

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

CR No. 8240 of 2016 (O&M)
Date of decision: 22.1.2019

Vishav Nath Tiwari and others

...Petitioners

Versus

Kulwant Singh

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Aayush Gupta, Advocate,
for the petitioners.

Mr. Amarjit Singh Virk, Advocate,
for the respondent.

JAISHREE THAKUR, J.

This revision has been filed under Article 227 of the Constitution of India with a prayer for setting aside the order dated 17.11.2016 passed by the Rent Controller, Kurukshetra, whereby the application filed by the petitioners for framing of additional issue and to lead further evidence has been dismissed.

In brief, facts are that the petitioners herein filed a petition under Section 13 of the Haryana Urban Control of (Rent & Eviction) Act, 1973 for ejection of the respondent/tenant from the shop in question. It is the pleaded case of the petitioners that the respondent/tenant was chronic defaulter of payment of rent and he failed to pay the rent @ ₹5,000/- per month, besides house tax.

In fact, the petition that contained para No.1 the following averments were made:-

“1. That respondent is tenant in a commercial shop bearing Municipal No. 1317/8, measuring 8 feet x 23 feet, situated on Railway Road, Kurukshetra under the petitioners on a monthly rent of Rs. 5,000/- besides House Tax and the said shop is bounded as under:-

East : Shop in possession of Raksh Kumar

West : Shop in possession of Puran Chand

North : Railways Road, Kurukshetra

South : Vacant land of Chura Mani.”

A written statement was filed to the said ejectment petition, wherein certain preliminary objections were taken on behalf of the respondent/tenant. On merit, reply to para 1 of the petition, it was stated as under:-

“1. That the contents of para No.1 of the petition are correct and admitted.”

After filing of the written statement by the tenant, an application for amendment of the written statement was filed seeking to withdraw the said admission on the ground that the rate of rent, in fact, was ₹500/- per month, as mentioned in other paras of the written statement. The amendment was allowed by order dated 29.3.2016, which subsequently came to be challenged in this Court in Civil Revision 2475 of 2016 titled Vishav Nath Tiwari and others Vs. Kulwant Singh. The revision petition was dismissed. However, it was directed that the amendment would be subject to costs of ₹5,000/-. Thereafter, the petitioners preferred an application for framing of an additional issue in terms of the amended pleadings as to what is the rate of rent of the shop in dispute. Reply was filed to the said application and by

the impugned order the Rent Controller dismissed the said application, giving rise to the present revision.

Learned counsel for the petitioners contends that there is specific averment that has been made in the petition that the shop in dispute had been rented out for a sum of ₹5,000/- per month, which was not controverted initially. However, by an amendment that admission was withdrawn. It is contended that if the respondent has set up a plea that the premises had been rented out for a sum of ₹500/- per month, an additional issue needs to be framed as to what is the rate of rent of the premises in dispute. It is submitted that until that issue is settled, the court below would not be able to arrive at a conclusion whether the tenant would be liable to be evicted on the ground of non-payment of rent.

Per contra, learned counsel appearing on behalf of the respondent submits that the respondent has already paid the arrears of rent as per the assessment order dated 9.12.2014. It is also argued that there is clear cut denial in the written statement that the rate of rent is ₹5,000/- per month, however, it was stated to be ₹500/- per month.

I have heard learned counsel for the parties and perused the pleadings of the parties. A perusal of para 1 of the eviction petition that has been annexed with the present petition clearly mentions that the respondent is a tenant in a commercial shop bearing Municipal No. 1317/8, measuring 8 feet x 23 feet, situated on Railway Road, Kurukshetra, on monthly rent of ₹5,000/-, besides house tax. The written statement filed clearly mentions that the respondent had never paid a sum of ₹5,000/- per month as rent of

the shop in dispute, while further submitting that the rate of rent was ₹500/- per month. This plea has been taken up in several paras of the written statement. Thus, there is dispute regarding the rate of rent which needs to be adjudicated so as to arrive at a conclusion as to what was the exact rate of rent and then to decide whether the respondent is in arrears of rent or not. Order XIV Rule 1 of the Code of Civil Procedure, which deals with the framing of issues reads as under:-

“1. Framing of issues.—(1) Issues arise when a material proposition of fact or law is framed by the one party and denied by the other.

(2) xx xx

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) xx xx

(5) xx xx

(6) xx xx”

A reading of sub Rule (3) contemplates that each material proposition affirmed by one party and denied by other shall form the subject of a distinct issue. In the instant case, there is an averment made by the petitioners that the rate of rent of the premises in dispute is ₹5,000/-, which has been denied by the respondent/tenant claiming it to be ₹500/-, forming a distinct issue. Moreover, the Rent Controller has itself noted that from the very outset, the rate of rent has been denied but despite noting the dispute over the rate of rent failed to allow the additional issue without substantial reasons, in terms of sub Rule (3) re-produced above.

In view of the above, the revision is allowed. The impugned

order is set aside and the application filed by the petitioner for framing of an additional issue is allowed. The Rent Controller is directed to frame an issue as sought for and allow the petitioner to lead evidence, while giving liberty to the respondent to lead evidence in rebuttal.

22.1.2019	(JAISHREE THAKUR)
prem	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	No