

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.862 of 2013(O&M)
Date of decision:12.02.2015

Vinay Dhir

....Petitioner

Versus

Kamla Kapoor

.....Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Vaibhav Sehgal, Advocate, for the petitioner.

Mr.Rahul Rampal, Advocate, for the respondent.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition, filed by the petitioner-tenant, is to the order dated 11.01.2013 (Annexure P1), whereby the provisional rent was assessed @ ₹6200/- per month.

The eviction petition was filed claiming rent @ ₹6560/- per month by the respondent-landlord on the strength of a rent deed dated 05/06.04.2007, of the premises in question, which are situated on the first floor and described in the ejectment application (Annexure P2). The same was contested by filing written statement, taking various pleas that the ground floor was also taken on rent on 01.01.2008 @ ₹11,200/- per month and the portion in the ground floor had been vacated and thereafter, a rent deed had been executed on 01.01.2009 and the rent had been settled @ ₹6200/- per month. Clause (vi) of the alleged rent deed dated 01.01.2009 (Annexure P6) was also relied upon to show that a sum of ₹2 lacs had been given as security and interest @ 1.5% was to be adjusted from the monthly rent, apart from the security of ₹11,000/-.

Counsel for the petitioner-tenant has, thus, submitted that the Rent

Controller was not correct in assessing the rent @ ₹6200/- per month. Reliance

has also been placed upon the bank statement (Annexure P7) to submit that when the ground floor was in the possession of the tenant a sum of ₹11,200/- had been paid. The terms of tenancy were altered, thereafter by executing the rent deed dated 01.01.2009 wherein the terms were varied on account of security deposit.

Counsel for the respondent, on the other hand, has vehemently submitted that ₹6560/- was being deposited on regular basis in the bank account from the year 2009 onwards also and therefore, the Rent Controller was well justified in fixing the rate of provisional rent @ ₹6200/- per month.

While issuing notice of motion on 06.02.2013, the following contentions were noticed by a Co-ordinate Bench of this Court and the tenant was allowed interim protection beyond ₹3200/- per month:

“Petitioner tenant is in revision under Article 227 of the Constitution assailing the order dated 11.1.2013(P1) passed by the learned Rent Controller, Ludhiana whereby the provisional rent has been assessed @ Rs.6200/- per month.

Learned counsel for the petitioner/tenant submits that the tenant has placed on record two subsequent rent notes dated 1.1.2008 and 1.1.2009 succeeding the earlier rent note dated 6.4.2007 and the circumstances for such supersession. Although the landlady has denied the last rent note dated 1.1.2009, however, at this stage the learned Rent Controller is enjoined to take into consideration the evidence produced by the tenant on record. Further submits that as per the rent note dated 1.1.2009 it is apparent from clause (vi) that the tenant was entitled to deduct a sum of Rs.3000/- per month as simple interest on the security of Rs.2 lacs furnished to the landlady.

Notice of motion for 10.4.2013.

In the meanwhile the payment of provisional rent beyond the rate of Rs.3200/- per month in terms of the impugned order dated 11.1.2013 (P1) shall remain stayed.”

It is an admitted fact that the proceedings before the Rent Controller have reached at an advanced stage and the evidence of the respondent/landlord is

over. It is not disputed that the rent, as directed by this Court at ₹3200/- has been

deposited. Counsel for the petitioner-tenant submits that it is being paid regularly. In such circumstances, it would be hazardous for this Court to opine upon the validity of the rent deeds in the absence of any evidence. The *prima facie* fixation which has been granted by this Court and thereafter, for 2 years, the tenant has been paying the same at the said rate and the order has remained in force. Therefore, keeping in view the fact that there were various rent deeds executed *inter se* the parties and the tenant has been able to *prima facie* demonstrate that at one stage he had been in occupation for a larger portion of the tenanted premises for which he had paid ₹11,200/- and paid some security which was to be adjusted.

Accordingly, the tenant will be liable to pay rent @ ₹3200/- per month, as directed by this Court, subject to final decision of the rent petition, keeping in view the fact that the Rent Controller has failed to take into consideration the clause of the additional amount of ₹2 lacs, which has been alleged to have been paid to the respondent-landlord.

Accordingly, the present revision petition is disposed of with a direction that the tenant will be liable to pay the rent @ ₹3200/- per month. However, it is made clear that anything said herein is only for the purpose of deciding the present revision petition and it will be open to the Rent Controller to decide the final rate of rent *inter se* the parties, on the basis of the evidence which will be adduced before it. Needless to say that the Rent Controller shall make all efforts to decide the rent application by 31.05.2015.

12.02.2015
sailsh

(G.S.SANDHAWALIA)
JUDGE