

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-8265-2019(O&M)

Date of decision: 22.12.2020

Bittiya Rani

.....Petitioner

Versus

Vijay Sharma

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Shekhar Verma, Advocate for the petitioner

Mr.Puneet Jindal, Sr. Advocate with
Mr. Tajinder Singh, Advocate for the respondent

ANIL KSHETARPAL, J.

The correctness of judgment passed by the Appellate Authority assessing the provisional rent payable by the tenant during the pendency of the eviction petition has been assailed by filing revision under Section 15 (5) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act of 1949'), read with Article 27 of the Constitution of India.

Some facts are required to be noticed. The respondent-landlord filed a petition under Section 13 of the Act of 1949 seeking ejection of the tenant. As per provisions of the Act, the Rent Controller is required to assess provisional rent. The learned Rent Controller assessed the provisional rent at the rate of Rs.3,290/- per month which has been revised by the learned Appellate Authority in accordance with the terms of lease deed. It may be noted here that a

lease deed was signed between the parties on 6.7.2005 which was effective from 1.7.2005. On careful reading of the lease deed which has been styled as rent note the tenancy is month to month and the period of tenancy is for 11 months. No doubt, in clause 9, it is provided that in the event of continuity of the tenancy on expiry of the period of 11 months, the tenant would be liable to pay rent with a periodical increase of 7% on the previous rent. Learned Rent Controller did not take in to consideration the clause of periodical increase whereas the Appellate Authority has taken that into consideration while assessing provisional rent. It is significant to mention here that initially the lease property was taken on a monthly rent of Rs.2700/- however, the tenant herself admitted that the rent was increased to Rs.3290/-.

This Court has heard learned counsel for the parties at length and with their able assistance perused the paper book. Learned counsel appearing for the petitioner has submitted that since the rent note is required to be compulsorily registered, therefore, it is not admissible in evidence. He, hence, submitted that the Appellate Authority has erred. He submitted that the rent note is for a period exceeding one year and therefore, under Section 17 (1) (d) of the Registration Act, 1908, registration of such document is mandatory.

On the other hand, learned counsel appearing for the respondent while placing reliance on three Judges Bench judgment of the Supreme Court in **Shri Chand (dead) through L.Rs vs. Surinder Singh** (2020) 6 SCC 288 contends that since the tenancy is on month to month basis and is for a period of 11 months with a provision for periodical increase in the case of tenant does not vacate, therefore, the

document was not required to be registered. He submitted that the lease is not for term exceeding one year.

Since, the eviction petition is pending, therefore, it would not be appropriate for the Court to delve deep into the matter lest it may prejudices the case of any other parties. Prima facie as per the latest judgment passed by the Supreme Court in Shri Chand's case (supra) the lease deed cannot be said to be for a term exceeding one year. As per clause 8 the tenure of tenancy has been fixed at 11 months. In clause 9 it is provided that in the event of continuity of the tenancy, the tenant will pay the rent with periodical increase of 7% on the previous rent. However, such clause itself is sufficient to hold that the lease deed was for a period exceeding a year.

Keeping in view the aforesaid facts, this Court does not find any good ground to interfere in the order passed by the Appellate Authority. It is clarified that the learned Rent Controller would independently decide about the admissibility of the lease deed and the opinion expressed by this Court shall not be construed as final.

Hence, dismissed.

22.12.2020
rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No