

In the High Court of Punjab and Haryana at Chandigarh

CR- 665 of 2018(O&M)
Date of Decision:7.2.2018

David Virmani and others

---Petitioners

vs.

Anil Kumar Mehta

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Lajpat Sharma, Advocate
for the petitioner

Rekha Mittal, J.

Challenge in the present petition has been directed against orders dated 6.12.2016 passed by the Rent Controller, Karnal and dated 15.9.2017 by the Appellate Authority under the Rent Act whereby application under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter to be referred as “the Act”) was allowed by the Rent Controller and the order of eviction on the ground of non-payment of rent was affirmed by the Appellate Authority.

Counsel for the petitioners has submitted that Anil Kumar Mehta, respondent filed an application for eviction on the ground of non-payment of rent and personal necessity qua the premises in question i.e. Booth/shop No. 13, Sector-6, Urban Estate, Karnal. The Rent Controller assessed provisional rent on 7.11.2016 and the case was fixed for payment

of provisional rent on 23.11.2016. Due to demonetization, provisional rent could not be tendered in cash. Cheque No. 367199 dated 23.11.2016 was issued for payment of provisional rent which was accepted by the respondent/landlord under protest. The respondent filed an application for passing of order of eviction on account of failure of the petitioners to pay the provisional rent as the cheque aforesaid allegedly got dishonoured on its presentation to the bank for want of sufficient funds in the account with the Punjab National Bank, Morinda and as per memo dated 24.11.2016, balance as on 23.11.2016 was Rs. 1279.99 P. The application filed by the respondent was disposed of by the Rent Controller vide order dated 6.2.2016 and the petitioners were directed to vacate the shop in question within three months of passing of the order with liberty to the respondent to recover the arrears of rent as per law. The order of eviction passed by the Rent Controller was affirmed by the Appellate Authority.

The sole submission made by counsel for the petitioners is that the respondent is guilty of playing mischief with the court as in the memo dated 24.11.2016, there is reference to outstanding balance as on 23.11.2016 but not outstanding balance as on 24.1.2016. It is argued with vehemence that the courts below failed to take note of a material fact that the memo relied upon by the respondent does not make reference to balance in the account as on 24.11.2016.

I have heard counsel for the petitioners, perused the paper book particularly the orders impugned.

Indisputably, the learned Rent Controller assessed provisional rent on 7.11.2016 and the case was adjourned to 21.11.2016 for

depositing/tendering of provisional rent. On that date, the petitioners did not deposit the provisional rent and the case was adjourned to 23.11.2016. On 23.11.2016, Kapil Virmani, one of the petitioners, tendered cheque bearing No. 367199 dated 23.11.2016 for an amount of Rs. 1,18,672/- drawn on Punjab National Bank, Sector-6, Karnal. The cheque was accepted by the landlord under protest.

The respondent filed the application with regard to dishonour of cheque and passing of ejectment order against the petitioners for their failure to pay the provisional rent. After having heard counsel for the parties at length in the light of their respective contentions by way of pleadings as well as arguments advanced by their counsel, the Rent Controller held in para 5 that the impugned cheque was dishonoured due to insufficient funds vide Punjab National Bank memo dated 24.11.2016. Counsel for the petitioners has failed to point out any such plea raised by them that either on 23.11.2016 or on 24.11.2016 there were sufficient funds in the account in regard whereof cheque bearing No. 367199 dated 23.11.2016 for Rs. 1,18,672/- was issued by respondent No. 3 therein. Even before this court, no such plea has been raised by the petitioners that on 24.11.2016, there were sufficient funds in the account maintained in Punjab National Bank, Morinda to honour the cheque issued by one of the petitioners for payment of provisional rent. In this view of the matter, contention raised by counsel for the petitioners that the respondent is guilty of committing any mischief or practising fraud in the proceedings before the Rent Controller is highly misconceived and merits outright rejection. As the petitioners failed to pay the provisional rent and issued the cheque by one of

them for discharging their liability without ensuring availability of funds in his account, no error can be found in the consistent findings recorded by the courts below that the petitioners are liable to be evicted from the premises in question on the ground of non payment of rent.

No other point has been raised.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

7.2.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No