IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 1730 of 2017 (O & M)
Date of decision: 05.04.2017

Suman .....Petitioner(s)

Versus

Ramesh Goel ...Respondent(s)

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

Present: Mr. Ajay Ghangas, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The landlord, in his revision petition against the order dated 09.02.2017 whereby, the Appellate Authority has set aside the order of the Rent Controller dated 17.07.2016 whereby provisional rent was assessed at ₹9,000/- and for the arrears for the shop in question for the period 01.04.2013 to 28.02.2016 with 6% interest and costs of ₹1,000/-. Thus, a total amount of ₹3,34,900/- was to be paid by the tenant on 14.10.2016. The tenant preferred an appeal which was dismissed on 15.11.2016 (Annexure P-2). The said order was challenged in C.R. No. 8544 of 2016 by the respondent-tenant. The same was allowed on 13.01.2017 (Annexure P-3) by remanding the matter to the Appellate Authority on the ground that the tenant was showing the rent being paid at ₹3,000/- per month in the income tax returns and, therefore, reliance upon affidavits of the tenants of the other shops in the locality was not justified by the authorities below. In pursuance of the remand, the present order which is now impugned, has been challenged.

Counsel for the landlord is at pains to show from the site plan

(Annexure P-9) that there was a difference as such in the size of the shop and, therefore, ₹9,000/- was an appropriate amount of rent and which had been rightly provisionally assessed and, therefore, by allowing the appeal, the Appellate Authority had fallen into an error. The premises in question are stated to be occupied by Shakti Sari Bhandar and as per the case of the counsel, the landlady was showing the rent being received at ₹1,44,000/- and for the adjoining two shops, at ₹36,000/- each annually. It is submitted that the difference as such was on account of the fact that the size of the shop was different and the shop in question was opening on two sides and, therefore, the difference in the rent. It is, thus, submitted that the order was not justified.

It is to be noticed that affidavits, as noticed on earlier occasion, had also been relied upon by the courts below and now the Appellate Authority has held that the affidavits and the income tax returns would not be sufficient to hold that the rate of rent as claimed at the higher rate would be sufficient proof. There is no doubt that there is no written rent deed and, therefore, the tentative finding which has been arrived at is on the basis of the material which is on the record. The Appellate Authority has also noticed that the size and condition of the shops are not mentioned in the affidavits which have been given by the tenants. The site plan also which has now been relied upon at this point of time is not duly proved as such to hold out that the sizes are bigger, as now argued. It has been laid down by the Apex Court in ***Rakesh Wadhawan and others vs. M/s. Jagdamba Industrial Corporation and others, 2002 (5) SCC 440*** that the provisional rate of rent is only tentative. In case after final adjudication it is found that the rent is higher than claimed by the landlord, opportunity is to be given to the tenant to make good the deficit. The findings as such are only interim and on the basis of the material on record. The landlord has not been prejudiced as such to the extent that the tenant will have to tender the amount as held out by him. At a later point of time, after taking the evidence on record, the Rent Controller would come to a conclusion as to what is the actual rate of rent and thereafter, the landlord will be entitled to the said amount alongwith interest.

In such circumstances, this Court is of the opinion that the order of the Appellate Authority is not one which suffers from any infirmity as such which would warrant interference in revisional jurisdiction and the present revision petition is accordingly dismissed.

05.04.2017 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No