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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CR-345-2016 (O&M)**

Shabir Hassan ..Petitioner

Versus

Ajay Gupta and anr. ..Respondents

**Date of Reserve: 22.01.2026**
**Date of Pronouncement:05.02.2026**
**Uploaded on:- 05.02.2026**

***Whether only the operative part of the judgment is pronounced?*** ***No***
***Whether full judgment is pronounced?*** ***Yes***

**CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Ms. Aeshna Jain, Advocate
for the petitioner.

Mr. Pritam Singh Saini, Advocate with
Ms. Surbhi Rana, Advocate
for the respondent.

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**SUDEEPTI SHARMA, J.**

1. Challenge in the present revision petition is to order dated 24.11.2015 passed by learned Appellate Authority, Chandigarh whereby the Appellate Authority accepted the appeal filed by the respondents against the order dated 13.05.2015 passed by learned Rent Controller, Chandigarh and ordered the eviction of the petitioners from the demised premises.

2. It would be relevant to mention herein that vide order dated 27.01.2016, dispossession of the petitioners was stayed by Co-ordinate Bench of this Court. Thereafter, vide order dated 03.06.2020, Co-ordinate Bench of this Court passed the following order:-

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*Let the matter be placed before the Division Bench after obtaining an appropriate order from Hon'ble the Chief Justice to decide the following legal issue:-*

> *" Whether in the urban area of U.T., Chandigarh, the entire Shop-cum-Flat is to be treated as commercial or in a given case, First & Second Floor thereof could be termed as residential building for the purpose of eviction under the Act of 1949? "*

*In the interest of justice, till the matter is listed for hearing before the Division Bench, interim order dated 27.01.2016 shall continue.*

3. Thereafter, Division Bench of this Court on 14.12.2023 passed the following order:-

*Vide order dated 03.06.2020 passed by the Single Bench of this Court, the following question of law has been referred to the Division Bench :-*

> *Whether in the urban area of U.T. Chandigarh, the entire Shop-cum-Flat is to be treated as commercial or in a given case, First & Second Floor thereof could be termed as residential building for the purpose of eviction under the Act of 1949?"*

*In the present case, Shop-cum-Flat is situated in the urban area of U.T. Chandigarh and for eviction of tenant, the Act of East Punjab Urban Rent Restriction Act, 1949 is applicable to U.T Chandigarh. This Act of 1949 was amended in the year 1982. The Parliament enacted the East Punjab Urban Rent Restriction (Chandigarh Amendment) Act, 1982 (for short "1982 Act"), which consists of only 04 sections. Relevant Sections 2, 3 and 4 of this Act are being reproduced below :-*

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***"2. Amendment of Section 1*** *:- In the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act III of 1949), as in force in the Union Territory of*

*Chandigarh, (hereinafter referred to as the Principal Act), in Section 1, in sub-section (1), for the words "East Punjab", the word "Punjab" shall be substituted.*

***3. Amendment of Section 2*** *:- In Section 2 of the principal Act, for clause (d), the following clause shall be substituted, namely :-*

*(d) "non-residential building" mean –*

*(i) a building being used solely for the purpose of business or trade;*

*(ii) a building let under a single tenancy for use for the purpose of business or trade and also for the purpose of residence.*

*Explanation – For the purposes of this clause, residence in a building only for the purpose of grudging it, shall not be deemed to convert a "non-residential building" to a "residential building".*

***4. Special provision as to pending cases*** *– The provisions of the principal Act, as amended by this Act, shall apply to an and in relation to every case, under the principal Act, for eviction of a tenant from a building let under a single tenancy for use for the purpose of business or trade and also for the purpose of residence which is pending immediately before the commencement of this Act, and any order made in such case before such commencement by any*

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*authority, shall, on an application made in this behalf to such authority, be modified so as to be in conformity with the provisions of the principal Act as amended by this Act.*

***Explanation -*** *For the purposes of this section, a case relating to eviction of a tenant shall be deemed to be pending –*

*(a) if no order has been made in such case for the eviction or otherwise of the tenant; or*

*(b) if an order has been made in such case for the eviction of the tenant and such order remains to be executed.*

