

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.3300 of 2017 (O&M)

Date of decision: 09.05.2017

Inderpal Singh

....Petitioner

Versus

Karamjit Singh

...Respondent

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

Present: Mr.Divanshu Jain, Advocate, for the petitioner.

Mr.Sunil Garg, Advocate, for the respondent.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present revision petition, by the petitioner-tenant is to the order dated 11.04.2017, vide which the Rent Controller, Patiala has made provisional assessment of rent @ Rs.8200/- per month, from May, 2013 to April, 2017, i.e., for a total period of 48 months at Rs.3,93,600/- and after adding interest and costs, the amount calculated was Rs.4,45,316/-. Challenge has also been raised to the orders passed by the Appellate Authority, Patiala dated 02.05.2017, upholding the said order on the ground that there were rent receipts (Exts. P7 to P10) on record, though they did not bear the signatures of the tenant, though they were duly admitted by him. The question regarding the alleged fabrication of the said receipts was to be considered when the parties would lead their respective evidence, to that effect. The proposition of law laid down in **Ramesh Goel Vs. Suman 2017 (1) Law Herald (P&H) 394** was held not to be disputed but not applicable to the case in hand and as such, distinguishable.

Unfortunately, the order dated 02.05.2017 does not show as to on what basis the said judgment is distinguishable. Mr.Jain has submitted that the rent petition seeking eviction and claiming arrears of rent was instituted only on 01.02.2016 (Annexure P1). Prior to that, a Civil Suit had been filed on

04.01.2016, by the petitioner-tenant, seeking protection of his possession and monthly arrears of rent. Reference has been made to the plaint to show that it was specifically held out that monthly rent was Rs.1000/- and the rent had been paid upto December, 2012 and it was due from January, 2013. The landlord was refusing to receive the rent but the tenant was ready and willing to pay. Copy of the rent receipts (Annexures P2 to P4) had also been attached along with Income Tax Returns.

A injunction had been ordered on the basis of the said pleadings on 04.01.2016 (Annexure P8) by the Civil Judge (Jr.Divn.), Patiala, by noticing that the rent was being paid @ Rs.1000/- and *status quo* regarding possession had been granted. It is, accordingly, submitted from the pleadings in the eviction petition that as per the rent deed with the earlier owner, namely, Jaspal Singh @ Rs.825/- tenancy had commenced from 20.12.1990 and the said owner had sold the property in favour of the father of the landlord on 04.04.2005. It was, accordingly, contended that nothing was brought on record to show that the rent had been enhanced and the rent was Rs.8200/-, on the basis of which the claim was made. Reference is also made to the written reply filed by the petitioner, to show that *ex parte* injunction order had been attached with the same and that the payment of rent had been shown in the account-books of the tenant who is running the business under the name and style of Shri Gurdev Karyana Bhandar. The Income Tax Returns along with the balance-sheet, the tendering of arrears of rent duly attested by Income Tax Advocate, had been pleaded, to contend that the rate of rent was Rs.1000/- per month.

Counsel for the petitioner has, accordingly, referred to the said annexures, showing the Income Tax Returns for 2014-15 wherein the amount has been shown as rent payable to the tune of Rs.12,000/- for the whole area and similarly, for the assessment year 2015-16, the amount payable is Rs.24,000/-, to contend that it was carried forward.

It is settled principle that while assessing the rent provisionally, the Rent Controllers are to examine the documents which are already on record and come to the conclusion, which is found to be *prima facie* from the perusal of the pleadings and the material placed before the Rent Controller on that day. The said order is to give way to a final order to be made on further enquiry to be held later in case of dispute between the parties. Reference can be made to the judgment of the Apex Court in **Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation 2002 (5) SCC 440**, to this extent, wherein the said principles have been delineated.

The Appellate Authority also noticed a judgment of this Court in **Ramesh Goel** (supra) which squarely covered the facts of the case wherein also, the matter had been remanded by this Court on the ground that there was sufficient material *inter se* the parties, to record a finding as to what was the agreed rent between them which was placed before the rent authorities. In the said case also, there was no rent agreement as in the present case and photocopies of the Income Tax Returns for the concerned years had also been placed on record in that case. Similar is the situation herein.

The Appellate Authority, unfortunately, has failed to consider the judgment in its proper perspective and also failed to consider the fact that

on an earlier occasion, a suit had been filed specifically taking the plea that the rate of rent was Rs.1000/-. Thus there was relevant material in the form of Income Tax Returns also. Unfortunately, the Appellate Authority has failed to consider all these aspects and also failed to take into consideration that it is the last Court of fact and the order which has been passed has led to unnecessary litigation on account of non-application of mind by the said authority.

Resultantly, the impugned order is set aside and the matter is remanded to the Appellate Authority, Patiala, for re-consideration, in view of the observations made above and the law laid down in **Ramesh Goel** (supra), which has been held to be distinguishable without giving any reasons. In the meantime, the tenant shall deposit the arrears of rent @ Rs.1000/- per month, as assessed and admitted by the petitioner, within a period of 2 weeks from today, to safeguard the interests of the landlord. The said deposit shall be without prejudice to further proceedings.

09.05.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No