

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

227

CR-7311-2015 (O&M)

Date of decision: 27.04.2018

SARWAN KUMAR & ORS

...Petitioners

Versus

BALWINDER SINGH

...Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Mr. Hitesh Pandit, Advocate for the respondent.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 05.05.2015 (Annexure P2) passed by the Appellate Authority whereby order dated 05.03.2015 passed by the learned Rent Controller, Ludhiana assessing provisional rent has been modified.

Counsel for the petitioners would inform that two separate eviction applications have been filed by the petitioners against the respondent in respect of two different portions of shop Nos.1 and 2 and the same are pending in the Court of Rent Controller, Ludhiana. In both the cases provisional rent was assessed by the Rent Controller that became subject matter of separate appeals filed by the respondent/tenant. The Appellate Authority decided both the appeals vide order of even date i.e. 05.05.2015 whereby the provisional rent assessed by the Rent Controller was substantially reduced which led to filing of two separate petitions by the petitioners/landlords i.e. CR No.7310 of 2015 and the instant petition (CR No.7311 of 2015). It has further been apprised to the Court that CR No.7310 of 2015 was disposed of vide order dated 03.11.2017 and the order passed by the Appellate Authority was quashed with the observations recorded in para 5 therein and the matter was remanded for decision of the appeal afresh with a specific direction that the appeal shall be decided either by the District Judge, Ludhiana or an Appellate Authority other than

the authority which passed the impugned order. He has prayed that in view of the observations made in the order dated 03.11.2017 passed in CR No.7310 of 2015, the present petition may be disposed of accordingly.

Counsel for the respondent would urge that as the petitioners have adduced their evidence and the case is fixed for evidence of the respondent/tenant, the present petition may be disposed without examining correctness of the order impugned and direction may be issued to the Rent Controller to decide the application for eviction in a time bound manner.

Be that as it may, the order passed by the same Appellate Authority between the same parties was set aside by this Court with observations recorded in para 5 of order dated 03.11.2017 passed in CR No.7310 of 2015. A relevant extract therefrom reads as follows:-

“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/-.”

In view of the above, the impugned order cannot be allowed to sustain and liable to be set aside. The matter is remitted to the District Judge, Ludhiana for decision of the appeal afresh in terms of observations made by this Court in order dated 03.11.2017.

The parties through their counsel are directed to appear before the District Judge, Ludhiana on 24.05.2018.

27.04.2018
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No