*The Supreme Court has interpreted the abovesaid provisions of the Amended Act of 1982 in the case of* ***Rakesh Vij vs. Dr. Raminder Pal Singh Sethi and others, decided on 30.09.2005, in Civil Appeal No.2894 of 2001*** *and while dealing with the case of eviction of a tenant from Shop-cum-Flat (SCF) has held that the SCF in Chandigarh is a non-residential building and ejectment of a tenant on a bonafide ground can be made both in case of residential building as well as non-residential building.*

*The reference is answered in the above terms keeping in view the amendment made in the year 1982.*

*The Registry is directed to list the case as per roster."*

4. Now coming to the facts of the present petition wherein the respondents filed eviction petition bearing No.165 dated 07.02.2013 (R.A. No.405 of 2014), under Section 13 of the Act of 1949 for eviction of the petitioner from store/room on backside of First Floor, S.C.F. No.25, Sector 19-C, Chandigarh (hereinafter referred as 'demised premises').

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5. As per averments in the eviction petition, father of the respondents, namely, Kasturi Lal Gupta (since deceased), being owner of SCF No.25, Sector 19-C, Chandigarh, let out a store/room measuring 6x2 and 8x8 on the backside of Ground Floor of the same having entrance from backside to the petitioner on the basis of Rent Note dated 01.10.1993 (P-5). Further averred that in the year 2003, on the request of petitioner, said Kasturi Lal gave the demised premises on same terms & conditions as contained in the Rent Note dated 01.10.1993, but no separate Deed was executed. During his lifetime, Kasturi Lal received rent from the petitioner, but after his death, respondents stepped into the shoes as landlords on the basis of a registered Will dated 12.02.2001 (P-2), executed by their father. Thereafter, respondents started receiving the rent from the petitioner, thus, there is a relationship of landlord and tenant regarding the demised premises. Rate of rent is stated to be Rs. 6570/- per month (excluding electricity charges).

6) Grounds of eviction raised by the respondents are as under:-

***(a)*** *non-payment of arrears of rent @ Rs. 6570/- per month w.e.f. October, 2012;*

***(b)*** *change of user. It is alleged that the demised premises was let out for storing tailoring materials, whereas petitioner has opened a Tailor Shop, thus, not permissible as per Bye-Laws framed under the Capital of Punjab (Development and Regulation) Act, 1951 (sic-1952) [hereinafter referred as "Act of 1952"];*

***(c)*** *the property may be resumed by the Estate Officer in view of the change of user and the respondents shall suffer an irreparable*

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*loss and injury, which shall amount to material impairment to the value as well as utility of the property.*

7) Petitioner denied the claim of the respondents by way of written statement while raising preliminary objections, inter alia, that eviction petition is liable to be dismissed on account of lacking the requisite ingredients of Section 13 of the Act of 1949 and the same has been filed just to harass the petitioner for increasing the rate of rent. Also submitted that respondents have not approached the learned Rent Controller with clean hands.

8) On merits, it is admitted to the extent that petitioner was inducted as a tenant by the father of the respondents, namely, Kasturi Lal, but submitted that in the year 2003, said Kasturi Lal asked him to vacate the store/room on the Ground Floor of the SCF and in lieu thereof, another portion of the building i.e. at First & Second Floor on backside portion along with common toilet at Ground Floor underneath the stairs was given. He has also submitted that initially the rate of rent was settled @ Rs. 1300/- per month, which was later on enhanced from time to time and he has paid the rent uptill September, 2012 @ Rs. 6570/- per month. Again submitted that after September, 2012, petitioner offered the rent to the respondents, but they refused to accept the same and that led to filing of an application before learned Civil Judge (Jr. Divn.), under Section 31 of the Punjab Relief of Indebtedness Act, 1934 (for short 'Act of 1934'), which is still pending. Also pleaded that the premises was taken on rent by the petitioner for the purpose of Tailoring and since the inception of tenancy, he is using the same for that very purpose under the name and style of “Zeenath Tailors”, thus, there is no

