

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

CR No. 7310 of 2015 (O&M)

Date of decision: 03.11.2017

Sarwan Kumar and others

...Petitioners

versus

Balwinder Singh

...Respondent

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

Present : Mr. Aditya Jain, Advocate for the petitioners.

Mr. Hitesh Pandit, Advocate for the respondent.

RAJIV NARAIN RAINA, J. (ORAL)

1. This is a civil revision filed under Article 227 of the Constitution of India in challenge to the order dated 05.05.2015 (P-2) passed by learned Additional District Judge, Ludhiana whereby the order dated 05.03.2015 (P-1) passed by the learned Rent Controller, has been modified.

2. When this matter came up for hearing on 08.05.2017, the Coordinate Bench passed the following order while requisitioning the record of the Rent Controller.

3. Learned counsel for the petitioners states that there is repeated reference in the order dated 05.05.2015 passed by the Appellate Authority to the fact that the respondent-tenant has produced documents i.e. receipts, tax returns qua the payments having been received for each month, but there is no such detail in the said order.

4. Learned counsel for the respondent had sought time to produce original documents produced before the Appellate Authority to secure the order impugned in this petition. Again when the matter came up for hearing on 24.08.2017, this Court passed the following order:-

“List again on 03.11.2017 for final disposal.

To be shown in urgent list.

Both the counsel would not only inspect the record, but identify the material, which has been used by the Appellate Authority in the order, which does not exist on file.

Mr. Jain would make a photocopy of the Appellate Authority’s order for the assistance of this Court and highlighted with the red at the place where observations have come without supporting documents on record.

A photocopy of this order be placed on the connected file.”

5. Mr. Viren Jain, Advocate has produced a copy of the order dated 05.05.2015 passed by the Appellate Authority duly highlighted with red to see where observations have come without supporting documents on record. Mr. Jain has read both the contentions and the part of the order containing findings. It is apparent and requires no detailed reasoning that the Appellate Authority has committed the first cardinal sin by deciding the case on materials produced at the hearing and not produced in evidence by following the mode of proof to be admissible in evidence. Record is available in Court and both the learned counsel wanted to inspect the same and with their assistance I

find and place trust in what is urged by Mr. Jain and Mr. Hitesh Pandit, much at pains to point out from the record the materials which were taken into consideration in interfering with the order of the Rent Controller assessing provisional rent and reducing the amount miraculously from Rs. 1, 04, 308/- to Rs. 5, 284/-.

6. Without entering upon the merits of the assessment order so as not to prejudice either party since case calls for remand, the impugned order of the Appellate Authority is quashed. Case is remanded to the learned District Judge, Ludhiana to either keep the case on his board or mark it to any other appellate authority, other than the authority which passed the order, in case he is still posted in Ludhiana. On remand a fresh order be passed expeditiously.

7. Parties are directed to appear before the District Judge, Ludhiana on 15.11.2017.

8. The other case i.e. CR No. 7311 of 2015 is detached from this case and posted for hearing on 13.12.2017.

9. The Appellate Authority who passed the order dated 05.05.2017, will furnish explanation to this court justifying his order. He would submit the reply to the learned Registrar General of this court within three weeks from the date of the receipt of this order in the disposed of petition for consideration on reply submitted, for the consideration of the competent authority on the administrative side. He must disclose in his reply reasons as to how he accepted documents

directly in Court from the hands of the tenant on the dais which were not part of the judicial record and relied upon them, making several observations and recording findings thereon and using such extraneous material to pass the order reducing the provisional rent determined by the Rent Controller and scaling it down from a tall figure of Rs.1,04,308/- to as low as Rs.5,284/- per month without proper justification and by recording reasons based on record.

(RAJIV NARAIN RAINA)
JUDGE

November 3, 2017

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Whether speaking/reasoned : Yes

Whether reportable : No