

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

Civil Revision No. 4167 of 2019 (O&M)

Date of decision : September 17, 2019

Agrim and others

.....Petitioners

Versus

Satish Kumar Thareja

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. S.S. Dinarpur, Advocate
for the petitioners.

Mr. Pawan Kumar, Senior Advocate with
Mr. Surya Kumar, Advocate
for the respondent.

LISA GILL, J.

CM No. 18949-CII of 2019 has been filed praying for stay of the proceedings before the learned Rent Controller, Yamuna Nagar at Jagadhri. Revision petition stands adjourned to 04.11.2019.

Learned counsel for the parties are ad idem that the hearing of the main revision be preponed for today itself and the matter be heard on merits. In view of the specific stand of learned counsel for the parties, hearing of the main revision petition is preponed from 04.11.2019 for today itself and the same is taken up for hearing.

This petition has been filed challenging order 23.04.2019 (Annexure P-4) whereby learned Rent Controller has dismissed the application filed by the present petitioner – landlord under Section 33/34 of the Indian Stamp Act, 1899 claiming that the rent note dated 29.03.2011 (Ex.R2) relied upon by the respondent – tenant has not been affixed with the

stamp duty in accordance with the provisions of the Indian Stamp Act. Therefore, the said document be impounded, stamp and penalty be deposited by the respondent and in case of failure to do so, the document be struck off the case file. It is stated therein that as per the respondent – tenant's claim, monthly rent of the premises as per the said document (Ex.R2) is ₹18,000/- per month. Moreover, premium of ₹10 lakhs is reflected to have been paid and the lease period is for fifteen (15) years. Relevant part of Schedule 1-A of the Indian Stamp Act (Entry No. 35) as applicable to Haryana as referred to in the application is reproduced as under:-

35. **Lease**, including an under-lease or sub-lease and any agreement to let or sub-let;

xxx xxx xxx

(c) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved.	The same duty as a Conveyance (No. 23), as levied by this Act, for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered.
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Reply to this application was filed by the respondent – tenant wherein it is stated that the document in hand need not be stamped. Learned Rent Controller vide impugned order dated 23.04.2019 has dismissed the said application while observing that it is not to decide the validity of the rent note relied upon, by either the applicant or the respondent. Payment of requisite stamp fees is a matter between the person in whose favour the rent note has been executed and the concerned revenue authority. It is further

observed the Rent Controller is only to decide whether the respondent is to be ejected from the demised premises or not and the question regarding payment of requisite stamp fee is not to be decided in the present rent petition. Aggrieved therefrom, the present petition has been filed by the petitioners.

Learned counsel for the petitioners has argued that in case the document is not properly stamped, the same is not admissible in evidence and cannot be relied upon to decide the lis between the parties. It is, thus, prayed that this petition be allowed and impugned order dated 23.04.2019 be set aside and the learned Rent Controller be directed to decide regarding the admissibility of the document in question.

Per contra, learned senior counsel for the respondent while refuting the above argument, submits that the petitioner – landlord is only trying to delay the proceedings. It is contended that a petition had earlier been filed by the landlord while relying upon rent note dated 23.04.2010 whereby the rate of rent is stated to be ₹52,000/- per month. Earlier petition filed by the landlord was decided by the learned Rent Controller, Yamuna Nagar at Jagadhri on 29.01.2018. A photocopy of the said order has been furnished in Court today. It is submitted that in order dated 29.01.2018, learned Rent Controller has specifically observed that rent note dated 23.04.2010 as well as rent note dated 29.03.2011 (which is relied upon by the respondent – tenant) are not properly stamped or registered and both the documents cannot be read in evidence. Rent petition filed by the landlord was dismissed.

It is further contended that the present petition for ejectment has been filed only on the ground of non-payment of arrears of rent, therefore, for the collateral purpose of determining the rent both the

documents i.e. rent note dated 23.04.2010 relied upon by the petitioner – landlord as well as rent note dated 29.03.2011 relied upon by the respondent - tenant can be looked into and are clearly admissible for this purpose. Moreover, in the earlier petition filed by the landlord, he never raised the plea of rent note dated 29.03.2011 not being properly stamped, therefore, it is not open for the petitioner to raise this ground at this stage. It is submitted that in any case the petitioner is also relying upon rent note dated 23.04.2010, which is not appended with the stamp duty in accordance with the provisions of law and by the same analogy, the said rent note dated 23.04.2010 is also inadmissible in evidence. It is contended that the matter is at its final stage before the learned Rent Controller and is fixed for further orders. It is, thus, prayed that this petition be dismissed.

I have heard learned counsel for the parties and have gone through the file as well as order dated 29.01.2018 passed by the learned Rent Controller in the earlier proceedings.

It is not in dispute that the present petitioner - landlord has filed a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short – 'the Act') seeking ejectment of the respondent from the demised premises on the ground of non-payment of arrears of rent. Petition under Section 13 of the Act is attached as Annexure P1 with this petition. Earlier petition filed by the landlord was admittedly dismissed on 29.01.2018. The said petition was filed on the basis of non-payment of arrears of rent as well as for personal bonafide necessity. The petitioner – landlord in the earlier proceedings too relied upon rent note dated 23.04.2010 claiming rent to be ₹52,000/- per month whereas the respondent – tenant relied upon rent note dated 29.03.2011 claiming rent to

be ₹18,000/- per month. As per rent note dated 29.03.2011, premium of ₹10 lakhs is stated to be received and the lease period is mentioned to be fifteen (15) years. Learned Rent Controller vide order dated 29.01.2018 in the earlier rent petition has specifically observed that both the said rent notes dated 23.04.2010 and 29.03.2011 are not to be read in evidence, in support of either of the parties. Learned counsel for the petitioners has informed that appeal against order dated 29.01.2018 is pending before the concerned learned Appellate Authority and operation of the said decision has been stayed.

The Hon'ble Supreme Court in Ram Rattan (Dead) by Legal Representatives v. Bajrang Lal & Ors., AIR 1978 Supreme Court 1393 has held that it is the duty of the Court to judicially determine the objections as to the admissibility of any document before a suit is finally disposed of. In the present case, the petitioner has moved an application for initiation of action against the respondent for not appending the stamp duty. Though learned Rent Controller is not required to go into the controversy regarding action to be taken against the respondent but at the same time it is incumbent upon the learned Rent Controller to determine the admissibility of such an document. This is so for the reason that there is a specific prayer in the application moved by the petitioner that in case the requisite stamp is not appended, the document may be struck off the case file. It is in this connection and to the extent of determining the admissibility of the document that the learned Rent Controller is to adjudicate the matter.

In this view of the matter, this petition is disposed of with a direction to the learned Rent Controller to determine the admissibility of the document in question before the petition filed by the landlord is finally

disposed of.

Present petition is, accordingly, disposed of.

September 17, 2019
rts

(Lisa Gill)
Judge

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