

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

CR NO.272 OF 2015 (O&M)
DATE OF DECISION : 28th JANUARY, 2015

Zarina & another

.... Petitioners

Versus

Anju Bhalla

.... Respondent

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. G. C. Shahpuri, Advocate for the petitioners.

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SURINDER GUPTA, J. (ORAL)

1. Heard.
2. Respondent-Anju Bhalla sought ejectment of revision petitioner from demised premises on the grounds of non-payment of rent; committing actionable nuisance; impairing the value and utility of the demised premises and on account of her personal bonafide necessity.
3. It was alleged that revision petitioner no.1-Zarina is a tenant in the demised premises under the rent deed dated 02.08.2005 @ ₹1500/- per month.
4. Revision petitioner no.1 denied the relationship of landlord and tenant with respondent and also denied the execution of agreement dated 02.08.2005. She pleaded that her husband revision petitioner no.2 is tenant in demised premises.
5. Revision petitioner no.2 who was impleaded as party on his application claimed himself to be tenant in the demised premises @ ₹200/- per month. He denied all the pleas taken by respondent-landlord,

seeking ejectment of the revision petitioner no.1 and that revision petitioner no.1 was her tenant.

6. Learned Rent Controller upheld agreement dated 02.08.2005 and recorded the finding that there is relationship of landlord and tenant between revision petitioner no.1 and respondent-landlord. The plea of respondent-landlord that she requires demised premises for her personal bonafide necessity, was also allowed.

7. Not satisfied, revision petitioners filed an appeal before the appellate authority which was also dismissed vide judgment dated 30.10.2014. Regarding tenancy of revision petitioner no.1 and rate of rent, appellate Authority recorded finding in para 14 of its judgment, which reads as follows:

“It is also evasively argued by learned counsel for the appellant-tenant that the agreed rate of Rent was Rs.200/- per month against the demised premises. However, the said plea has not been substantiated by him by pointing out any convincing and reliable evidence. Mere bald statement of the appellants without any corroboration is not worthy of credence and is liable to be rejected out rightly. Further, it is settled law that a party cannot be allowed to lead oral evidence to controvert the documentary evidence on record (Ex.A2) subject to exceptions. The exceptions as laid down in the Evidence Act is not at all attracted. There is no material or convincing evidence on record

to disbelieve that the rate of rent as agreed between the parties in terms Ex.A2 was Rs.1500/- per month. Even otherwise this Authority is of the opinion that when a tenant is enjoying the fruits of the property for a long time without paying the rent/mesne profits cannot be allowed to retain the property in question especially when it is shown that need of the landlady-respondent is bonafide.”

8. The learned counsel for the revision petitioner argues that there is concealment of fact by respondent-landlord as she has not disclosed about her occupation of another property where she is presently living with her mother-in-law. He argues that this has been observed by learned Rent Controller that respondent-landlord is living in house of her mother-in-law, but non-disclosure of this fact in the ejectment petition is a concealment of material fact.

9. Section 13(3)(a)(i) of the Haryana Urban (Control of Rent & Eviction) Act, 1973, requires the landlord to plead that he/she is not occupying another residential building in urban area concerned and has not vacated such building without sufficient cause, after the commencement of the 1949 Act in the said urban area. If the landlord is residing in house owned by her mother-in-law, she was not required to disclose this fact. Even otherwise, it was not the premises in her occupation, as such, there is no violation of the aforesaid provision.

10. The above argument advanced by learned counsel for the revision petitioner has no merit and is discarded.

11. The second argument advanced by learned counsel for the revision petitioner that it was the husband of revision petitioner no.1, who was tenant in the demised premises @ ₹200 per month and rent agreement dated 02.08.2005 was a forged and fabricated document and could not be relied upon by the Authorities under the Rent Act to hold the tenancy of respondent no.1 in the demised premises is also without merit. Rent agreement dated 02.08.2005 was produced in Court and filed as Ex.A2, which bears thumb impressions of revision petitioner no.1. In para 13 of judgment the Appellate Authority has discussed the evidence and held this document as duly proved. The revision petitioners did not produce any evidence to prove that agreement Ex. A2 do not bear her thumb impressions or that it is a result of fraud. In the absence of any such evidence, the Appellate Authority and Rent Controller have rightly relied upon the agreement, to hold the tenancy of respondent no.1 over the suit property and also the rate of rent as ₹1500/- per month.

12. Leaned counsel for the revision petitioner further argues that the Appellate Authority has committed grave error of law while assessing the mesne profits @ ₹1500/- per month and giving the direction to revision petitioner no.1 to pay the same from the date of ejectment till handing over the possession of the demised premises to respondent-landlord. He argues that application for assessing mesne profits was filed, which was withdrawn and again another application was filed which was kept pending without notice to the revision petitioner, as such, the Appellate Authority was not competent to assess mesne profits and issue directions to revision petitioner no.1 to pay the mesne profits @ ₹1500/- per month.

13. On giving a careful thought to submission of learned counsel for the revision petitioner, I find that Appellate Authority has not assessed any mesne profits in this case. It has only issued directions to revision petitioner no.1 to pay the agreed rent as per the rent agreement dated 02.08.2005. Only the nomenclature 'mesne profits' has been used in place of "rent", due to the reason that after tenancy of revision petitioner no.1 has come to an end, the landlord-respondent could claim mesne profits and not the rent. Revision petitioner no.1 has been directed to pay only the Rent as settled in between the parties, as such, there is no assessment of any mesne profits and this argument of learned counsel for revision petitioner is discarded.

14. It has further been argued that during pendency of this case the revision petitioner no.1 has deposited some amount towards arrear of rent @ ₹200/- per month. The amount, if any, so deposited by petitioner no.1 shall be adjusted in the amount ordered to be paid by the Appellate Authority.

15. On perusal of the paper book and judgment of Authorities under the Act, I find no legal or factual infirmity therein calling for any interference. This revision petition has no merits and is dismissed.

28th January, 2015
'raj'

(SURINDER GUPTA)
JUDGE