

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(113)

**Civil Revision No.3848 of 2017
Decided on : 26.05.2017**

Charanjit Singh

... Petitioner

Versus

Kapil Kumar and another

... Respondents

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

Present : Mr. Pushpinder Kaushal, Advocate
for the petitioner.

G.S. Sandhawal, J. (Oral)

The petitioner-landlord challenges the order dated 23.02.2017 (Annexure P-1) passed by the Appellate Authority, Chandigarh whereby the appeal has been partly accepted to the extent that the order of the Rent Controller assessing the provisional rent for the period from 01.09.2012 to 31.05.2014 has been set aside.

The reasoning given by the Appellate Authority is that once a property has been purchased, the claim of arrears of rent would be from the date of the purchase of the property and the assignment by the affidavit which was sought to be produced by the landlord of the earlier owner was rejected on the ground that this affidavit had seen the light of the day, while replying to the stay application in the appeal. The Appellate Authority has rightly relied upon the judgments passed in *Harparshad Vs. Sarla 1985 (2) RLR 405 (P&H)*, *Hari Krishan Vs. Smt. Krishna Mohini, 1990 (2) RCR (Rent) 643 (D.B.)* and *Ranjit Singh Vs. K.K. Sikand 1995 (2) RCR (Rent) 531 (P&H)* to come to the conclusion that the rent for the abovesaid period cannot be claimed by the tenant.

Counsel for the petitioner has vehemently pointed out that on an earlier occasion in the year 2014 eviction petition filed under Section 13-A of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act') by the present petitioner against the same tenant had been filed, wherein it had been specifically averred that there was a sale deed dated 23.05.2014 in pursuance to the agreement to sell dated 01.05.2012 and the affidavit of the previous owners, namely, Jasbir Singh and Avtar Singh dated 26.09.2014 (Annexure P-3) had been mentioned. It is, accordingly, submitted that the Appellate Authority was in error in setting aside the well reasoned order passed by the Rent Controller dated 11.01.2017 (Annexure P-8).

The said argument is not liable to be accepted, keeping in view the fact that the petitioner-landlord filed the eviction petition under Section 13 of the Act on 15.03.2016 (Annexure P-5), which was based on the sale deed dated 23.05.2014 and resultantly arrears of rent were claimed from 01.09.2012, which is prior to the date of purchase and there was no specific averment made as regards to their right to claim the earlier rent, on the basis of any assignment which had been given by the earlier owners of the property in question.

The tenants defended the eviction petition on the ground that the earlier petition filed under Section 13-A of the Act had been dismissed in default after grant of leave to contest and also on other grounds and set up the rate of rent as ₹5,107 and not ₹5,160/-. The bonafide as such was questioned. It was further disputed that the

petitioner cannot claim the rent till May, 2014 as the sale deed was executed on 23.05.2014 and, therefore, entitlement to receive the rent alongwith Nirmal Kumar could only be effected from 01.06.2014.

In the replication filed also, nothing was clarified by the petitioner-landlord regarding any right of attornment on the strength of the affidavit, on the basis of which now the claim has been preferred to submit that the earlier owner had given them a right to claim rent prior to the date of purchase.

As noticed the order emanates from a provisional assessment of rent and the assessment is to be based on the material which is placed on record, as has been held in ***Rakesh Wadhwan and others Vs. Jagdamba Industrial Corporation and others'* 2002 (5) SCC 440** and it has to give way to a final order to be made after further enquiry. In the absence of any such material having been placed on record, the Appellate Authority was well justified in allowing the appeal to the extent that the entitlement was only from 01.06.2014 from the date of the purchase of the property.

It is, thus, apparent that the matter has to be decided finally *inter se* the parties and, therefore, it is after the evidence is led by both sides the matter of entitlement of rent of prior period can always be assessed by the Rent Controller. In the case of ***Rakesh Wadhwan (supra)*** it has further been held that there are three options available with the Rent Controller to direct to pay the amount due or to order refund in case of extra amount paid and to order ejectment. Therefore, in case the

petitioner-landlord is able to prove his case then he will be entitled to receive the rent for the period prior to the purchase and, therefore, there is no scope for interference in the order passed by the Appellate Authority, at this stage even otherwise.

Accordingly, the present revision petition is dismissed in limine.

MAY 26, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No