

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

CR No.7165 of 2017 (O&M)

Date of Decision: October 13, 2017

Jaswinder Singh

..... Petitioner

Versus

Bakshish Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Avtar S. Khinda, Advocate
for the petitioner.

DEEPAK SIBAL J. (ORAL)

Through the present petition, challenge is made by the petitioner-tenant to order dated 26.09.2017 passed by the Rent Controller, Sultanpur Lodhi through which an application filed by him under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment of the written statement has been dismissed. Through such amendment, the petitioner sought to plead that the initial agreed monthly rent between the parties was Rs.1000/- and not Rs.2500/- as alleged by the respondents.

After hearing learned counsel for the petitioner and having perused the record, the facts which have emerged and need to be noticed for adjudication of the matter are that in May 2013, the respondent-landlords through a petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 sought eviction of the petitioner from a shop duly described in the eviction petition (for short 'the tenanted premises'). In paragraphs No.1 and 2 of such petition, it was specifically averred as under:-

“1. That the shop in dispute marked as ABCD and shown in

Red in the site plan attached, as fully described in the head note of the petition is situated at Mohalla Shah Sultan, Sultanpur Lodhi and the said shop is integral part of a building comprising of total 7 shops. The land underneath said 7 shops was purchased by the petitioners vide sale deed dated 05.05.1992 executed by one Jaimal Singh son of Satnam Singh son of Kishan Singh resident of Sultanpur Lodhi for a sale consideration of Rs.62500/- and after purchasing the same the petitioners got constructed seven shops over there and said shops were rented out to various tenants. At present shops No.1 to 6 are in possession of some different tenants, whereas shop No.7 marked as ABCD and shown red in the site plan attached is in possession of respondent as a tenant under the petitioners. Initially the shop in question was rented out to the respondent at a monthly rent of Rs.2500/-. However, in the year 2008 with the mutual consent of the parties it was agreed that the rate of rent shall be enhanced @ 15% per annum every year w.e.f. 01.01.2009. However, the respondent failed to pay the due agreed rent w.e.f. 01.01.2009 and he is in arrears of rent since then and he is also liable to pay the house tax as well as the electricity charges w.e.f. 01.01.2009 amounting to Rs.18175/-.

2. *That the respondent has paid rent to the petitioners only upto 31.12.2008 but he has not paid the rent of the shop in question to petitioners w.e.f. 01.01.2009 onwards @ Rs.2500/- per month with increase @ of 15% per annum, alongwith the house tax and electricity charges, inspite of the repeated requests and demands made by the petitioners."*

(emphasis supplied)

A perusal of the afore-quoted paragraphs of the eviction petition show clear and specific pleadings by the respondents that initially the tenanted premises had been rented out to the petitioner at a monthly rent of Rs.2500/-; in the year 2008, with the mutual consent of the parties,

it was agreed that the rent shall be enhanced @ 15% per annum w.e.f. 01.01.2009; the petitioner had paid rent to the respondents only upto 31.12.2008 and that the petitioner had not paid the rent w.e.f. 01.01.2009 @ Rs.2500/- per month alongwith the agreed annual increase of 15% as also house tax and electricity charges.

In the written statement, though the petitioner denied the alleged agreement between the parties with regard to the increase of the rate of rent @ 15% per annum w.e.f. 01.01.2009, the initial agreed rate of rent between the parties @ Rs.2500/- per month was not denied. In fact, in reply to paragraph No.2 of the eviction petition, the petitioner stated that it was incorrect that the petitioner had paid the rent to the respondents only upto 31.12.2008 and thereafter had not paid the rent at the agreed rate of Rs.2500/- per month along with non-existent increase @ 15% per annum along with house tax and electricity charges.

Paragraphs No.1 and 2 of the written statement filed by the petitioner on merits read as under:-

1. *It is admitted to the extent that the shop in dispute is situated in Mohalla Shah Sultanpur Lodhi, but rest of the para is wrong hence denied. It is denied that the shop in dispute is integral part of the building comprising seven shops in all as alleged. It is denied that the land underneath the said shop was purchased by the petitioners vide sale deed dated 05.05.1992 executed by Jaimal Singh s/o Satna, Singh s/o Kishan Singh r/o Sultanpur Lodhi for a sale consideration of Rs.62,500/- as alleged. Neither the petitioner has placed the copy of the sale deed on the record nor supplied any copy of the same to the answering respondent as such the respondent reserves his right to give appropriate detailed reply to the same as and when occasion so arise. It is denied that the after purchasing the land as alleged, the petitioner*

got constructed seven shops, which were rented out to various tenants as alleged. The petitioners have not filed any site plan got sanctioned from Nagar Council, Sultanpur Lodhi before the construction of the shop. However, it is denied that all the shops are in the possession of various tenants that is why no detail of the same has been given. It is stated here that two shops are virtually in possession of the petitioners but just to dodge this Hon'ble Court and created a camouflouge. All the shops are alleged to have been given on rent although virtually two shops are in actual possession of the petitioners. It is however not denied that the shop in dispute was rented out to the respondent but it is denied that it was ever agreed with mutual consent or otherwise to increase the rate of rent @15% p.a every year w.e.f 01.01.2009. No such condition was ever agreed between the parties nor is binding on the respondent at all. It is denied that the respondent has failed to pay the alleged due agreed rent w.e.f 01.01.2009 or that he is in arrears of rent since then as alleged. It is denied that the respondent is further liable to pay house tax as well as electricity charges w.e.f 01.01.2009 amounting to Rs. 18175. On the other hand the respondent, has been regularly paying the rent at the initial agreed rate of rent without any break except till the filing of the present petition. The petitioner has already received the arrears of rent upto 30.04.2013 and thereafter no rent was received by the petitioners for obvious reason, on account of having filed the present petition. It is submitted that the rent settled between the parties was inclusive of all taxes and charges and therefore the respondent is not liable to pay separately the electricity charges or house tax as claimed in the present petition. The petitioners themselves have refused to receive the rent from 01.05.2013 due to filing of the present petition.

2. It is wrong hence denied. It is absolutely incorrect that the respondent has paid the rent to the petitioner only upto 31.12.2008 or that thereafter has not paid the rent to the petitioners till 01.01.2009 onwards at the agreed rate of rent

of Rs.2500/- per month or non existing increase at the rate of 15% p.a. thereon alongwith house tax and electricity charges. Since the respondent has already paid the rent upto 30.04.2013, so the question of making any request or demand by the petitioners does not arise at all.”

(emphasis supplied)

From the above, it is abundantly clear that at more than one place in the eviction petition, the respondents had specifically averred the initial agreed rent between the parties to be Rs.2500/- per month. In the written statement filed by the petitioner, though the facts pleaded by the respondents with regard to enhancement of the agreed monthly rent and non payment of rent by the petitioner were specifically denied, to the specific pleading by the respondents that the initial monthly rate of rent was Rs.2500/-, there was no denial. That being so, no fault can be found in the impugned order passed by the Rent Controller, Sultanpur Lodhi through which the petitioner was not allowed to amend his written statement through which amendment he wanted to withdraw from his admission and introduce a new fact that the initial agreed monthly rent between the parties was Rs.1000/- and not Rs.2500/-.

In view of the above, finding no merit in the present petition, the same is ordered to be dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

October 13, 2017

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No