IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 2636 of 2014 (O&M)
Date of Decision : 12.05.2015

S.C. Bhandari ....Petitioner

Versus

Suresh Kumar ...Respondent

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. V.K. Jindal, Senior Advocate with
Mr. Akshay Jindal, Advocate
for the petitioner.

Mr. Hemant Bassi, Advocate
for the respondent.

R.P. Nagrath, J.

The instant revision is filed by the tenant to challenge the concurrent findings of the courts below whereby he has been ordered to be evicted from the premises comprising of a portion of House/Annexe No. 66, Ambala Cantt, comprising of two rooms, one bath room and a kitchen.

2. According to the respondent-landlord, the premises was rented out to the petitioner @ ₹ 2500/- per month w.e.f. 01.04.2003 with a stipulation to increase the rent by 10% every year. When the eviction petition was filed the rent of premises so calculated was stated to be ₹ 4868/- per month. The eviction of the petitioner was sought on the ground that the petitioner was in arrears of rent. The

petitioner had been making payment of rent @ ₹ 3000/- per month but failed to pay the increased rent as agreed. There was, thus, an amount of ₹ 32,809/- outstanding against the petitioner-tenant towards arrears for the period from 01.04.2009 to 31.10.2010. The arrears of rent upto 31.03.2009 were paid in the previous eviction application and the present case was filed without prejudice to the rights of respondent-landlord in the pending eviction case.

3. The petitioner filed the written statement denying any agreement of increase in the rent by 10% every year. It was also denied that the rent was ₹ 4868/- per month for the period in question. It was admitted that the respondent-landlord increased the rent from ₹ 2500/- to ₹ 2750/- with effect from 01.04.2004 and further to ₹ 3000/- per month from 01.04.2005 by misrepresentation. But now the petitioner was paying ₹ 3000/- per month regularly. It was further stated that the petitioner had filed an application for fixation of the fair rent before learned Rent Controller which was allowed and an amount of ₹ 2610/- per month was fixed vide order dated 28.05.2009. However, that order of the Rent Controller was set aside in appeal decided on 14.05.2010.

4. The respondent also filed the rejoinder. Learned Rent Controller framed the following issues from above pleadings of the parties:-

(i) Whether the petitioner is entitled to ejectment of the respondent on the grounds as alleged in the petition? OPP

(ii) Whether the petition is not maintainable? OPR

(iii) Relief.

5. Only the parties appeared in support of their respective cases and ultimately learned Rent Controller held that there was an agreement for yearly increase of the rent @ 10% and directed the petitioner to pay difference of rent for the aforesaid period w.e.f. 01.4.2009 to 31.10.2010 with interest @ 6% per annum, within a period of two months from the date of the order failing which he was directed to hand over vacant possession of the premises. This order was affirmed in appeal.

6. I have heard learned counsel for the parties, perused judgments of both the courts below and the records of the Rent Controller and the Appellate Authority.

7. The first point of determination would be the agreed rate of rent between the parties. The petitioner filed a Rent Case No. 201 dated 03.8.2006/03.09.2008 for fixation of the fair rent. The determination of learned Rent Controller was set aside in appeal vide judgment dated 14.05.2010 admittedly wherein it was found that the basic rent should have been taken to ₹ 3000/- per month w.e.f. April 2005 and the application for fixation of the fair rent was not maintainable for a period of five years therefrom. That judgment of the Appellate Authority was not appealed against and has attained finality. It is an admitted fact that the rent originally fixed was ₹ 2500/- per month. It is also admitted that the petitioner started paying rent @ ₹ 2750/- per month after expiry of one year therefrom.

Exactly one year thereafter the petitioner started paying the increased rent of ₹ 3000/- per month. So even if there was no written agreement of the yearly increase it could be safely inferred and deduced that there was an agreement of yearly increase of 10% per annum and this term of settlement is permissible in the eyes of law. Reliance for supporting this view can be placed upon a judgment of Division Bench of this Court in ***Smt. Hardev Kaur and others vs. Ghazal Restaurant and others, (1993) ILR 2 Punjab and Haryana 429.***

