

**RSA-1206-1993 (O&M)**

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

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**RSA-1206-1993 (O&M)
Reserved on:-04.09.2025
Date of Decision : 10.09.2025**

Balwant Kaur and Others

....Appellants

VERSUS

Tilak Raj (deceased) through LRs and Another

....Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Harminder Singh, Advocate for the appellants.

Mr. Deepak Arora, Advocate for the respondents.

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MANDEEP PANNU,J.

1. The present Regular Second Appeal has been filed by the appellants/defendants challenging the concurrent findings recorded by both the Courts below whereby the suit of the plaintiff-Tilak Raj for refund of excess rent has been decreed. The judgment and decree dated 08.02.1990 passed by the learned trial Court, as well as the judgment dated 01.02.1993 passed by the learned Lower Appellate Court, are under challenge.

Brief Facts

2. The brief facts of the case are that the plaintiff filed a suit against the defendants for recovery of ₹7,440/- being the excess rent paid by him in respect of the premises in dispute. It was pleaded that the plaintiff was inducted as a tenant in the demised premises by late Balraj Singh, whose legal representatives are the present defendants. The plaintiff was inducted as a tenant at the rate of ₹500/- per month vide lease deed dated 02.12.1975.

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3. Balraj Singh, during his lifetime, filed an ejectment application against the plaintiff on various grounds, including non-payment of rent. In the said proceedings, Balraj Singh claimed arrears of rent at the rate of ₹2000/- per month, whereas the actual agreed rent between the parties was ₹500/- per month. In order to avoid the risk of ejectment, the plaintiff tendered arrears of rent for three months at the rate of ₹200/- per month along with interest on 05.04.1982. However, while doing so, the plaintiff reserved his right to claim refund of the excess rent received by Balraj Singh.

4. The said ejectment petition was ultimately dismissed by the Rent Controller, Kapurthala, on 14.12.1984, and it was held that the rate of rent settled between the parties was ₹500/- per month. During the pendency of the ejectment petition, Balraj Singh died and the present defendants were impleaded as his legal representatives, having inherited the property in dispute. It was further pleaded that the defendants had used the excess rent amount for their own personal use, and therefore the plaintiff was also entitled to interest thereon at the rate of 1% per month. The plaintiff also asserted that at the time of tender, he had paid ₹150/- as interest on ₹4,500/-, and therefore he was entitled to refund of that amount as well.

5. The matter was carried further in appeal by the defendants before this Court, but the same was ultimately dismissed on 14.11.1985. Despite repeated requests, the defendants failed to refund the excess amount received by them. Left with no option, the plaintiff filed the present suit seeking recovery of ₹7,440/- along with interest

6. Upon notice, the defendants appeared and filed written statement alleging that the rate of rent as per lease deed dated 03.12.1975 was ₹2,000/- per month and not ₹500/- per month as pleaded by the plaintiff. It was pleaded that the

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parties were bound by the terms of the lease deed and not by any other document. It was admitted that they had filed an ejectment application against the plaintiff and that the plaintiff had correctly tendered the rent at the rate of ₹2,000/- per month. According to the defendants, the plaintiff had unconditionally made tender in the said application and therefore could not subsequently claim refund of any amount. It was further pleaded that the dispute regarding the rate of rent was still pending and it was never finally settled that the rate of rent was ₹500/- per month. Hence, the suit was liable to be dismissed.

7. From the pleadings of the parties, the following issues were framed by the learned trial court:

1. Whether the plaintiff is entitled to recover any amount from the defendants? If so, to what extent? OPP
2. Whether the present suit is liable to be stayed as alleged in preliminary objection No. 4 of the written statement? OPD
3. Whether the plaintiff is debarred from filing the present suit by his act and conduct? OPD
4. Whether the suit is not within time? OPD
5. Whether the defendants are not liable to pay any amount to the plaintiff? OPD
6. Relief.

