

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

**109**

**CM No.24991-CII of 2017 in/and  
FAO No.7572 of 2017 (O&M)  
Date of Decision : 22.01.2018**

National Textile Corporation

..... Appellant

Versus

Radha Soami Charitable Society and another

..... Respondents

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI**

**\*\*\***

Present : Mr. H.N.Mehtani, Advocate  
for the appellant.

Mr. Rajesh Punj, Advocate  
for the caveator.

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**AJAY TEWARI, J. (Oral)**

**CM No.24991-CII of 2017**

For the reasons recorded, the application is allowed. Delay of 20 days in re-filing the appeal is condoned.

**FAO No.7572 of 2017**

This appeal has been filed against the order of the Additional District Judge, Amritsar declining an application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act').

The respondent No.1 had leased out a 102 kls 18 mls. of land falling in khasra No.362, 374 and 382 at Putlighar, Amritsar to the appellant on long term lease. Clause 4 of the lease agreement was in the following term :-

*“4. that the lease shall be deemed to have commenced from 01.04.1974 and shall continue so long it is not altered by the*

*parties by mutual consent provided that on expiry of every 10 years the rent will be subject to re-assessment between the parties. In case of dis-agreement between the parties, revision in rent either side shall be referred to a mutually agreed sole arbitrator whose decision in the matter shall be final.”*

After the due date the respondent No.1 sought enhancement in the rent on the ground that the house tax had increased and some fire tax has also been imposed and the increase was intended to cover those additional costs. Since the appellant did not agree to increase the rent the respondent No.1 moved this Court under Section 11 of the Act and an arbitrator was appointed. The arbitrator gave award on 14.11.2011. The relevant portion of the award is as under :-

*“In the light of the findings arrived at above it is held that :*

*(i) the petitioner is entitled to increase in rate of rent recoverable from the respondents.*

*(ii)(a) That the increase in rent shall be with effect from 01.10.2005.*

*(b) Though because of the judgment Ex R-18 the petitioner has been pinned down not to recover more than Rs.68,100/- per month as rent upto 30.09.2005 (already received by it) yet the rate of rent payable upto 30.09.2005 shall be deemed to be Rs.92,000/- p.m., and the increase for further period would be calculated on this amount i.e. Rs.92,000/-, as and from 01.10.2005. Needless to say that respondent would not be liable to pay the difference of rate of rent upto 30.09.2005.*

*(c) That from 01.10.2005 to 30.11.2011 the increased rent would be Rs.1,24,000/- per month (including Municipal Taxes, like House Tax, fire Tax etc. then in force on 01.10.2005). However, in case there is any increase in the Municipal Tax, which might have occurred after 01.10.2005, then the amount of rent of Rs.1,24,000/- per month would*

*stand increased by such an increase.*

*(d) That the claimant-petitioner is also entitled to interest at the rate of 8% p.a. on the arrears of rent from the due date till actual payment.*

*(e) No order for costs.”*

An application under Section 34 of the Act was filed which having been rejected the appellant is before me.

The only argument raised by the learned counsel for the appellant is that the matter of increase of rent can only be gone into by a Rent Controller under Section 4 and 6 of the ***East Punjab Urban Rent Restriction Act, 1949 (for short the Act of 1949)***. Those two sections are reproduced hereunder :-

***“4. Determination of fair rent.***

*(1) The Controller shall on application by the tenant or landlord of a building or rented land fix the fair rent for such building or rented land after holding such inquiry as the Controller thinks fit.*

*(2) In determining the fair rent under this Section, the Controller shall first fix a basic rent taking into consideration -*

*(a) the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances during the twelve months prior to the 1st January, 1939; and*

*(b) the rental value of such building or rented land if entered in property tax assessment register of the municipal, town or notified area committee, cantonment board, as the case may be, relating to the period mentioned in clause (a):*

*(3) In fixing the fair rent of a residential building the Controller may allow, if the basic rent -*

*(i) in the case of a building in existence before the 1st January, 1939 -*

*(a) does not exceed Rs. 25/- per mensem, an increase not exceeding 8-1/3 per cent on basic rent;*