8. Learned Appellate Authority while dismissing appeal against the eviction order has observed as under:-

> *"....................No doubt, as per Section 5(1) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, when the fair rent of a building or rented land has been fixed under Section 4, no further increase or decrease in such fair rent shall be permissible for a period of five year, but, in the case in hand, petition to determine the fair rent filed by the tenant was dismissed by the then Appellate Authority, Ambala, vide judgment dated 14.5.2010 passed in Rent appeal no. 56 of 2009 titled as "Suresh Kumar Versus S.C.Bhandari". Thus, when no fair rent has been fixed as per Section 4 of the Act, there is no bar on the landlord to increase the rent periodically by agreement. Though, there is no agreement between the parties in writing; nonetheless, it is clear from the*

perusal of testimony of S.C.Bhandari, RW1, wherein, he has admitted that after obtaining the premises in dispute on rent at the rate of Rs.2500/- per month on 1.4.2003, the rent was increased by 10% after one year to Rs.2750/- per month and thereafter, it was increased to Rs.3000/- per month. He has further deposed that, the landlord had told him to increase rent of the premises in dispute every year by 10% meaning thereby, by no stretch of imagination, it can be held that parties had not agreed to increase rent of the premises in question by 10% after the expiry of each year. It is further clear from the para no.4 of the affidavit as Ex.RW1/A of S.C. Bhandari, the tenant that he had been paying rent only at the rate of Rs.3000/- per month; thus, admittedly, he has not paid the difference of rent, as claimed in the petition. Learned counsel for the respondent in support of his case has also relied upon ***Ajay Kashyap Versus Smt. Mohini Nijhawan 2009(1) PLR 668(P&H)****;* ***Smt. Hardev Kaur and others Versus M/s Ghazal Restaurant, Chandigarh and others 1992(2) PLR 712(P&H)*** *and* ***Smt. Har Kaur Versus Shri Balaki Ram 1987 HRR 651 (P&H).*** *Accordingly, keeping in view the discussion made above, I find no illegality or irregularity in the impugned judgment warranting any interference by the Appellate Authority. Hence, I agree with the findings of learned*

Rent Controller."

9. The aforesaid determination of the dispute is based on the proper appreciation of evidence and cannot be interfered with in exercise of revisional jurisdiction. Reliance can be placed upon the principle laid down by the Hon'ble Supreme Court in ***Hindustan Petroleum Corporation Ltd.*** ***vs.*** ***Dilbahar Singh*, 2014 (9) SCC 78**.

10. On acceptance of the above finding, the rate of rent as claimed in the petition was rightly held to be ₹ 4868/- per month w.e.f. 01.04.2009 but the difference in the rent has not been tendered. Learned senior counsel for the petitioner vehemently contended that the appeal against the eviction order was filed on 06.06.2012. When the matter was listed on 13.06.2012, the Appellate Authority stayed the operation of eviction order subject to the petitioner furnishing security of ₹ 35,000/- on or before 31.07.2012. Learned Appellate Authority took up the file on 25.07.2012 observing that the petitioner has furnished the security in the shape of FDR bearing account no. 32429248417 dated 16.07.2012 with State Bank of India, Ambala Cantt. That FDR was placed on record. It was directed that the petitioner would not withdraw the FDR during pendency of the appeal. It is, thus, submitted that furnishing of the FDR, which is still lying with the Appellate Authority, there is the compliance of requirement of the law about the tender of arrears of rent as determined by learned Rent Controller.

11. On the other hand, learned counsel for the respondent

submitted that the petitioner despite the adverse finding by learned Rent Controller did not pay the amount of arrears of rent within a period of two months as directed by learned Rent Controller. He has taken the calculated risk of not depositing the arrears, though he furnished the security in the shape of FDR.

12. The perusal of record of learned Rent Controller reveals that rent petition was instituted on 21.12.2010 for which notice was issued to the petitioner-tenant for 23.02.2011. Appearance was made on that date on behalf of the petitioner and the matter was adjourned for 07.03.2011 for assessment and tender of the rent amount. On 07.03.2011, a statement was made by the petitioner that there was no stipulation of annual increase in the rent and he has paid the rent continuously @ ₹ 3000/- per month and therefore, he was not to make tender of rent.

13. In ***Raunki Ram* vs. *Sham Lal Jain* 2014 (1) RCR (Rent) 417,** there was a specific defence by the tenant that he was not in arrears of rent and has paid the rent till date. This Court made the following observations in that case:-

> "*16. At this stage, it may be noticed that there was no occasion for the Rent Controller to assess the provisional rent as the petitioner has taken a specific defence that he has paid the entire amount of rent as claimed and in these circumstances, when his plea of payment of entire rent was found to be false, the Rent Controller was not under*

obligation to grant him an opportunity to make up the deficiency of the arrears of rent. The law laid down in this regard by the Hon'ble Supreme Court in ***Rakesh Wadhawan v. M/s Jagdamba Industrial Corporation 2002 (1) RCR (Rent) 514****, will not be of any help to the petitioner as in* ***Mohd. Giaz v. Mohd. Gulzar and another 2012 (2) HLR 23****, it was held that in a case where tenant denies his liability of arrears of rent and fails to support his plea, he cannot be given the benefit of making up of deficiency of the arrears of rent and at the time of passing of the final order, in terms of the* ***Rakesh Wadhawan's case (supra)*** *and on the same lines, there is another judgment reported as* ***Ameek Singh v. D.N. Gaur, Chief Engineer, Nuclear Power Corporation of India Limited 2010 (Suppl.) CCC 456****. In that case, the plea taken by the tenant that he had already paid the rent was found to be false and the eviction order was passed. The eviction order was challenged on the ground that no opportunity was given to the tenant, this Court held that such a plea was not tenable. Thus, where the tenant has taken a plea that he has already paid the arrears of rent, then ratio of law decided in* ***Rakesh Wadhawan's case***