8. In addition, the following additional issues were also framed:

- 5A. Whether the Rent Controller had no jurisdiction to entertain or adjudicate upon the ejectment application filed by the landlord Balraj Singh against Tilak Raj? OPD



5B. Whether the judgment dated 14.12.1984 and all proceedings before the Rent Controller are without jurisdiction and void? OPD

9. The parties led their respective evidence.

Findings of the trial Court

10. Thereafter, the learned trial Court heard counsel for the parties and carefully examined the evidence on record. The plaintiff had produced copies of the judgment Ex. P5 passed by the Rent Controller in the ejectment proceedings. From this judgment, it was proved that the rate of rent of the premises was held to be ₹500/- per month, which finding was also upheld by the Appellate Court. Learned counsel for the plaintiff further relied upon 1986 (1) RCJ 42, wherein this, while deciding appeal arising out of ejectment proceedings, had held that the rate of rent of the premises in dispute was ₹500/- per month and that the rate of ₹2,000/- per month claimed by the landlord was in the nature of penal rent and therefore illegal.

11. Relying upon the aforesaid judgment and the evidence produced, the learned trial Court held that the rate of rent stood proved at ₹500/- per month, but the defendants had in fact recovered rent at the rate of ₹2,000/- per month along with interest. Therefore, the plaintiff was entitled to recover the excess amount of ₹7,440/- along with the interest paid by him at the time of tender in the ejectment proceedings.

12. As regards additional issues 5A and 5B, the learned trial Court held that there was no evidence that Balraj Singh had rented out the premises along with the machinery to the plaintiff so as to oust the jurisdiction of the Rent Controller. The rent note Ex. D1 did not support the plea of the defendants. The Court further held that if the defendants intended to raise an objection regarding the jurisdiction

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of the Rent Controller, they ought to have done so in the ejectment proceedings themselves. Since no such objection was taken, the defendants could not raise the same in the present civil suit. Accordingly, both these issues were decided against the defendants with a finding that the Rent Controller had the jurisdiction and the order dated 14.12.1984 passed by the Rent Controller holding the rate of rent as ₹500/- per month was valid and binding.

13. In the light of these findings, the suit of the plaintiff for recovery of ₹7,440/- with costs was decreed against the defendants by the learned Senior Sub Judge, Kapurthala, vide judgment and decree dated 08.02.1990.

Findings of the Lower Appellate Court

14. Feeling aggrieved by the aforesaid judgment and decree passed by the learned trial Court, the defendants preferred an appeal against the legal representatives of the plaintiff challenging the judgment and decree dated 08.02.1990.

15. The learned Lower Appellate Court, after hearing counsel for the parties and perusing the record, observed that in the present case, the rate of rent had already been held to be ₹500/- per month in the ejectment proceedings by judgment Ex.P5 passed by the Rent Controller. It was admitted that the appeal against the said judgment was dismissed by the Appellate Authority on 30.05.1985 and the revision petition filed before this Court was also dismissed on 14.11.1985. Thus, the finding that the rate of rent was ₹500/- per month had become final and binding.

16. The learned Appellate Court further referred to Ex. D1, the copy of the rent deed, wherein the rate of rent was mentioned as ₹500/- per month with a stipulation that if the tenant failed to vacate the premises after the expiry of five

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years, the rent would stand increased to ₹2,000/- per month. It was held that it is a settled principle of law that there can be no estoppel against statute and parties cannot contract themselves out of statutory provisions. Clause No. 5 of Ex. D1 was therefore void being contrary to the provisions of the East Punjab Urban Rent Restriction Act.

17. It was also noticed that in order to save himself from ejectment, the plaintiff had tendered an amount of ₹6,230/- at the rate of ₹2,000/- per month along with ₹200/- as interest, which had been received by the landlord under coercive pressure in the ejectment petition. Thus, the landlord had received excess to the tune of ₹4,500/- and further ₹150/- as interest. The learned Lower Appellate Court held that the plaintiff/tenant was entitled not only to refund of this excess amount but also to interest on such excess payment. Accordingly, the claim of ₹7,440/- filed by the plaintiff was held to be valid.

18. The objection of limitation raised before the learned Lower Appellate Court was also considered. The Court held that a suit for recovery of excess rent is to be governed by the provisions of the Indian Limitation Act. Since there is no specific Article relating to such a claim under the head of contract, the matter would fall under the residuary Article 137 of the Limitation Act, which prescribes limitation of three years from the date when the right to sue accrues. In the present case, the ejectment petition was decided by the Rent Controller on 14.12.1984, and it was only on this date that it was finally held that the rate of rent was ₹500/- per month and not ₹2,000/- per month. Therefore, limitation would start from 14.12.1984. The present suit having been filed on 19.05.1987 was held to be well within limitation.

