IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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(1) CR No.2737 of 2017 (O&M)

Kashmir Singh ....Petitioner

Versus

Surinder Kaur ...Respondent

(2) CR No.2843 of 2017 (O&M)

Parminder Singh ....Petitioner

Versus

Surinder Kaur ...Respondent

(3) CR No.3376 of 2017 (O&M)

Davinder Kumar ....Petitioner

Versus

Surinder Kaur ...Respondent

(4) CR No.3451 of 2017 (O&M)

Narinder Singh ....Petitioner

Versus

Surinder Kaur ...Respondent

Date of decision:23.05.2017

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

Present: Mr.Navjot Singh, Advocate, for the petitioners.

Mr.Ajay Singla, Advocate, for the caveator/respondent.

G.S. SANDHAWALIA, J. (Oral):

This judgment shall dispose of CR-2737, 2843, 3376 & 3451-2017, involving common questions of law and facts. However, to dictate orders, facts have been taken from CR-2737-2017 titled Kashmir Singh Vs. Surinder Kaur.

Challenge in the present revision petition, by the petitioner-tenant, is to the order passed by the Appellate Authority, Jalandhar dated 02.02.2017, allowing the appeals filed by the respondent-landlady, against the order passed by the Rent Controller, fixing the provisional rent at Rs.2900/- per month w.e.f. 01.06.2012 along with interest @ 6% per annum till the filing of the petition, with costs of Rs.1000/-, which has been passed on the basis of surmises and conjectures and guess work whereas the tenants' cross-appeals were dismissed.

The reasoning to decline the rent note which has been relied upon by the petitioner-tenants and to fix the provisional rent @ Rs.2900/- per month, reads as under:

> "So, this rent-note cannot be made basis for assessing the rent @ Rs.850/- per month as alleged by appellant (cross-appeal/tenant) in the present case. No rent receipt of payment of rent @ Rs.850/- per month is on the file. Similarly there is no rent receipt with regard to payment of rent @ Rs.2000/- plus 10% increase every year as alleged by the appellant/landlord is on the file. So, in these circumstances, provisional rent is to be assessed as per the situation of the shop in the locality and area of the shop was to be considered. Shop in dispute is admittedly situated on the road leading to Hoshiarpur from Lamma Pind Chowk, Jalandhar. Meaning thereby, property is situated inside Jalandhar City and is in a busy locality and the measurement of the shop is 10' x 13'. For such a big shop rate of rent in the year 2005 (year of tenancy) cannot be said to be Rs.850/- per month. Rather for such a shop in the locality where the shop is situated, the rent in the year 2005 might be between Rs.2800/- to Rs.3000/- per month. Therefore, the provisional rent assessed by the learned Rent Controller is not justified and I find merits in the

> contentions raised by the learned counsel for the appellant Surinder Kaur and no merits in the contentions raised by the learned counsel for the tenant/respondent/appellant (in cross-appeal) Parminder Singh."

Counsel for the petitioner is well justified in placing reliance upon the judgment of the Apex Court in ***Rakesh Wadhawan Vs. M/s. Jagdamba Industrial Corporation, 2002 (5) SCC 440***, to contend that the order of provisional assessment which has to be made on the first hearing, is to take into consideration the relevant materials placed on record in the shape of affidavit and documents and make a provisional assessment and that the order, as such, is a provisional one and the same is subject to final adjudication which the Rent Controller may come to while assessing the quantum of arrears and which is to be decided finally between the parties. It has been, accordingly, held that its effect would be at the time of the final decision, i.e., if less amount has been paid, then the tenant has to be given an opportunity to pay the balance amount or in case excess amount has been paid, it is to be refunded to the tenant and in case the rent is not paid, then the order of eviction has to follow but compliance of the same would save him from eviction. It is settled principle that the said order, as such, is thus, to be on the basis of the documents and materials which are produced on record and the Court is not to go by its own criteria as to what would be the provisional rent in the area as it would be a dangerous field to tread into.

In similar situation, the Apex Court and this Court has time and again held that it is only the registered lease deeds which are to be taken into consideration for assessing the mesne profits. Reference can be made to the judgments in ***M/s. Atma Ram Properties (P) Ltd. vs. M/s. Federal Motors Pvt. Ltd., 2005 (1) SCC 705*** which was followed in ***Anderson Wright and Co. vs. Amar Nath Roy, 2005 (2) RCR (Civil) 831*** and by a three-Judge Bench of the Apex Court in ***State of Maharashtra and another vs. M/s. Super Max International Pvt. Ltd. and others, 2009 (9) SCC 772***. The binding precedent laid down by the Apex Court was followed in ***Surender Kumar vs. Rattan Lal, 2006 (2) PLR 200***.

