IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CR-5421-2019(O&M)

M/s Mayur Dhaba and others
.......Petitioners

Versus

Prerna Chaudhary and others
......Respondents

2. CR-5428-2019(O&M)

M/s Mayur Dhaba and others
.......Petitioners

Versus

Prerna Chaudhary and others
......Respondents

Date of decision: 04.03.2020

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vikas Bahl, Sr. Advocate with
Mr. Nitish Garg and
Ms. Arzoo B Grewal, Advocates for the petitioner

Mr. S.K.Garg Narwana, Sr. Advocate with
Mr. Vishal Garg Narwana and
Ms. Shalini Attri, Advocates for respondent no.1

Mr. Suvir Sidhu, Advocate for respondent no.2
in CR-5421-2019

ANIL KSHETARPAL, J. (ORAL)

By this order two Civil Revision petitions i.e CR-5421 and 5428 of 2019 shall stand disposed of.

For convenience, the parties are referred to by their original status in the rent petition.

The tenant-petitioner has filed these two revision petitions assailing correctness of orders passed by the learned Rent Controller dated 3.7.2019 and 27.8.2019 passed by learned Appellate Authority, Karnal. A petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the '1973 Act') has been filed by the respondent claiming to be the landlady. One of the grounds on which eviction has been sought is non-payment of rent apart from other grounds. The rent is being claimed at the rate of ₹15,000/- per day from 8.4.2016 till 28.2.2019 amounting to ₹ 1,74,54,600/-. In the rent petition, respondent impleaded following parties:-

> "1. M/s Mayur Dhaba, Village Uchana, G.T. Road, Karnal near Chauhan Traders (Indian Oil Petrol Pump), through its partner Rajesh Kumar son of Shri Joginder Pal.
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> 2. Sumit Kumar son of Shri Charanjeet, resident of LID 231, Sector 45, CHD City, Karnal.
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> 3. Rakesh Gulati son of Shri Bodh Raj Gulati, resident of 1439, Sector 13, Urban Estate, Karnal.
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> 4. Kavita alias Kavita Sharma wife of Shri Ashwani Sharma, resident of House No.58, Friends Colony, Kaithal Road, Karnal.
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> 5. Rajesh Kumar son of Shri Joginder Pal, resident of 1654-A, Sector 6, Urban Estate, Karnal.
>
> 6. Inderjit Singh son of Shri Jasbir Singh, resident of House No.90-A, Ward No.2, Model Town, Karnal.
>
> 7. Balinder Kumar son of Malkhan Singh, resident of Village Bastara, Tehsil Gharaunda, District karnal.
>
> 8. Balbir Singh son of Shri Nathu Ram, resident of village Bahini Kalan, Tehsil Nilokheri, District Karnal."

In the petition it is claimed that respondent no.1 is occupying the tenanted premises as a tenant.

Respondent no.1 contested the petition by filing a detailed written statement on behalf of respondents no. 1 to 3 and 5. It was claimed that agreed rate of rent is ₹8000/- per month w.e.f 1.4.2018. Originally the premises were taken on rent from late Sh. Ranjit Singh on a monthly rent of ₹3000/- per month in the year 1989 which was subsequently enhanced from time to time and till 31.3.2018, monthly rent at the rate of ₹7000/- per month was being paid.

As per the provisions of Section 13 of the 1973 Act, it is obligatory on the Rent Controller to assess provisional rent as interpreted by the Hon'ble Supreme Court in the case of **Rakesh Wadhawan vs. M/s Jagdamba Industrial Corporation** (2002) 5 SCC 440. The dispute in the present revision petition is with regard to provisional assessment. Landlady as noted above, claims rent at the rate of ₹15,000/- per day. In the petition it has not been stated as to how ₹15,000/- per day is being claimed. Para 5 of the petition reads as under:-

> "5. That the respondent No.1 is occupying the piece of the land, on which, building has been constructed at a daily rent of Rs.15000/- with increase of 10% after every one year, on the existing rent and the demised premises is bounded as under:-
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> North: Property of ICDP (Government Land)
> South: Indian Oil Petrol Pump (Chauhan Traders)

East: G.T.Road

West: Land of the petitioner.

The site plan depicting the true state of affairs is attached herewith for the kind perusal of this Hon'ble Court.”

It is important to note that respondent no.4 in the eviction petition is Smt. Kavita Sharma. She filed a written statement admitting the rent to be ₹15,000/- per day.

Learned Rent Controller as well as Appellate Authority chose to rely upon the admission of Smt. Kavita Sharma being admission of a partner of the partnership firm and therefore, proceeded to assess the provisional rent on the aforesaid basis.

This Court has heard learned senior counsel appearing for the parties at length and with their able assistance gone through the orders passed by the authorities.