*(b) exceeds Rs. 25/- per mensem but does not exceed Rs. 50/- per mensem, an increase not exceeding 12-1/2 per cent on such basic rent;*

*(c) exceeds Rs. 50/- per mensem, an increase not exceeding 25 per cent on such basic rent;*

*(ii) in the case of a building constructed on or after the 1st January, 1939 "*

*(a) does not exceed Rs.25/- per mensem, an increase not exceeding 25 per cent on such basic rent;*

*(b) exceeds Rs.25/- but does not exceed Rs.50/- per mensem, an increase not exceeding 37-1/2 per cent on such basic rent;*

*(c) exceeds Rs.50/- per mensem, an increase not exceeding 50 per cent on such basic rent.*

*(4) In fixing the fair rent of a scheduled building the Controller may allow, if the basic rent -*

*(i) in the case of a building in existence before the 1st January, 1939 -*

*(a) does not exceed Rs.25/- per mensem, an increase not exceeding 13- 1/3 per cent on such basic rent;*

*(b) exceeds Rs.25/- but does not exceed Rs.50/- per mensem, an increase not exceeding 17-1/2 per cent on such basic rent;*

*(c) exceeds Rs.50/- per mensem, an increase not exceeding 30 per cent on such basic rent;*

*(ii) in the case of building constructed on or after the 1st January, 1939 -*

*(a) does not exceed Rs.25/- per mensem, an increase not exceeding 30 per cent on such basic rent;*

*(b) exceeds Rs.25/- but does not exceed Rs.50/- per mensem, an increase not exceeding 42-1/2 per cent on such basic rent;*

*(c) exceeds Rs.50/- per mensem, an increase not exceeding 55 per cent on such basic rent.*

*(5) In fixing the fair rent of non-residential building or rented land the Controller may allow, if the basic rent -*

*(i) in the case of a building in existence before the 1st January,*

*1939, or in the case of rented land -*

*(a) does not exceed Rs.50/- per mensem, an increase not exceeding 37- 1/2 per cent on such basic rent;*

*(b) exceeds Rs. 50/- per mensem, an increase not exceeding 50 per cent on such basic rent;*

*(ii) in the case of a building constructed after the 1st January, 1939 -*

*(a) does not exceed Rs.50/- per mensem, an increase not exceeding 50 per cent on such basic rent;*

*(b) exceeds Rs.50/- per mensem, an increase not exceeding 100 per cent on such basic rent.*

*(6) Nothing in this section shall be deemed to entitle the Controller to fix the fair rent of a building or rented land at an amount less than the rent payable for such building or rented land under a subsisting lease entered into before the first day of January, 1939.”*

***6. Landlord not to claim anything in excess of fair rent.-***

*(1) Save as provided in Section 5, when the Controller has fixed the fair rent of a building or rented land under Section 4 -*

*(a) the landlord shall not claim or receive any premium or other like sum in addition to fair rent or any rent in excess of such fair rent, but the landlord may stipulate for and receive in advance an amount not exceeding one month's rent:*

*(b) any agreement for the payment of any sum in addition to rent or of rent in excess of such fair rent shall be null and void.*

*(2) Nothing in this Section shall apply to the recovery of any rent which became due before the 1st day of January, 1939.”*

As per learned counsel for the appellant the arbitrator had no jurisdiction to increase the rent in view of the above mentioned statutory provisions.

In my considered opinion, however, this argument can not

incorporated to operate only where there is no agreed rate of increase or where there is no agreed mechanism for increasing the rate of rent. Where parties have themselves agreed on a particular mechanism for revising the rent periodically Sections 4 and 6 of the Act of 1949 would not be applicable.

Learned counsel for the appellant has also argued that under the amendment dated 18.12.2014 the ***Sick Textile Undertakings (Nationalisation) Act, 1974*** was amended, as per which Section 41 was added, and under the new Section 41 the appellant would be entitled to be re-vested with any property which it had been divested of. This argument would not be applicable in the present case because admittedly the appellant had been divested of the property in independent proceedings under the ***East Punjab Urban Rent Restriction Act, 1949*** upto the Supreme Court of India.

Appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

( **AJAY TEWARI** )  
JUDGE

22.01.2018  
*Pooja sharma-I*

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No