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19. In view of these findings, the learned Lower Appellate Court affirmed the judgment and decree of the learned trial Court and dismissed the appeal of the defendants by judgment and decree dated 01.02.1993.

20. Feeling aggrieved by the concurrent findings recorded by both the courts below, the defendants have preferred the present Regular Second Appeal.

21. Notice of the appeal was issued on 26.07.1993. Initially respondents contested the appeal, but later on no one appeared on behalf of the respondents to contest the appeal.

Findings of this Court

22. I have carefully considered the submissions of learned counsel for the appellants and examined the record. The pivotal issue in the present case is whether the suit filed by the plaintiff for recovery of excess rent is within limitation.

23. The reliance placed by the appellants on the judgment of Hon'ble Supreme Court in the case of *Jamnadas Harkchand v. Narayanlal Bansilal*, AIR 1970 RCR (Rent) 244, is well supported. The Hon'ble Supreme Court, while interpreting Section 20 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, categorically held that if a tenant has paid excess rent, the same may be recovered either by way of deduction from rent subsequently payable or by filing a suit, but in either case such recovery must be made within six months from the date of payment. If the tenant fails to act within this period, the right of recovery is barred by limitation. The Court observed that the right to sue and the right to deduct are co-extensive, and both are extinguished once the period of six months expires.



24. This legal position was reiterated by a Division Bench of this Court in Bhim Sain v. Laxmi Narain, AIR 1982 P&H 155. In para 9 of the judgment, the Court observed as under:

“9. It is undisputed that the excess rent paid by the tenant is recoverable by him under Section 7 of the Act and that an action by way of suit is also not barred. The remedies can be availed of within a period of six months of such excess payments as provided in Section 7. The twin question is whether the tenant should file a separate suit to claim refund of the excess payments or can he claim an issue in the eviction petition itself since an event occurring therein gave him the cause of action.”

25. Thus, both the Hon’ble Supreme Court and this Court have held that a claim for refund of excess rent is specifically governed by Section 7 of the East Punjab Urban Rent Restriction Act and must be filed within six months of the date of such excess payment.

26. Applying the above principles to the facts of the present case, it is not disputed that the plaintiff tendered arrears of rent on 05.04.1982 at the rate of ₹2,000/- per month along with interest, in order to avoid ejectment. If the plaintiff intended to seek refund of the excess so paid, his cause of action arose on 05.04.1982 itself. The limitation for filing such a claim under Section 7 would therefore expire on 05.10.1982. The subsequent dismissal of the ejectment petition by the Rent Controller on 14.12.1984, dismissal of the appeal on 30.05.1985, and dismissal of the revision petition by this Court on 14.11.1985, do not extend the period of limitation. The starting point of limitation is the date of payment of excess rent and not the date of final adjudication of the ejectment proceedings.

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27. Even if, for the sake of argument, it is assumed that the limitation period of three years under Article 137 of the Limitation Act applies, the starting point would still be 05.04.1982, the date on which the excess rent was tendered. Counting three years from that date, the limitation would expire on 05.04.1985. The present suit having been instituted only on 19.05.1987 is, therefore, hopelessly time-barred. The plaintiff cannot claim that limitation begins from the date of final adjudication of the ejectment petition, since the cause of action for recovery of excess rent arises on the date of actual payment and not on subsequent judicial determination of the agreed rent.

28. The present suit was thus filed far beyond the period of limitation, whether reckoned under the special statute (six months under Section 7) or even under the residuary provision (three years under Article 137). The findings of the courts below, treating the claim as within limitation, are contrary to law and unsustainable and are thus liable to be set aside.

Conclusion

29. In view of the discussion made herein-above, the impugned judgments and decrees dated 08.02.1990 and 01.02.1993, passed by the learned trial Court and learned Lower Appellate Court, respectively, are hereby set aside. The present Regular Second Appeal is allowed.

30. Pending application(s), if any, also stands disposed of.

September 10, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No.