

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

CR No.2573 of 2018(O&M)
Date of Decision: January 17, 2019

Usha

...Petitioner

Versus

Adish Bawa and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. B.D. Sharma, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

1. The petitioner-respondent herein seeks to impugn the order dated 04.12.2017 passed by the learned Appellate Authority, Amritsar whereby, the order dated 04.04.2016 passed by the learned Rent Controller, Amritsar has been set aside to the extent of giving opportunity to the petitioner-respondent to deposit the arrears of rent within one month of passing of the order and consequently, the eviction application was allowed and eviction order was passed in favour of the respondents-applicants and against the petitioner-respondent.

2. In brief, the facts required to be noticed are that, the respondents-applicants herein filed an application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 against the petitioner-respondent herein, while submitting that Sh. Sham Lal, father of the

petitioner-respondent had been given on rent two rooms on the ground floor bearing Khanna Shumari No.1449/9 min, MCA Black Plate situated at I/s Lahori, Abadi Bawa Raghbir Dass, Amritsar @ ₹ 6/- per month. The tenancy had been created orally accompanied by delivery of possession. After the death of father of the petitioner-respondent, the petitioner-respondent used to pay the rent @ ₹ 100/- per month to the father of the respondents-applicants. The father of the respondents-applicants expired on 25.07.2005 and thereafter, their mother expired as well and being the legal heirs of deceased Raghbir Dass Bawa, they became landlords qua the petitioner-respondent. It was alleged by the respondents-applicants that the petitioner-respondent had not paid nor tendered the rent w.e.f. 01.07.2003 @ ₹ 100/- per month and despite repeated requests, failed to vacate the tenanted premises, which had become unfit and unsafe for human habitation.

3. The said eviction application was contested by the petitioner-respondent, while taking the preliminary objections as to maintainability and that the respondents-applicants have not approached the court with clean hands, apart from alleging that the respondents-applicants are not owners of the demised premises. It was further alleged that father of the petitioner herein was never inducted as tenant, as her father was occupying the demised premises being owner of the property.

4. Replication was also filed by the respondents-applicants.

5. The learned Rent Controller framed several issues, one being that whether the petitioner herein is in arrears of rent?

6. Onus to prove this issue was on the respondents-applicants and

in order to prove the same, the respondent-applicant stepped into the witness box as AW1 and tendered his affidavit Ex.P1/A and reiterated the averments of the application. On the other hand, the petitioner-respondent herself stepped into the witness box as RW1 and her husband was examined as RW2. The petitioner-respondent denied the relationship of landlord-tenant with the respondents-applicants.

7. The Rent Controller, on appreciating the evidence, came to hold that there is relationship of landlord and tenant between the parties. The Rent Controller observed that the petitioner-respondent has admitted during her cross-examination that she is not possessing any document or title deed to prove the fact that she is owner of the disputed property. The Rent Controller has also taken note of the order dated 10.11.2009 Ex.A1 passed by the court of Ms. Daljit Kaur, Ld. CJJD wherein Raghbir Dass, father of the respondents-applicants herein was the plaintiff and the present petitioner-respondent was defendant and in the said suit, it was held that Raghbir Dass was owner of the property in dispute and the petitioner-respondent had become tenant under him by operation of law. The Rent Controller had directed the petitioner-respondent to tender the rent @ ₹ 100/- per month w.e.f. 01.07.2003 till 04.04.2016 along with interest and costs total amounting to ₹ 21,048/- and thus, decided the issue No.1 in favour of the respondents-applicants and against the petitioner-respondent. Issue No.2 regarding demised premises being unfit and unsafe for human habitation was decided against the respondents-applicants and in favour of the petitioner-respondent. Other issues were not pressed during the course of arguments. While granting relief, the petitioner-respondent had been

directed to pay the arrears of rent within one month, failing which she had been directed to vacate and hand over the vacant possession of the demised premises to the respondents-applicants within a period of one month.

8. Aggrieved against the said order, the respondents-applicants filed an appeal before the Appellate Authority, primarily on the ground that once the relationship of landlord and tenant had been denied, there was no occasion for the Rent Controller to assess the arrears of rent and to give an opportunity to tender the arrears within one month. The Appellate Authority on appreciating the evidence and the law in this regard allowed the appeal and set aside the order of the Rent Controller to the extent whereby opportunity was given to the tenant to deposit the arrears of rent within one month of the passing of the order. Consequently, the rent application was allowed, giving three months' time to the petitioner-respondent to hand over the vacant possession of the demised premises to the respondents-applicants. Aggrieved against the said order, the instant civil revision has been filed by the petitioner-respondent.

9. Mr. B.D. Sharma, learned counsel appearing on behalf of the petitioner vehemently contends that the impugned order suffers from patent illegality as the Rent Controller had correctly allowed the petitioner-respondent herein to make up the arrears of rent, while coming to the conclusion that the plea set up by the respondents-applicants regarding the premises being unsafe and unfit for human habitation has been dismissed.

10. I have heard learned counsel for the petitioner and have gone through the pleadings of the case.

11. While allowing the appeal of the respondents-applicants, the

Appellate Authority has observed, as under:-

“20. *It is evident that in the case in hand, provisional assessment order of rent was not passed by the Rent Controller, the reason being in her written statement, the respondent denied the relationship of landlord and tenant between the parties. After both the parties adduced the evidence, the learned Rent Controller came to the conclusion that there exists relationship of landlord and tenant between the parties. In the light of the case laid down by the Hon'ble High Court in **Yashpal Singla's case (supra)** and **A.K.Goel's case (supra)**, the Rent Controller was having no jurisdiction to assess the arrears of rent and to give an opportunity to the tenant to tender the said arrears within one month of the passing of the impugned order, rather the Rent Controller should have straightway passed order of eviction on the ground of non-payment of rent.*”

12. In the case in hand, in response to the rent application filed by the respondents-appellants, the petitioner-respondent came up with the plea that she is not the tenant, in fact, she is owner of the demised premises and in this way, relationship of landlord-tenant was denied. However, at the time of final disposal of the rent application, the Rent Controller found the plea of the petitioner-respondent to be false and came to hold that there exists a relationship of landlord and tenant between the parties. However, instead of allowing the petition and passing the eviction order on the ground of non-payment of rent, the Rent Controller assessed the rent to be paid by the petitioner-respondent within one month, failing which the petitioner-respondent would be liable to vacate and hand over the vacant possession

within a period of one month. It is settled proposition of law that once the tenant denies the relationship of landlord and tenant between the parties and after conclusion of evidence, the Rent Controller finds that the relationship of landlord and tenant so exists, then in such an eventuality, the Rent Controller would not be justified in assessing the rent and granting an opportunity to the tenant to deposit or tender the arrears of rent. Reliance in this regard can be placed upon judgment rendered in ***Rakesh Wadhawan vs. Jagdamba Industrial Corporation, 2002(1) RCR (Rent) 514***. The Appellate Authority has rightly set aside the order passed by the Rent Controller to the extent of granting opportunity to the tenant to deposit the arrears of rent within one month. This court finds no illegality or perversity in the findings so recorded by the Appellate Authority.

13. In view of the above, the civil revision in hand has no merit the same is hereby dismissed.

January 17, 2019

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No