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change of user. Further submitted that neither any Notice for alleged building violation has been received by the petitioner; nor the same is disclosed by the respondents in their eviction petition. Petitioner also attached the photocopy of Saving Account, maintained with Punjab & Sind Bank, Sector 27-B, Chandigarh to prove the encashment of cheques for discharging his rental liability. Again submitted that in the month of May, 2012, respondents threatened the petitioner to vacate the demised premises and he was forced to file Civil Suit for permanent injunction before learned Civil Judge (Jr. Divn.), Chandigarh, which is still pending and status quo order was passed in the matter, but despite that, respondents violated the injunction order and changed the lock of common toilet, situated on Ground Floor and petitioner is not allowed to use the same. Respondents locked the toilet and no key of the same was supplied to the petitioner just to harass and pressurise him for vacation of the demised premises.

9) Respondents filed replication and submitted that there is no concealment of any material fact in the eviction petition. Also submitted that there was no dispute with regard to illegal construction of the portion which was in occupation of the petitioner at the back side of ground floor of SCF No.25, Sector 19-C, Chandigarh. Respondents denied the pendency of proceedings under Section 31 of the Act of 1934 being unaware and further submitted that same is not applicable to the rent proceedings. Respondents again reiterated the change of user by the petitioner as well as purpose of the tenancy as pleaded in the eviction petition. Filing of civil suit for permanent injunction was admitted, but stated to be without any basis. Also submitted that respondents never changed the lock of alleged common toilet on Ground

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Floor; rather pleaded that no toilet or any part thereof was ever let out to the petitioner and grounds of eviction were also reiterated.

10) Learned Rent Controller, Chandigarh dismissed the rent petition on 13.05.2015 of the respondents on the ground that they did not place on record any notice of valuation in respect of ground floor, first floor and barsati portion to prove that the notice was given to them due to default on the part of petitioners. Further, the respondents were not able to prove the nature of building and violation, if any, or change of user, if any, in the demised premises by examining any witness from the Estate Office. The respondents filed appeal before Appellate Authority, Chandigarh, which was allowed on 24.11.2015 and the petitioners were ordered to be evicted from the demised premises. Hence, the present revision petition.

***SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES***

11) Learned counsel for the petitioner contends as under:-

(a) That Rent Note does not specify any purpose

(b) That as per his own examination, respondents stated that since inception Board of 'Zeenat Tailors' is there.

(c) That structure is same and residential portion is not used.

(d) Further respondents admitted that there is tailoring workshop but no retial.

(e) That neither there is anything on record nor any witness was examined to show that there is change of user since respondents themselves admitted that since inception workshop is there. There is no *bona fide* ground of eviction of the petitioner and only ground is change of user.

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12) She, therefore, prays that the present revision petition be allowed and order dated 24.11.2015 passed by learned Appellate Authority, Chandigarh be set aside.

13) To give force to her contentions, learned counsel for the petitioner relies upon the following judgments:-

***(1) Shabir Ahmad vs. Sham Lal, 2002 (1) RCR (Rent) 306***

***(2) Rakesh Vij vs. Dr. Raminder Pal Singh Sethi and ors, 2005 (2) RCJ 70.***

14) Per contra, learned counsel for the respondents contends that learned Appellate Authority, Chandigarh has passed a well reasoned detailed order dated 24.11.2015. He therefore prays that the present revision petition be dismissed.

15) To give force to his contentions, he relies upon following judgments:-

***(1) Nand Kishore vs. Yashpal Singh, 2009 (16) SCC 634***

***(2) Nasib Kaur vs. Amarjit Kaur, 2015 AIR CC 2959***

***(3) Smt. Sarabjit Kaur vs. Air Marshal (Retd.) K. D Singh, passed in C.R. N o. 7276-2012, decided on 13.12.2012.***

16) I have heard learned counsel for the parties and have gone through the file of this case with their able assistance.

17) So far as question referred to by this Court, vide order dated 03.06.2020 is concerned, the Division Bench of this Court answered the same while relying upon ***Rakesh Vij vs. Dr. Raminder Pal Singh Sethi and others, decided on 30.09.2005, in Civil Appeal No.2894 of 2001*** and

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decided that while dealing with a case of eviction of a tenant from Shop-cum-Flat (SCF), the SCF in Chandigarh is a non-residential building and ejectment of a tenant on a bonafide ground can be made both in case of residential building as well as non-residential building. Therefore, there is no dispute that ejectment of tenant on benfide ground can be made both in case of residential and non-residential building.

