

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5856 of 2014 (O&M)
Date of Decision: 12.01.2015

Sham Lal

...Petitioner

Versus

Satish 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. Anil Chawla, Advocate
for the petitioner.

R.P. Nagrath, J.

The instant revision is filed under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (for short to be referred as the Act). Learned Rent Controller dismissed the eviction petition and the appeal against that order was also dismissed. The only question involved before the authorities below was with regard to the rate of rent. The rent petition was filed on 11.05.1995.

The premises in question is ground floor comprising of two rooms, a kitchen, toilet alongwith deori apart from the courtyard of H.No.26-D, Golden Avenue, Amritsar rented out to the respondent @ ₹ 950/- per month. Eviction of the respondent was sought on the ground that he has neither paid nor tendered rent w.e.f. from

01.08.1992 till date. The version of the respondent was that the premises was taken on rent from petitioner @ ₹ 200/- per month. The plea of petitioner-landlord that respondent was also liable to pay electricity and water charges is denied. It was further stated that petitioner-landlord has already received the rent up to 18.07.1995. Rejoinder was also filed. The learned Rent Controller framed the following issues:—

“1) What is the rate of rent of the demised premises? OP Parties.

2) Whether the tender made by the respondent is short and invalid? OPA.

3) Relief.”

I have heard learned counsel for the parties, perused the orders passed by both the Courts below and also the paper book.

Learned counsel for the petitioner vehemently contended that it did not lie in the mouth of respondent to say that the rate of rent was ₹ 200/- per month because in the civil suit for permanent injunction instituted by respondent, it was averred that the premises was on rent with him at ₹ 250/- per month. The learned counsel further submitted that there was overwhelming evidence in support of the petitioner, with regard to the rate at which the tenants earlier occupying the demised premises had been paying.

There was no dispute of the fact that respondent tendered the rent on the first date of hearing @ ₹ 200/- per month w.e.f. 01.08.1992 alongwith interest and costs assessed by the Rent

Controller.

There has been meticulous analysis of the evidence, by both the Courts below to come to a definite finding about the rate of rent. In case, the rate of rent was ₹ 950/- per month as pleaded by petitioner, the respondent would not have taken the risk of tendering the rent at the lower rate. It seems that petitioner had not been accepting the rent for so many years as the agreed rent according to the petitioner's estimate, was quite low. It may be observed that the premises in question is located in the town of Amritsar and at the time the respondent was inducted a tenant in the year 1989, there were disturbed conditions in the State due to peak period of terrorism.

The learned Appellate Authority observed that there was nothing on record in the shape of documentary evidence to show that the rental of the premises could be settled at ₹ 950/- per month in the said year. The Appellate Authority while evaluating the evidence observed as under: –

“After evaluating the evidence, adduced by both the parties, I am of the considered opinion that though AW1 Om Parkash and AW2 Roshan Lal have stated that they used to pay rent to the applicant at the rate of ₹ 800/- and ₹ 850/- per month respectively during the period, they remained tenant under the applicant, but then, their testimony is not going to support the version of applicant in any manner, as both of them have stated in their cross

examinations that no rent note was executed by them in favour of applicant. Witness AWI Om Parkash was examined in the court on 4.11.1996 and he feigned ignorance qua prevalent rate of rent of the demised premises.

So far as the testimony of AW3 Anil Kumar is concerned, though he assessed the demised premises and determined the monthly rate of rent pertaining to the demised premises to be ₹ 1418.33p, but then he did not appear to face remaining cross examination. Law is well settled that statement of a witness, recorded partly, cannot be read into evidence. So the statement of Anil Kumar recorded in part cannot be considered. Even in the present case, tenancy was oral between the parties and admittedly, no rent note was executed between the parties. It is the case of respondent that he used to pay rent to the applicant at the rate of ₹ 200/- per month, but applicant did not issue any receipt to him. During cross-examination applicant also admitted this fact that he did not issue any receipt to the respondent at the time of receiving rent. So, the case of applicant is solely based upon oral version.”

Hon'ble Supreme Court in ***Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh, (2014)9 SCC 78*** has held that the consideration or examination of the evidence by the High Court in

revisional jurisdiction under the Rent Control Act is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. To satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

It appeared in the statement of respondent as RW2 in chief examination itself that Amritsar was a critically disturbed district in the year 1989. The respondent further stated that he is only a rickshaw puller. So to say that in the year 1989 when terrorism in the State of Punjab was at peak, the respondent who is rickshaw puller would have agreed to pay rent at the rate of ₹ 950/- per month is unacceptable.

Learned counsel for the petitioner, however, referred to Annexure P-2, copy of the plaint in Civil Suit No.290 of 1995 filed by respondent for relief of permanent injunction wherein respondent pleaded the rate of rent to be ₹ 250/- per month.

I am not convinced with the above argument because as per pleadings of the parties in the instant case, the rent of the premises could be either ₹ 200/- or ₹ 950/- per month. It cannot be possible to give any other rate of rent than what is pleaded by the parties. If such a statement was made in the earlier suit for injunction filed by respondent, the same can be only some typographical error. It is, however, not the contention of learned counsel for the petitioner, that the respondent was cross-examined on the aspect of rate of rent with his pleadings in the civil suit for injunction or the statement made in that case.

In view of the above, I do not find any ground to interfere in the concurrent finding of fact about rate of rent reached by the Courts below and the instant petition is dismissed.

12.01.2015
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(R.P. Nagrath)
Judge