

CR No. 6864 of 2015(O&M)

Date of decision: 19.10.2015

Komal Singla

.....Petitioner

versus

Veer Bhan and another

.....Respondents

Coram: Hon'ble Mr. Justice Arun Palli

Present: Mr. Harshit Jain, Advocate
for the petitioner.Arun Palli, J.(Oral)

Vide order dated 02.05.2013, rendered by Rent Controller, Samana fair rent of the demised premises was assessed at ₹ 1500/- p.m. As an appeal preferred, by the respondent/tenants, against the said order was accepted vide order dated 27.08.2015 and the order dated 02.05.2013 was modified, the landlord is before this Court vide this revision petition. The conclusion reached by the appellate authority in support of its order reads as thus:-

“As per the law laid down by the Hon'ble Supreme Court in Rakesh Wadhawan vs. Jagdama Industrial Corporation 2002(2) Punjab Law Reporter 370, when there is such like dispute between the parties, the Rent Controller is required to pass the provisional order assessing the arrears of rent payable by the tenant. Even in the instant case the Rent Controller has in fact assessed the rate of rent vide impugned order. Neither the land lord wanted to get determined the fair rent as required under Section 4 of the Act nor

the Rent Controllor has passed the order under Section 4 of the Act. From the application moved by the landlord, it appears that he wanted that the Rent Controller should assess the rent of the shop in question on the basis of prevailing rate of rent in the locality, but such like procedure can not be followed for the purpose of determining the fair rent of the shop in question. In fact, the Rent Controller was required to make provisional assessment on the basis of the pleadings as well as documents produced by the parties. In the eviction application, the land lord has nowhere pleaded that as to what was the rate of rent agreed between the previous owners and the tenants. The land lord alleged that the respondents had agreed to pay rent to him @ Rs. 1500/- per month and even a rent note was to be executed by them. However, no such rent note has admittedly been executed by the tenants in favour of the landlord. In these circumstances, at this stage there was nothing before the Rent Controller to conclude that the rate of rent agreed between the parties was Rs. 1500/- per month. The tenants produced on file a copy of their account book wherein previous owner had received Rs. 720/- as rent for three months. No doubt, the genuineness of the said receipt is yet to be determined, but it is well settled law that the onus to prove the rate of rent lies upon the land lord. When the landlord has not been able to produce any material to substantiate his version that the agreed rate of rent of the property in question was Rs. 1500/- per month, the Rent Controller should have assessed the provisional rent by accepting the rate of rent at Rs. 240/- per month as quoted by the tenants, particularly when

the landlord has not been able to repudiate that the rent agreed between the previous owners and tenant was Rs. 240/- per month. It will be pertinent to mention here that the tenants had preferred, a revision petition against the impugned order but the same was ultimately withdrawn with the liberty to assail the order before the appropriate Forum. There is no dispute that the said order is appealable. Accordingly, this court is of the view that the impugned order is not sustainable. The instant appeal is allowed and the impugned order is modified and it is held that the Rent Controller should assess the provisional rent by taking the rate of rent as Rs. 240/- per month. No doubt, after the passing of the impugned order, the Rent Controller has passed another order assessing the arrears of rent but the Rent Controller will have to passe a fresh order assessing the arrears of rent, costs and interest.”

Ex-facie, the Rent Controller was required to determine the provisional rent. In the eviction petition, the petitioner/landlord did not even remotely mention as to what was the agreed rent between the previous owners/landlord and the petitioners. Though, it was maintained that the respondents had agreed to pay rent at ₹ 1,500/- p.m to the petitioner and a rent note in this regard was to be executed but nothing was brought on record to substantiate the said plea.

Consequently, there was hardly any basis for the Rent Controller to conclude that the agreed rate of rent between the parties was ₹ 1500/- per month. Learned counsel for the petitioner could not point out as to how the conclusion that has been arrived at by the appellate

authority was either contrary to the position of the record or suffered from any illegality.

That being so, no interference is warranted in exercise of revisional jurisdiction under Section 15(5) of the East Punjab Urban Rent Restriction Act 1949. Petition being devoid of merit is accordingly dismissed.

19th October, 2015
Shivani Kaushik

[ARUN PALLI]
JUDGE