

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

CM No.26153-54-CII of 2017 &
CR No.6403 of 2017 (O&M)
Date of decision: 12.12.2017

Sukhjinder Singh

...Petitioner

Versus

Khushwant Rai Joshi

...Respondent

CORAM:-HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present:- Mr.Ashish Gupta, Advocate for the petitioner/tenant

Mr.B.S.Bhalla, Advocate
for the applicant/respondent-landlord

RAJIV NARAIN RAINA, J (Oral)

CM No.26153-CII of 2017

This application has been filed by the respondent-landlord for taking on record the orders (Annex R-1 to R-3). CM is allowed as prayed for.

CM No.26154-CII of 2017 &

CR No.6403 of 2017 (O&M)

1. Learned counsel for the respondent-landlord contends that this is the third round of litigation. The landlord had given the demised shop on rent to the petitioner-tenant. In the first round of litigation, when the petitioner failed to pay the agreed rent, the respondent/landlord filed rent petition. Provisional rent was assessed at ₹ 12,600/- per month from 1st April, 2013 to 31st March, 2014 and ₹ 13,915/- per month from 1st April, 2014 to 31st March, 2015, vide order dated 31st March, 2015 passed by the Rent Controller, Moga (Annex R-1). The petitioner challenged the

aforesaid order by filing an appeal before the Appellate Authority which was dismissed by order dated 30th May, 2015 (Annex.R-2). The said order attained finality since the petitioner failed to challenge the same.

2. In the second round of litigation, when the petitioner-tenant failed to pay the rent for the period 1st April, 2014 to 1st November, 2015, Rent Petition was again filed and the rent was assessed at ₹ 13,915/- per month as per the rent note dated 27th July, 2010 with an increase of 10% of rent and the rent was calculated at ₹ 15,307/- per month from April, 2015 to December, 2015 vide order dated 27th January, 2016 (Annex R-3). The order attained finality since the same was not challenged by the petitioner.

3. In this third round of litigation, this revision petition has been filed by the tenant/petitioner challenging the order dated 23rd May, 2017 passed by the Appellate Authority reversing the order dated 27th February, 2017 passed by the Rent Controller. The Rent Controller assessed the provisional rent at ₹ 4500/- per month vide its order dated 27th February, 2017. The Appellate Authority reversed the order of the Rent Controller vide its order dated 23rd May, 2017 and assessed the provisional rent at ₹ 15307/- per month till 31st March, 2016 and for the subsequent period i.e. 31st March, 2017 at the rate of ₹ 16838/- and w.e.f. 1st April, 2017 by adding 10% enhancement to ₹ 16838/- per month.

4. This revision petition came for hearing before this Court on 20th September, 2017 when this Court passed the following interim order:-

“Present: Mr.Ashish Gupta, Advocate
for the petitioner

Issue notice of motion to the respondent, returnable on 06.12.2017.

The petitioner will pay arrears of mesne profits at the rate of ₹ 4,500/- per month within a fortnight before the Rent Controller and this amount be disbursed directly to the landlord.

In addition, as an interim arrangement, the mesne profits in addition to the original agreed rent will be deposited in a sum of ₹ 3,500/- per month from 01.01.2016 till today in an interest bearing fixed deposit account in a nationalized bank dependent, for disbursement on the result of this petition. The amount be deposited within a month from the date of receipt of a certified copy of the order.

In the meanwhile and subject to above, the operation of the provisional assessment beyond what has been granted by this interim order shall remain stayed till further orders.”

5. Mr.Bhalla, learned counsel has put in appearance on behalf of the respondent-landlord and has filed an application bearing CM No.26154-II of 2017 for modification of the aforesaid order dated 20th September, 2017 passed by this Court. The entire factual background has been brought out in the application as detailed above with regard to the three rounds of litigation on the limited issue of provisional rent.

6. I have heard Mr.Gupta, learned counsel for the petitioner-tenant and Mr.Bhalla, learned counsel for the respondent-landlord and have perused the paper-book with their guidance.

7. Firstly, the rent was assessed at ₹ 12,600/- per month w.e.f. 1st April, to 31st March, 2014 and ₹ 13,915/- per month from 1st April, 2014 to 31st March, 2015, vide order dated 31st March, 2015 passed by the

Rent Controller, Moga (Annex R-1) and; secondly, the rent was assessed at ₹ 13,915/- per month as per the rent note dated 27th July, 2010 with an increase of 10% of rent and the rent was calculated at ₹ 15,307/- per month from April, 2015 to December, 2015 vide order dated 27th January, 2016 (Annex R-3). Both the orders attained finality since the petitioner-tenant failed to challenge the same. In the third round of this litigation, in my opinion the Appellate Authority has rightly reversed the order of the Rent Controller by observing that once an order of provisional assessment of rent had already been passed by the Rent Controller and upheld by the Appellate Authority, in the absence of any cogent material on record, there was nothing before the Rent Controller to arrive at a different conclusion.

8. The Appellate Authority has therefore rightly set aside the order of the Rent Controller and fixed the rate of provisional rent of the demised shop at ₹ 15307/- up to 31st March, 2016 and for the subsequent period till 31st March, 2017 at the rate of ₹ 16838/- and w.e.f. 1st of April, 2017 adding 10% enhancement to make ₹ 16838/- per month rent which cannot be said to be unlawful or out of the blue. I find no reasonable ground to interfere with the impugned order dated 23rd May, 2017 passed by the Appellate Authority, Moga which deserves to be maintained.

9. In view of the above, I find merit in the application bearing CM No.26154-CII of 2017 filed by the respondent-landlord for modifying the interim stay order and the same is allowed. The interim order dated 20th September, 2017 passed by this Court is ordered to stand vacated.

10. Consequently, I find no merit in the main revision petition which is accordingly dismissed. The arrears of provisional rent, if any, be

cleared and paid to the respondent-landlord before the Rent Controller, Moga within a period of two months from the date of receipt of a certified copy of this order.

11. Since the Rent Petition is pending before the Rent Controller, the observations made in this order would not have any bearing on the merits of the case and are without prejudice to their rights.

(RAJIV NARAIN RAINA)
JUDGE

12.12.2017
MFK/Poonam (II)

Whether Speaking/reasoned	Yes
Whether Reportable	No