(supra) *will not apply in such a case eviction order shall follow.*

17. At this stage, it may further be noticed that deposit of arrears of rent during the pendency of the appeal before the Appellate Authority will not give any benefit to the petitioner as once a default is committed in making the arrears of rent, eviction order has to follow and it cannot be said that the respondent-landlord has waived the default committed by the tenant. Simply because the landlord has not initiated eviction proceedings for a period of six years itself is not sufficient to hold that the petitioner has paid the rent. Payment of rent has to be proved by the tenant and no such presumption can be raised on account of delay in filing the ejectment petition."

14. However, in the instant case learned Rent Controller passed a conditional order of ejectment affording the petitioner to clear the arrears within two months. Principles no. 5 and 6 laid down by Hon'ble Supreme Court in ***Rakesh Wadhawan* vs. *M/s Jagdamba Industrial Corporation*, 2002 (5) SCC 440** are reproduced as under:-

"5. If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two

orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If, on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount, failing which alone he shall be liable to be evicted. Compliance shall save him from eviction.

6. While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings."

15. The star argument of learned senior counsel for the petitioner was that since operation of the order of Rent Controller was stayed by Appellate Authority, the petitioner was not bound to deposit the amount of rent as he furnished the security as directed by Appellate Authority. I am of the view that the stay of the operation of eviction order could be considered at best the stay of execution

of order of learned Rent Controller which continued subject to furnishing of the security but once it was held that rate of rent as determined by learned Rent Controller was the agreed rate of rent and the amount having not been deposited within the period allowed, the eviction order was to follow.

16. Learned senior counsel relied upon the judgment of Hon'ble Supreme Court in ***Jang Singh* vs. *Brij lal and another,* 1966 AIR (SC) 1631** to contend that it could be at best a case of mistake on the part of the appellate court and that no act of court should harm a litigant based on the principle "Actus curiae neminem gravabit". That was a case based on its peculiar facts as the pre-emption decree passed on a compromise directed the appellant to deposit an amount of ₹ 5951/- less ₹ 1000/- already deposited by him on 01.05.1958. The decree also ordered that on his failing to make the deposit punctually his suit would stand dismissed with costs. The application was timely made by the appellant for deposit of the amount but clerk of the court who prepared the challan in duplicate handed over the application to the appellant for deposit of ₹ 4950/- instead of ₹ 4951/-. It was under those circumstances, the said principle was held but that cannot apply to the facts of present case. The petitioner never made application to learned Rent Controller praying to pay the amount in terms of order of learned Rent Controller so that there can be any contention of wrong calculation while depositing the amount. The petitioner is only relying upon the stay order granted by the Appellate Authority.

17. It is further pertinent to note that learned Rent Controller vide order dated 03.05.2012 directed the petitioner-tenant to pay the difference of the rent for the aforesaid period alongwith interest within a period of two months from the **date of the order**, failing which, he was directed to hand over the vacant possession of the premises (Emphasis laid).

18. If the period of two months is to be counted from 03.05.2012, that would have expired on 02.07.2012 but perusal of the record of learned Appellate Authority would show that the security was furnished on 25.07.2012 to the tune of ₹ 35,000/- by way of FDR much after the expiry of two months. Anyhow this FDR was not meant to be delivered to the respondent-landlord nor it was statedly in the name of respondent-landlord so that he could encash the same. Even in the reply dated 23.12.2014 to the application for vacation of stay, the respondent has reiterated that he has tendered the rent till date @ ₹ 3000/- per month. Though, with regard to arrears he is insisting upon the compliance of the order of furnishing the security by way of FDR to the tune of ₹ 35,000/-, which has in fact not been encashed.

19. In view of the aforesaid facts I find that the petitioner having not complied with the condition of paying the arrears within two months of the date of order passed by learned Rent Controller the eviction was supposed to follow.

20. In view of the aforesaid discussion, I find that the courts below were quite correct in holding the rate of rent @ ₹ 4868/- per

month by calculating it with yearly increase @ 10%. The petitioner-tenant having not complied with the conditional order by paying the arrears of rent within two months to the respondent-landlord, the instant revision would be without merit, and the same is, thus, dismissed.

The petitioner is granted one month time to vacate the premises.

May 12, 2015 **(R.P. NAGRATH)**
jk **JUDGE**