Learned senior counsel for the petitioner-tenant has submitted that in view of Section 19(2)(e) of the Partnership Act, 1932 such admission does not bind the firm. He further submitted that Smt. Kavita Sharma has already filed a criminal case against the remaining partners i.e FIR No. 657 dated 14.6.2018 complaining that she is not being rendered accounts. Learned counsel further submitted that she has been impleaded as party by the landlady once she knew that there is an inter se dispute. He further drew attention of the Court to the income tax return of the tenant-firm for the assessment year 2017-18 to contend that payment of rent for the period from 1.4.2016 to 31.3.2017 has been entered at ₹84,000/- In other words the rate of rent payable at that time was ₹ 7000/- per month. He submitted that the return was filed on 30.10.2017, much before filing of the petition by the landlady on 6.7.2019. He further places reliance on a judgment passed by the Court in **Prabhakar Traders Vs. Veejay Traders and others** 2009 SCC Online P&H 11699.

On the other hand, learned counsel appearing for the respondent-landlady referred to the award passed by the Arbitrators during the pendency of the present revision petition. He submits that in the aforesaid award the Arbitrator has assessed the rent at ₹8000/- per day. He further submitted that admission by a partner is binding on the firm and therefore, the Courts have rightly passed the order.

This Court has considered the submissions of the learned counsel for the parties and with their able assistance gone through the documents filed. At the outset it would be appropriate to extract Section 19 and 22 of the Partnership Act, 1932:-

> **"19. Implied authority of the partner as agent of the firm**.—(1) Subject to the provisions of Section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.
>
> The authority of a partner to bind the firm conferred by this section is called his "implied authority".

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

(*a*) submit a dispute relating to the business of the firm to arbitration,

(*b*) open a banking account on behalf of the firm in his own name,

(*c*) compromise or relinquish any claim or portion of a claim by the firm,

(*d*) withdraw a suit or proceeding filed on behalf of the firm,

(*e*) admit any liability in a suit or proceeding against the firm,

(*f*) acquire immovable property on behalf of the firm,

(*g*) transfer immovable property belonging to the firm, or

(*h*) enter into partnership on behalf of the firm.

22. Mode of doing act to bind firm.—In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm."

Clause (e) of sub Section 2 of Section 19 it is apparent that in absence of any usage or custom or trade to the contrary, the implied authority of a partner does not enable him/her to admit any liability in a suit or proceedings against the firm. In other words, in absence of any usage or custom of trade to the contrary, any admission made by a partner with respect to any liability in a suit or proceedings against the firm shall not be covered by the implied authority of a partner. Section 22 of Partnership Act provides that an act or instrument done or executed by a partner or other person on behalf of the firm, shall bind the firm. However, such act has to be with reference to the business of the firm and on behalf of the firm. Still further Section 19 and 22 have to be harmoniously construed. It may be noted here that this aspect came up for consideration in the case of Prabhakar Traders (supra). It was held as under:-

> "9. The judgments referred to by the learned counsel for the appellant are not relevant for the issue raised in the present appeal. In *Bhura' case* (supra), the admission of one of the persons, jointly interested in a suit was found to be relevant. In *Harihar Rajguru Mohapatra's case* (supra), the admission on one of the parties was found to be binding on another, where they were having joint interests. In the present case, the admission of defendant No.5 is sought to be used as a partner of the firm against the firm and other partners. Section 19 of the Act, does not empower a partner of the firm to admit the liability in a suit or proceedings against the firm. In view of the said provisions, the judgments referred to by the

> learned counsel for the appellant are not applicable to the issue raised in the present appeal."

In view of what has been laid down, admission of respondent no.4 Kavita Sharma cannot be treated to be binding on the firm.

Arguments of the learned counsel for the respondent with reference to Arbitration Award is also without any substance because in the Arbitration Award, rent has never been determined and what has been observed in Arbitration award is as under:-

> "**Regarding rent of dhaba**. The matter is pending with the court and during my enquiry it is found that there are contradicting claim from the both side the matter is with the court so it is to be decided by the court. At present approx. Rs.8000/- per day rent is taken."

From the reading of the aforesaid part of the Arbitration Award relied upon by the learned counsel for the respondent it cannot be said that Arbitrator has determined the rate of rent at ₹ 8000/- per day. Still landlady is not a party to the aforesaid award. The aforesaid award is with regard to settling some dispute between the various partners of tenant-firm.

Keeping in view the aforesaid facts, the orders passed by the Rent Controller affirmed in appeal by the learned Appellate Authority assessing the provisional rent are set aside. Learned Rent Controller is requested to re-assess the provisional rent as per the material available on the file.

Both these revision petitions are allowed.

04.03.2020 **(ANIL KSHETARPAL)**
rekha **JUDGE**

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No