dilapidated condition. The Rent Controller was pleased to dismiss the eviction petitions after recording a finding that tenanted premises were not in a dilapidated condition. The appeal was preferred by the appellant against the orders of the Rent Controller before the

¹ Though respondents had disputed the year of construction and according to them construction was carried out 30-40 years ago only.

Additional District Judge-cum-Appellate Authority under the Act. These appeals were also dismissed. Thereafter, the appellant filed revision petitions, which have also been dismissed by the High Court. Identical orders are passed dismissing these revision petitions and the operative portion of order dated July 09, 2015 passed by the High Court in the revision petitions is as follows:

“In the present case, petitioner had sought ejectment of respondent No.1 from the shop in question on the ground that it had been rendered unfit and unsafe for human habitation. In this regard, petitioner examined his expert. Respondent No.1 also examined his expert to establish that the premises in question was fit for human habitation. The Courts below after going through the reports of the expert and the photographs, placed on record, came to the conclusion that the premises in question was fit for human habitation. In fact, the shop in question had not been got repaired by the petitioner.

In the facts and circumstances of the present case, no ground for interference with the finding of fact arrived at by the Courts below, is made out.”

- 3) The learned counsel for the appellant has made twofold submissions. In the first place, it was argued that during the course of the trial, the appellant had placed on record the report of an expert, viz., an Engineer who was also examined as PW-3. He also filed an affidavit stating that he had carried out physical inspection of the shop and gave a detailed report dated March 10, 2006, which was exhibited as Exhibit P-2. The condition mentioned by him finds mention at pages 29 and 30 in paragraph 19 of the judgment dated April 30, 2010 of the trial court.

Relying on that report, learned counsel for the appellant argued that it speaks volumes about the state of existing construction and clearly shows that the shop in question is in a dilapidated condition. It states that cracks have been developed in the superstructure walls, RCC slabs of the stairs, roof projection. It also mentions that cement plaster has been eroded at some places leaving the bricks in the walls as naked and the naked walls have been eroded leaving their joints and coming out of the superstructure walls due to sudden dampness, efflorescence in walls caused by wash/waste water drains passing along with the rear walls of the shop. It also states that the roof projection deflected and cracks developed may cause heavy damage due to sudden collapse at any time. It also states that floor level of the shop is lower than the existing main road level, thus, attracting dampness from rain water and dry weather flow. Learned counsel for the appellant submitted that, no doubt, the respondents had also examined a retired Engineer as RW-4, who had filed his affidavit and his report was accepted as R-1. However, the report filed by RW-4 did not discuss the conditions of the shops and it only mentioned about the photographs of the roof and flooring which was taken with the help of a digital camera and the report also mentioned about *Chhajja* in the front side stating it to be in a good condition. He, thus, submitted that the findings of the courts below were totally perverse which relied upon the report of RW-4 and ignored the

report of PW-3.

- 4) Second submission of the learned counsel for the appellant was that the subsequent events which happened fortified the report of PW-3 inasmuch as in the year 2012, when the appeal of the appellant was pending before the Additional District Judge-cum-Appellate Authority, the *Chhajja* had fallen down. This event, according to him, proves that the premises are in dilapidated condition and unsafe for habitation. He submitted that even when this fact was brought to the notice of the Appellate Authority as well as the High Court, these courts have not taken note of this subsequent development, though they were supposed to look into the same. On this ground also it was argued that the findings of the courts below are perverse.
- 5) In his judgment dated April 30, 2010, the Rent Controller discussed the expert evidence led by both the parties and after detailed examination of both the reports, he formed an opinion that the appellant was not able to prove that the shops were in a dilapidated condition. Discussion on this aspect runs as follows:

“23. In the opinion of the court, the petitioners have not been able to prove that the shop is in dilapidated condition. On perusal of photographs Ex.R3, it is evident that the roof of the shop has been consisting of wooden battons. It has come in the cross-examination of PW2 Surender that ever since the shop has been let out to the respondent, they have never bothered to get the same repaired or white-washed. Their own witness of petitioners PW4 Parveen Kumar has also

stated in the cross-examination that the shop of Nand Lal from outside is in good condition. He also stated that between his shop and the shop of Varinder no other shops is there and the stairs of his shop are broken and had cracks but the remaining shop is fine. PW3 Sunil stated in his cross examination all the four shops where the construction at the same time. Since PW4 Parveen stated in his cross-examination that except four stairs his shop is fine and that all the shops were constructions together, it is improbable that one shop is about to fall being dilapidated and the other shop is fine. Beside this, PW1 Sh.R.Punia has stated in his cross-examination that he has not mentioned in the report the size of the plaster which has eroded from the walls and at what places.”

6) Thus, after examining the expert witnesses who are produced by both sides, the Rent Controller returned the aforesaid findings, which findings were approved by the Appellate Authority as well in its judgment dated September 17, 2012. We find that the view taken was plausible view which cannot be considered as perverse. The revisionary jurisdiction of the High Court is limited and, therefore, it rightly observed that no ground for interference with the finding of fact arrived at by the courts below was made out.

7) Insofar as the contention of the appellant based on alleged subsequent event is concerned, except arguing that it was taken before the appellate court as well as the High Court, no material is produced to support this submission. Grounds of appeal filed before the Appellate Authority or the copy of the revision petition has not been placed on record. Moreover, judgments of the Appellate Authority as well as the High Court

do not reflect that such a contention was raised before the said courts. In the absence thereof, the alleged subsequent event cannot be taken into consideration.

8) We, therefore, do not find any merit in these appeals which are accordingly dismissed.

However, if the condition of the premises, as of today, is dilapidated and the appellant is correct in his submission that the *Chhajja* of the premises had fallen down in the year 2012, it would be open to the appellant to file a fresh petition on the aforesaid ground as these events would furnish a fresh cause of action to the appellant.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

**NEW DELHI;
FEBRUARY 01, 2018.**