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C.A.No. 6579 OF 1999

ITEM No.104

Court No. 9

SECTION IV

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No. 6579 of 1999

BALWANT SINGH (DEAD) BY L.RS. Appellant (s)

VERSUS

RAMA KANT (DEAD) THROUGH L.RS.Respondent (s)

(With office report)

Date : 04/02/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL  
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. O.K. Khullar,Adv.  
Mr. Sanjeev Malhotra,Adv.

For Respondent (s)Mr. Rajiv Garg,Adv.  
Mr. A.D.N. Rao,Adv.

UPON hearing counsel the Court made the following  
O R D E R

Heard the learned counsel for the parties from 12.24 p.m. to 12.40 p.m.

The civil appeal is dismissed.

No costs.

[ T.I. Rajput ][ Shelly Sengupta ]  
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6579 OF 1999

Balwant Singh (Dead) By L.Rs. ...Appellant(s)

Versus

Rama Kant (Dead) Through L.Rs. . . . Respondent(s)

O R D E R

In this appeal, filed by the tenant, the order passed by the High Court in a revision petition filed by the landlord reversing the order passed by the appellate authority, affirming the order made by the Rent Controller, is under challenge. Initially, the landlord filed a petition seeking eviction of the tenant on various grounds but later it was confined to only one ground, namely, that the premises in question had become unfit and unsafe for human habitation. The Rent Controller dismissed the eviction petition on finding that the building was not unfit and unsafe for human habitation in the light of the material placed before him. The appellate authority, in the appeal filed by the landlord, did not find any good ground to disagree with the finding recorded by the Rent Controller.

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The landlord filed a revision petition before the High Court challenging the correctness and validity of the order passed by the appellate authority concurring with the finding recorded by the Rent Controller. During the pendency of the revision petition, a portion of the building fell down. On that account, the landlord made an application seeking appointment of a local commissioner, which was acceded to. The local commissioner, after inspection of the spot, made the report. The High Court, looking to the report of the local commissioner and considering the respective contentions urged on behalf of the parties, came to the conclusion that the premises has become unfit and unsafe for human habitation. In the view the High Court took, the revision petition was allowed passing an order against the tenant and reversing the order passed by the Rent Controller, as affirmed by the appellate authority.

Before us, the learned counsel for the appellants-tenant urged that merely because a portion of the verandah in the premises has fallen down was not sufficient to hold that the entire building has become unfit and unsafe for human habitation; the appellants are occupying the entire premises and using the major portion thereof for storing articles and are carrying on the business in the verandah; and the High Court was not right in observing that objections were not filed to the report submitted by the local commissioner. In short, according to the learned counsel, the High Court was not right and justified in setting aside the concurrent finding recorded by both the courts below, that too, exercising revisional jurisdiction.

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In opposition, the learned counsel for the respondents made submissions supporting the impugned order.

The High Court, in the impugned order, has re-produced the material portion of the report of the local commissioner. As can be seen from the report, part of the roof of the verandah has fallen down; the general condition of the shop is dilapidated as there are cracks in the walls of the whole building, including the roof of the verandah; the building is apparently very old and mud mortar is coming out of the bricks; the tenant is continuing his business in the verandah and in the remaining part of the building, he has stored his goods inside the building; the roof of the back room of the building has been found fallen although it is stated that the room was in the possession of the landlord. Since the condition of the building has deteriorated and portion of the building fell down during the pendency of the proceedings before the High Court itself strengthens the case of the landlord that the building was not in a good condition and was unfit and unsafe for human habitation. Coupled with this and looking to the report of the local commissioner, it is clear that not only the verandah where the actual business is carried on has fallen down, the entire building is old and cracks also are developed. It is also noticed that the building was constructed of mud and mortar. On overall assessment, the High Court, on fact, concluded that the building in question is unfit and unsafe for human habitation. The argument on behalf of the appellants that the concurrent findings could not be reversed will not be of much help in this case. It is not a question of concurrent finding in the sense that the condition of the building, as noticed by the local

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commissioner, is a subsequent event. The fact remains that the High Court found that the building was unfit and unsafe for human habitation, looking to its condition. In this view of the matter, we do not find any good ground to disturb the impugned order. Hence, finding no meri

t in the appeal, it is dismissed.

At this stage, the learned counsel for the appellants submitted that reasonable time may be granted to the appellants to vacate the premises in question. The learned counsel for the respondents opposed the same saying the appellant has already secured an alternate shop. He, however, submitted that he will not take any action for a period of one month from today to enable the appellants to shift by removing their articles. This submission is placed on record. No costs.

.....J.  
[SHIVARAJ V. PATIL]

.....J.  
[D.M. DHARMADHIKARI]  
New Delhi,  
February 04, 2004.