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251

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

(1) CR No.2121 of 2019
Date of Decision: 28.11.2019

Sukhjinder Singh

.....Petitioner

Versus

Khushwant Rai Joshi

.....Respondent

(2) CR No.2696 of 2019

Sukhjinder Singh

.....Petitioner

Versus

Khushwant Rai Joshi

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Ashish Gupta, Advocate
for the petitioner.

Mr. Arun Takhi, Advocate
for the respondent/caveator.

NIRMALJIT KAUR, J.

Both the aforementioned revision petitions shall stand decided
by this common order as the issue involved is identical.

Both the revision petitions are filed by the petitioner/tenant
against the dismissal of the appeal by the Appellate Authority, whereby, the
order of eviction, on the ground of arrears of rent, passed by the Rent
Controller, was upheld.

The only argument raised by learned counsel for the petitioner
is that both the Courts below have ignored the provisions of Section 17 of
the Registration Act, 1908. As per provision of Section 49 of the
Registration Act, the rent deed could have been read only in case it was a
registered document. The rent deed being admittedly an unregistered
document cannot be relied upon for quantifying the rate of rent as has been

CR No.2121 of 2019 & another connected case

done by the Courts below. Reliance was placed on the judgments rendered by this Court in the cases of Satwant Kaur Vs. Narinder Singh, 2011 (1) R.C.R. (Civil) 214 and Pardeep Behal Vs. Kanwaljit Kaur and others, 2012 (3) R.C.R. (Civil) 50, to contend that any rent note for exceeding a year or increasing yearly rent requires registration under Section 17 (1) (d) of the Registration Act, 1908 and is not admissible in evidence and the landlord cannot claim enhanced rent on the basis of said document.

The argument deserves to be rejected in the facts of the present case being devoid of merit.

Learned counsel for the respondent/landlord has pointed out that this is the fourth round of litigation. The first, eviction petition filed by the landlord for non payment of rent had attained finality on 30.05.2015 after the Appellate Authority dismissed the appeal filed by the petitioner/tenant against the order of eviction. In the second round of litigation, another rent petition had to be filed for non payment of rent for the subsequent period, which too attained finality on 27.01.2016, after the eviction order was passed against the petitioner/tenant. In the third round of litigation, the Appellate Authority, vide order dated 23.05.2017, once again assessed the provisional rent for the another subsequent period w.e.f. 01.04.2017 by adding 10% enhancement to Rs.16,838/- per month, when the said order was challenged before this Court in CR No.6403 of 2017. The same too was dismissed, vide order dated 12.12.2017. This is now the fourth round of litigation, where, another rent petition had to be filed under Section 13 of The East Punjab Urban Rent Restriction Act, 1949 for ejectment of the petitioner from the shop in question once again for non payment of rent

Period	Rent (including 10%) per month as per agreement	Rent payable year as per agreement
01.04.2015 to 31.03.2016	Rs.13,915/- + Rs.1391.5/- (10%) = Rs.15,306.5/-	= Rs.1,83,678/-
01.04.2016 to 31.03.2017	Rs.15,306.5/- + Rs.1530.65/- (10%) = Rs.16,837.15/-	= Rs.2,02,045.8/-
01.04.2017 to 30.11.2017	Rs.16,837.15/- + Rs.1683.715/- (10%) = Rs.18,520.87/-	= Rs.1,29,646.09/-
Total Rent payable		Rs.5,15,369.89/-

The appeal against the said order was dismissed, vide order and judgment dated 19.11.2018.

There is no dispute with the judgments rendered by this Court and relied upon by learned counsel for the petitioner in the cases of Satwant Kaur and Pardeep Behal (supra). However, in the present case, the rent note was executed for a period of 11 months, which could always be read in evidence for a collateral purpose i.e. to find out the purpose of tenancy. It is not disputed and as also recorded by the Courts below that one of the stipulation in the rent note was that the rent would be increased every five years. Therefore, the said rent note could always be read for the purpose of assessment of a provisional rent. It is a well settled proposition of law as held by Hon'ble the Apex Court in the case of Dalip Kaur Brar Vs. M/s Guru Granth Sahib Sewa Mission (Regd.) and another, 2017 (1) R.C.R. (Rent) 447, that in case the tenant does not deposit the provisional rent for the period as assessed, there was no escape from order of eviction. It was held by the Hon'ble Apex Court in the case of Dalip Kaur Brar (supra) as under:-

“To avail of the concession, the provisional “assessment”, must be complied with. If the tenant does so the payment is deemed to have been made within time. If the tenant fails to

do that, the Rent Controller is empowered to pass a decree for eviction. The manner in which a wrongful provisional “assessment”, will be remedied have been laid down in Wadhawan and Vinod Kumar (supra). The tenant upon complying with the order of the Rent Controller is not left without a remedy. When the Rent Controller subsequently makes a final determination of the rent payable, if it is found that the tenant has paid an amount in excess, the Rent Controller can issue directions for refund or adjustment, as the case may be. A tenant who complies with an order of provisional assessment by the Rent Controller is to be protected against eviction. At the same time, the tenant is entitled to pursue the challenge to the assessment made by the Rent Controller. A tenant who fails to observe the order of provisional assessment will not be protected against an order of eviction.”

Thus, any dispute qua the provisional rent can be raised only subsequently as the assessment is clearly provisional made before the commencement of evidence. Hence, no excuse is available to the tenant at that stage for not depositing the rent. Failure to deposit the same will invite an eviction order.

In view of the above, both the revision petitions are dismissed being devoid of any merit.

28.11.2019
sandeep

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No