

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.1579 of 2012 (O&M)

Date of decision:09.02.2015

Surjit Kaur

....Petitioner

Versus

Gurwinder Singh

.....Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Randeep Singh, Advocate, for
Mr.Vipin Mahajan, Advocate, for the petitioner.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition, filed by the landlord, is to the order dated 12.11.2011, passed by the Appellate Authority, Gurdaspur, vide which the appeal of the tenant was allowed and the eviction order, passed by the Rent Controller dated 07.12.2009 was set aside.

A perusal of the paperbook would go on to show that ejectment was sought from the shop in question on various grounds including non-payment of rent by placing reliance upon the enhancement clause after interval of 2 years, as per the rent note dated 28.09.1993, wherein, the initial rent had been fixed at ₹500/- per month. It was pleaded that the rent had not been paid since June, 2000 apart from the fact that the shop was damaged and in a dilapidated condition and unfit and unsafe for human habitation. It was further pleaded that the shop was required for the personal necessity of his son Sunil Kumar. In the defence taken by the tenant, the enhancement clause was denied and it was submitted that the rent was being paid regularly and the respondent had also filed a Civil Suit for the relief of temporary injunction. In spite of the injunction order, the roof of the shop had been demolished and even contempt proceedings had been initiated.

counter-claim was also filed for the recovery of the rent paid in excess.

The Rent Controller noticed that though the enhancement clause had been added but held that it was as per the consent of the parties and the rent had not been tendered as per the enhancement clause and decided the issue No.1 on the ground of non-payment of rent, in favour of the petitioner. The issues regarding the shop being in a unsafe and unfit condition and the *bona fide* requirement of the son of the petitioner was decided against the petitioner on the ground that no building expert had been examined and on the ground that a separate petition had been filed. The petition was held to be partly maintainable and the counter-claim of the tenant was declined while ordering ejectment.

The Appellate Authority has, after examining the rent note in detail, noticed that the enhancement clause, as per condition no.9 is hand-written while the entire rent note is a typed one. The landlord herself admitted that the said condition was added lateron and her initials were not there. Accordingly, it was held that there was material addition in the rent note and there was no explanation and neither the date of the additional clause had been mentioned and nothing could be shown that the same was inserted on the day when the rent note was executed. Accordingly, it was held that since the rent for the period form June, 2000 to October, 2005, @ ₹500/- per month, had been paid, therefore, the rent tendered was not short.

Thus, a finding of fact has been recorded regarding the enhancement clause on the basis of which, eviction has been ordered. Even if this Court accepts the fact that the enhancement clause was there, eviction could not have been ordered without giving a chance to the tenant to deposit the said amount, in view of the Apex Court judgment in **Rakesh Wadhawan & others Vs. M/s Jagadamba Industrial Corporation & others AIR 2002 (SC) 2004.** Thus, the

reasoning which has been given by the Appellate Authority, on the other hand, is well justified. The petitioner-landlord has failed to explain the addition of the condition in the rent note and as to what point of time, the condition was added and whether it was with the consent of the tenant. In such circumstances, the claim of enhanced rent was not justified.

Accordingly, finding no merit in the present revision petition, the same is hereby dismissed.

09.02.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE