IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 513 of 2004 (O&M)
Date of Decision : 21.01.2015

Vikram Singh ....Petitioner

Versus

Manohar Lal ....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. Sandeep Chhabra, Advocate
for the petitioner.

None for the respondent.

R.P. Nagrath, J.

Petitioner is the landlord of demised premises comprising of a shop situate at Delhi-Mathura road in district Faridabad. The respondent filed an application under Section 4 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short 'the Act'), for fixation of fair rent. The learned Rent Controller allowed the application of the respondent determining the fair rent @ ₹ 706/- per month to take effect from the date of filing the application under Section 4 of the Act which was affirmed by the Appellate Authority. The application before the Rent Controller was instituted on 19.03.1998 and decided on 22.5.2001. The instant revision has been filed under Section 15 (6) of the Act to challenge the concurrent findings of the Courts below. There is no representation from the respondent despite service.

2. The respondent-tenant pleaded that premises in question was rented out to him by the petitioner in the month of October, 1988 @ ₹ 550/- per month. It was stated that the landlord increased the rent arbitrarily and illegally and respondent was presently paying the rent @ ₹ 1421/- per month for saving his eviction. The rent prevailing in the locality in respect of similar building was not more than ₹ 700/- per month. It was contended that the landlord was not entitled to the increase of more than 25% of the basic rent under the law. Therefore, it was prayed that the fair rent may be fixed @ ₹ 800/- per month or at the rate of any other such rent which may be deemed fit and appropriate.

3. Version of the petitioner in his written statement was that a rent agreement was executed between the parties, in terms whereof the rent was to be increased. Learned Rent Controller framed the following issues:-

(i) What is the basic rent of the premises in dispute? OPA

(ii) If issue no. 1 is proved, what is the fair rent of the shop in dispute? OPA

(iii) Whether this petition is not maintainable in the present form? OPR

(iv) Whether the petitioner has no cause of action to file the present suit (petition)? OPR

(v) Whether this petition has not properly valued for the purpose of court fee and jurisdiction? OPR

(vi) Relief.

4. I have heard learned counsel for the petitioner, carefully perused the orders passed by the authorities below and the records.

5. Learned counsel for the petitioner at the outset submitted that probably the shop in question which fell on the national highway has come under the acquisition but I am of the view that since there is no definite information, the instant revision must be disposed of on merits.

6. The basic controversy raised by the petitioner was the method of choosing the basic rent. It was admitted proposition of fact that the construction of the building in question was completed after 31st of December, 1961 and therefore, clause (b) of sub-section (2) of Section 4 of the Act would be attracted. It reads as under:-

> "in respect of the building the construction whereof is completed after the 31st day of December, 1961 or land let out after the said date, the rent agreed upon between the landlord and the tenant preceding the date of the application, or where no rent has been agreed upon, the basic rent shall be determined on the basis of the rent prevailing in the locality for similar building or rented land at the date of application."

7. The contention of the petitioner was that since the

respondent had been paying the rent @ ₹ 1421/- per month immediately before filing of the application, by increasing original rent by 10% every year, the same should have been accepted as the basic rent. The above contention is based on the principle laid down by this Court in ***Smt. Hardev Kaur and others*** ***vs.*** ***Ghazal Restaurant and others*****, (1993) ILR 2 Punjab and Haryana 429.** It was held by the Division Bench of this Court as under:-

> *"18. 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 enforceable. Lessee is obliged to pay revised rate of rent by allowing increase in rent by 10 per cent as it stipulated in covenant No. (3) of the lease deed dated November 3, 1980, Exhibit A-1. The lessee complied with the covenant when it tendered rent at the rate in the*

> *eviction proceedings as is evidenced by Exhibits Rule 13, Rule 14 and Rule 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. It was further held that if fair rent had not been fixed, there would not be no bar in law for the parties by agreement to provide for revision of rent.

9. The main thrust of argument for the respondent was that the agreement in question has not been duly proved. The petitioner relied upon the rent agreement, Ex. R-1, dated 04.11.1988. There are two features which would make the said document as suspicious. In the first sentence the date of execution of the document was typed as 01.10.1988 and by making cutting on the said date, that 04.11.1988 was typed above the original date. In terms of clause 2 (1) of the rent note Ex. R-1, it is again stipulated that the tenancy would commence from 10.01.1998 and again mentioned as 10.10.1998 and that it would be valid for 11 months. The above term is self contradictory. Clause 2 (9) of the agreement stipulates that if the tenant continues to occupy the premises on expiry of 11 months, the rent would be increased by 10% after every 11 months.

10. The respondent-tenant as PW-2 stated that the rate of rent was ₹ 550/- per month only. His stand in the cross-examination was categorical that no rent note was executed by

him. Interestingly the alleged rent agreement was not specifically put to PW-2 in his cross-examination.

11. Learned Rent Controller observed as under:-

> *".........However, in the reply a categorical plea was taken to the effect that an agreement of rent was executed between the parties at the time of creation of tenancy and that the rent was being increased as per the terms and conditions of the said agreement. It is interesting to note that the date of execution of the agreement was not mentioned in the reply. When the petitioner stepped into the witness-box, he came up with a categorical denial to the effect that any writing was executed between him and the respondent at the time when the shop was taken on rent. Despite this the petitioner was not confronted with the agreement Ex. R-1. No efforts were made by the respondent to get the signatures of the petitioner purported to have been affixed by him on the agreement, Ex. R-1, compared with his specimen/admitted signatures. Hence the statement of the respondent and that of RW Tek Chand have to be taken with a pinch of salt. Although, both the witnesses have categorically stated that the agreement, Ex. R-1, was executed between the parties after the settlement of terms and conditions of tenancy, none of them has, for the reasons known*

best to them, mentioned the date on which the agreement was executed."

12. It was also observed by the Rent Controller that perusal of Ex. R-1 would make it a doubtful document. It shows that the stamp paper on which the agreement was drafted purport to have been purchased by the respondent-tenant but his signatures have not been appended thereon. The aforesaid finding of fact has also been endorsed by the Appellate Authority by referring to the evidence adduced by the parties. This finding of fact cannot be possibly interfered with in exercise of revisional jurisdiction unless the same is shown to be perverse or in ignorance or misreading of evidence. In support of this view reliance can be placed upon judgment of five Judges Bench of Hon'ble Supreme Court in ***Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh, (2014) 9 SCC 78.***

13. If that be the position, learned Courts below have not committed any error in taking basic rent @ ₹ 550/- per month. Learned counsel for the petitioner would agree that if the basic rent is treated as ₹ 550/- per month, determination of the fair rent by the learned Rent Controller and affirmed by the Appellate Authority is exactly in terms of the principle laid down by Division Bench of this Court in ***Yoginder Mohan vs. Krishan Lal, 1999 (2) RCR (Rent) 466***.

14. The respondent-tenant made a categorical statement as AW-2 that he deposited the rent @ ₹ 1421/- per month in the

eviction petition to save his ejectment. No question was put to the respondent since how long he has been paying the increased rent than originally settled @ ₹ 550/- per month. There is no documentary proof of the payment of the increased rent by the respondent other than in the eviction cases filed against him. The tenancy was created in the year 1988. I, therefore, find no ground at all for interfering in the concurrent findings of fact reached by the Courts below and the instant petition is dismissed.

January 21, 2015 **(R.P. NAGRATH)**
jk **JUDGE**