18) Learned Appellate Authority, Chandigarh has rightly considered the evidence on record and held that the demised premises is shop cum flat and both the parties did not take any permission from Rent controller for carrying on commercial activity in the residential portion. Further that the demised premises being residential portion and given to the petitioner for store purposes, in which he is carrying on the tailoring business and by doing so, he has violated the condition laid down in Section 11 of the Act. Section 11 clearly prohibits a landlord or a tenant to convert the purpose of tenancy without permission of the Rent Controller. As per facts and record, the petitioner was inducted by the respondents at initial stage on the backside of ground floor for commercial purpose i.e for tailoring shop. But later on in the year 2003, he provided the premises to the respondents for the same purpose i.e for store purpose. In the eviction application as well as in the evidence, it was the case of the respondents that petitioner has lateron changed the user to commercial purpose which is not permissible in residential portion of the shop cum flat as per Section 11 of the Act.

19) The respondents has shown number of show cause notices received by him, which were passed by Sub Divisional Magistrate (East)

exercising the powers of Estate Officer, U.T. Chandigarh. The copy of one of such show cause notice is reproduced as under:-

*CP-297(MISUSE)*

*25.08.2025*

*Present* *Sh. Kanishak Gupta, owner in person.*
*None for the department.*

*Heard.*

*File received back from the Misuse Branch with their comments on the reply dated 18.11.2024 filed by the tenant of SCF No. 25. Sector 19-C, Chandigarh, which is reproduced below:*

> *"As per terms and conditions of allotment letter dated 15.02.1955 and deed of conveyance executed on dated 30.06.1962 the aforesaid site (SCF No. 25, Sector 19-C. Chandigarh) can only be used for the purpose of mentioned in the allotment letter. The site in question is SCF (Shop cum flat) meaning thereby shop at ground floor and flat at upper floors. The owner may apply for conversion from SCF to SCB to SCS, but the owner/allottee has not applied for conversion and in the absence of conversion of site building he is misuing the site through tenant. The owner has not submitted his reply in response to show cause notice till today. Hence, the owner/occupier is liable to dealt with law with effect from the issuing Show Cause Notice dated 18.03.2016 till the vacation of misuse/or till the decision of the case by the authorities".*

*Therefore, the owner has seeks adjournment in the matter.*

*In view of above and in the interest of justice & facts of the case. case to come up on 03.12.2025."*

20) A bare reading of the above referred to notice shows that there is misuse of the property and the landlord should not suffer because of the misuse of the premises by the tenant.

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21) Now coming to the judgments referred to by learned counsel for the petitioners.

22) In ***Shabir Ahmad vs. Sham Lal, 2002 (1) RCR (Rent) 306,*** Hon'ble the Supreme Court has held that the landlord is not entitled to evict the tenant for residential purposes in shop-cum-flats in Chandigarh.

23) In ***Rakesh Vij vs. Dr. Raminder Pal Singh Sethi and ors, 2005 (2) RCJ 70,*** Hon'ble the Supreme Court has held that in U.T. Chandigarh, it is open to the landlord to seek eviction of the tenant from non residential building on the ground of his own use.

Both the judgments would be of no help to the petitioner in view of the facts and circumstances of this particular case.

24) So far as judgment cited by learned counsel for the respondents is concerned, in ***Nand Kishore vs. Yashpal Singh, 2009 (16) SCC 634,*** Hon'ble the Supreme Court has held that landlord can seek eviction of tenant on the ground of using residential building for commercial purpose.

25) In view of the above discussion and law laid down by Hon'ble Supreme Court as referred to above, the present petition is **dismissed**. Order dated 24.11.2015 passed by learned Appellate Authority, Chandigarh is upheld.

26) Pending miscellaneous applications, if any, are also disposed of.

**05.02.2026** **(SUDEEPTI SHARMA)**
*Gaurav Arora* **JUDGE**

*Whether speaking/reasoned : Yes/No*
*Whether reportable : Yes/No*