IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-2384-2012

Date of decision: 15.1.2015

Baldev Singh

..... Petitioner

Versus

Manjit Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Naresh Prabhakar, Advocate for the petitioner.

Mr. Gurcharan Singh, Advocate for respondents No. 1 to 3.

<u>R.P. NAGRATH, J.</u>

The petitioner has filed the instant revision under Section 15 (5) of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') against the order dated 26.3.2012 passed by the learned Rent Controller, Sultanpur Lodhi, District Kapurthala, assessing the provisional rent to be tendered by the petitioner-tenant. The Rent Controller, adjourned the matter for 24.4.2012 for enabling the tenant to tender the provisional arrears etc. While issuing notice of motion on 23.4.2012, this Court had stayed the operation of impugned order.

2. A Division Bench of this Court in ***CR-2268-2008, (Tirlok Singh Anand Vs. M/s Prem Chand and Sons and others,*** decided on 29.5.2012, has held that in terms of notification No. 1562-CR47/9228 dated 14.4.1947, orders passed by the Rent Controller under Sections 4, 10, 12 and 13 of the Act alone are appealable in both the States of Punjab and Haryana and that all other orders passed by the Rent Controller are not subject matter of appeal. The orders other than the orders which are appealable, can be disputed only by way of a revision petition before this Court.

3. The case set up by respondents No. 1 to 3-landlords is that the premises in question was rented out to the petitioner vide rent note dated 26.5.1993 with agreed rate of rent at ₹ 300/- per month and on expiry of 11 months period, the rate of rent was to be ₹ 600/- per month with future increase of 7% after every three years. It was stated that petitioner-tenant made a pitfall (khudda) in front of the shop and placed iron girders resulting in cracks to the walls and floor of the shop. It was further stated that petitioner also failed to pay the property tax. Therefore, a dispute arose between the parties which was resolved by a writing dated 15.9.2007. The petitioner agreed to pay the rent @ ₹ 3200/- per month with increase of 5% every year. In the said compromise, the petitioner-tenant was also allowed to make necessary repairs in the shop but was not have any concern with upper portion of the roof of shop in question.

4. These allegations were denied by the petitioner. It was also denied that any such agreement was reached between the parties on

15.9.2007. It was stated that the document set up by the respondent-landlords could not be looked into as it was neither on a stamp paper nor the same was a registered document. The learned Rent Controller, accepted the plea of respondent-landlords mainly on the ground that the compromise document was attested by four witnesses and assessed the provisional rent @ ₹ 3200/- per month and directed the petitioner to pay the arrears of rent for the period from 15.9.2007 to 14.9.2011, quantified at ₹ 1,65,120/- with interest @ 6% per annum which comes to ₹ 20,230/- and the costs were assessed at ₹ 500/-.

5. I have heard learned counsel for the parties and carefully perused the impugned order as well as the paper-book.

6. Leaned counsel for the petitioner vehemently contended that the Rent Controller, has failed to take into account the fact that the rent petition was filed on 29.3.2010 i.e. after the gap of about 2½ years from the alleged agreement dated 15.9.2007, meaning thereby that the petitioner- tenant had always been disputing correctness of the agreement in question as admittedly the rent was never paid after 15.9.2007, the date of execution of the said agreement. It is further contended that the learned Rent Controller, has not taken into consideration the provisions of Section 7 of the Act which says in sub-section (1) that no landlord in consideration of the grant, renewal or continuance of a tenancy of any building or rented land require the payment of any fine, premium or any other like sum in addition to the rent.

7. Learned counsel for the respondent-landlords placed reliance upon ***Smt. Hardev Kaur (deceased) through her legal representatives***

Vs. ***M/s Ghazal Restaurant, Chandigah and others,*** ***1992 (2) RCR (Rent) 660,*** which says that the periodical increase of rent is permissible. It was held as under:-

> *"Section 7 of the Act only prohibits that a landlord cannot claim fine, premium or any other like sum in consideration of grant renewal or continuance of tenancy. There is no bar for the landlord to ask for a periodical increase of rent. The Act does not forbid the parties from entering into a bilateral agreement for periodical increase of rent except when Section 6 of the Act is attracted. In the instant case, on the proved facts, it was permissible for the parties to provide for periodical increase in rent by agreement. The agreement providing for such increase is legal valid and enforce- able. Lessee is obliged to pay revised rate of rent by allowing increase in rent by 10% as is stipulated in covenant No. (3) of the lease deed dated November 3, 1960, Exhibit A-1. The lessee complied with the covenant when it tendered rent at the revised rate in the eviction proceedings as is evidenced by Exhibits R.13, R.14 and R.16. Thus, it is not open to the lessees to say that they were not bound by the terms of the lease deed and that revision of rent is not permissible."*

8. There is no quarrel with the proposition that annual increase

may be permissible but the factum whether such a huge jump from ₹ 300/- or ₹ 600/- per month to ₹ 3200/- per month can be *prima facie* acceptable, has not been discussed by the learned Rent Controller and to see whether such an increase would be in the nature as prohibited under Section 7 of the Act. The other contention of leaned counsel for the petitioner is that the Rent controller has also not considered the fact that the alleged agreement dated 15.9.2007 does not even purport to bear the signatures of respondent No. 3, one of the co-landlord, even though his name has been typed on the said document. The other factors that the agreement is not prepared on a stamp paper; that it was not scribed by a regular deed writer and that it is an un-registered instrument though purporting to create tenancy for more than one year have also not been appreciated. The effect of the landlords remaining silent for a period of about 2½ years after the execution of compromise, has not been considered.

9. In view of the aforesaid discussion, I find that the impugned order suffers from patent illegality and deserves to set aside. The instant petition is allowed and the impugned order dated 26.3.2012, passed by the learned Rent Controller is set aside. The matter is remitted to the Rent Controller, with a direction to hear the parties again and pass the orders afresh for making provisional assessment of rent etc.

10. The parties are directed to appear before the Rent Controller, on 13.2.2015.

January 15, 2015 **(R.P. NAGRATH)**
rishu **JUDGE**