

In the High Court of Punjab and Haryana at Chandigarh

CR No. 4650 of 2016
Date of Decision:21.1.2019

Sunder Singh

---Petitioner

vs.

Ashwani Kumar

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ravindra Jain, Advocate
for the petitioner

Rekha Mittal, J.

Challenge in the present petition has been directed against concurrent findings of fact whereby eviction application filed under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short “the Act”) was dismissed by the Rent Controller, Yamana Nagar at Jagadhri vide order dated 21.11.2015 and appeal preferred by the unsuccessful landlord-petitioner was rejected by the Appellate Authority, Yamuna Nagar at Jagadhri.

The petitioner sought eviction of the respondent-tenant from the demised shop on the ground of arrears of rent i.e. arrears of difference of increased rent @ Rs. 230/- per month for 35 months with effect from 1.1.2011 to 30.11.2013 and rent @ Rs. 1700/- per month from 1.12.2013 to 30.5.2014 total amounting to Rs. 18,150/- liable to be paid with interest @

8% per annum and costs of the application.

The Rent Controller assessed provisional rent to the tune of Rs. 20,000/-, detailed hereunder:-

From 1.6.2011 to 30.11.2013 @ Rs. 230/- per month i.e. Rs. 6900/-

Interest of Rs. 1219/-

From 1.12.2013 to 30.5.2014 @ Rs.1700/- per month i.e.

Rs. 10,200/-

Interest of Rs. 646 and costs

Rs. 1035/-

Undisputedly, the rent assessed by the Rent Controller was paid by the respondent-tenant.

The short question that requires consideration is with regard to claim of the petitioner for arrears of difference of increased rent @ Rs. 230/- per month with effect from 1.1.2011 to 31.5.2013.

The application for eviction was filed on 8.5.2014. Section 13 of the Act deals with eviction of tenants and sub section 1 thereof says that a tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this Section. Clause (i) of sub section 2 of Section 13 deals with eviction if the tenant has not paid or tendered the rent due from him in respect of the building or rented land within 15 days after expiry of time fixed in the agreement of tenancy with his landlord or in absence of any such agreement by the last day of the month next following that for which the rent is payable. Second proviso appended to this clause lays down that the landlord shall not be entitled to claim arrears of rent for a period exceeding three years immediately preceding the date of application under the provisions of this Act. In the

case at hand, the fair rent was fixed at Rs. 1470/- per month by the Rent Controller and the same was increased to Rs. 1700/- per month vide order dated 29.11.2010 passed by the Appellate Authority, Yamuna Nagar at Jagadhri. The petitioner claimed arrears of difference of increased rent @ Rs. 230/- per month with effect from 1.1.2011 to 30.11.2013 by filing eviction application in May 2014. When the case is examined in the light of second proviso, discussed hereinbefore, the petitioner was not entitled to seek arrears of difference of increased rent for a period beyond three years from the date of filing of eviction application. In the given circumstances, the petitioner was entitled to arrears of difference of increased rent with effect from 8.5.2011 to 30.11.2013 but the Rent Controller allowed arrears of difference of increased rent with effect from 1.6.2011 in place of 8.5.2011. The amount of arrears of difference of increased rent for a period of 22/23 days would be approximately Rs. 170 /- with interest @ 8% per annum and the same would be approximately Rs. 200/-.

This Court can not lose sight of the fact that if a tenant had paid an amount of Rs. 20,000/- as assessed, he would not hesitate to pay another sum of Rs. 200/- in order to save his eviction.

Taking into consideration the extent of inconvenience and expense involved in case the respondent is called upon by the court to pay the outstanding amount, in the light of judgment of Hon'ble the Supreme Court **Rakesh Wadhawan vs. M/s. Jagdamba Industrial Corporation 2002(1) RCR (Rent) 514**, interest of justice commands that the petitioner is left at liberty to seek his claim for arrears of difference of increased rent with effect from 8.5.2011 to 31.5.2011 in another eviction application, if

any, filed by him within a period of three years from the order passed by this
Court and ordered accordingly.

Disposed of.

(Rekha Mittal)
Judge

21.1.2019
paramjit

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