Inspite of the specific averments *inter se* the parties, the Appellate Authority has, thus, exceeded its jurisdiction in passing the order dated 02.02.2017, on the basis of the reasons which has been reproduced above and therefore, the said order is not sustainable, on the face of the record.

A perusal of the record would go on to show that it was the specific case of the respondent/landlord that the tenancy of the shops and one room in question was oral and at a monthly rent of Rs.850/- and Rs.500/- for the room, since June, 2005. A condition of increase was there @ 10% per month for every year and the rent was to be increased from time to time. Resultantly, in the petitions filed on 30.05.2015, the monthly rent was claimed at Rs.5897/- along with arrears from 01.06.2012 @ Rs.4873/- till May, 2013 and Rs.5361/- from June, 2013, per month, etc.

The specific defence of the petitioner-tenants was that the tenancy was of the year 1995 at a monthly rent of Rs.500/- and the rent was earlier collected by the attorney of the landlady and a new rent deed was got executed between the parties on 22.04.2009 (Annexure R2) whereby the monthly rent was increased to Rs.850/-. It was mentioned that similar rent deeds were also executed with the other tenants, namely, Parminder Singh, Davinder Singh and Narinder Singh, who are also petitioners, herein. It was on this basis that the Rent Controller, vide order dated 04.11.2015, took into account the materials on record, the factum of the rent note and also noticed that the respondent-landlady had failed to produce on record any receipt issued by her regarding the payment of rent. Accordingly, assessment was made on 04.11.2015 from 01.06.2012 till 31.10.2015 @ Rs.850/- per month and the amount along with interest and costs, were quantified to Rs.39,509/- in Kashmir Singh's case and the same was fixed for payment of provisional rent.

Two cross-appeals were filed, both by the landlady and the tenants, on account of the fact that the landlady was aggrieved against the fixation of a lessor amount whereas the tenants were aggrieved on the ground that the same had been assessed not till the date of filing the petition, i.e., 30.05.2015 but till the date of the assessment order.

As noticed, the appeals of the landlady have been allowed, which are not sustainable. That it was for the landlady to prove the rate of rent as onus also lies upon her regarding this aspect and the principles stand settled in various judgments. Reference can be made upon ***Karpoori Thakur Vs. Dewan Chand 2002 (3) PLR 646***. wherein it was laid down as under:

> "13. It was submitted by the learned counsel for the petitioner (Karpoori Thakur) that no landlord would keep quiet if rent is not paid for a long period. In my opinion, at the same time, no tenant would go on paying rent without getting corresponding receipt. In Maman Singh Kadyan v. Smt. Roshni Bai alias Kishni Bai of Panipat, 1991 (2) RCR (Rent) 648: 1991 H.R.R. 510, it was held that onus in such cases lies on the tenant to show payment of rent and mere oral testimony regarding such payment, cannot suffice. In Jagdish Rai Chandna v. Swaran Dass, 2000 (1) RCR (Rent) 373 (P&H): 2000 H.R.R. 219, it was held that the burden of proving payment of rent lies heavily on tenant. In Pishori Lal of Chandigarh v. Smt. Shanti Rai, 1992 (1) RCR (Rent) 467 (P&H): 1992 H.R.R. 134, it was held that once the tenant has taken a specific plea that he had already paid the entire rent, then onus would be on him to prove that he was not in arrears of rent. In Smt. Chand Rani v. Shri Amar Nath, 1984 (2) RCR (Rent) 584: 1985 H.R.R. 258, it was held that a bald statement of the tenant is not sufficient to prove the payment of rent, onus is on the tenant to prove such payment through a reliable evidence. No written rent note between the parties - onus lis upon the landlady to prove the rate of rent. However, it cannot be held that she has come with unclean hands due to absence of such evidence."

No material has been placed on record to this effect by the landlady and specific rent note was relied upon *inter se* the parties, which has not been denied by way of filing any reply or placing any material on record.

Accordingly, this Court is of the opinion that the order dated 02.02.2017, passed by the Appellate Authority, cannot sustain and the same is hereby quashed and the present revision petitions are allowed, to the extent whereby the provisional rent has been assessed at Rs.2900/-

per month. Keeping in view the 6th principle as laid down in **Rakesh Wadhawan** (supra), counsel for the petitioners submits that the tenants shall continue to deposit the rent at the same rate, as fixed by the Rent Controller, Jalandhar, regularly, by 7th day of each month, during the pendency of the eviction petition.

23.05.2017 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*