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

-:-

CR-5067-2014 (O&M)

Date of Decision : 05.12.2022

Tek Chand

....Petitioner

VERSUS

Harbans Lal

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. R.S.Randhawa, Advocate for the petitioner.

Mr. Kunal Dawar, Advocate for the respondent.

ALKA SARIN, J. (Oral)

The present revision petition has been filed challenging the orders dated 11.03.2014 and 24.03.2014 whereby the learned Rent Controller assessed the provisional rent and subsequently ordered the eviction of the petitioner on the ground of non-payment of arrears of rent.

The brief facts relevant to the present lis are that the respondent, who is none other than the brother of the petitioner, filed an ejectment petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 for eviction of the petitioner from a single room ad-measuring 8'6"x9' forming part of property/house bearing No.2-L/59, B.P N.I.T, Faridabad on the ground of non-payment of arrears of rent w.e.f 2005 at a monthly rate of Rs.1000/-per month besides Rs.200/- extra on account of electricity, water and sewerage charges. It was averred in the ejectment petition that the tenancy was oral and that no rent agreement was executed between the parties.

In reply to the ejectment petition the petitioner herein denied the relationship of landlord and tenant. It was averred that the ejectment petition was a false and frivolous one. It was further contended that the petitioner herein had been residing in the said property from more than two decades. It was further denied that there was any oral tenancy as alleged. It was also averred in the reply that the respondent therein had also filed a suit for declaration and permanent injunction in respect of the same property being Civil Suit No.129 dated 08.05.2010 titled as Harbans Lal Vs. Tek Chand and Others.

Learned counsel for the petitioner submitted that in the present case the respondent has even prima facie not been able to show that he was the landlord and hence the assessment of provisional rent itself was not sustainable in law and consequently the ejectment on the ground that the provisional rent as assessed has not been paid was not sustainable. Learned counsel for the petitioner has further pointed out that the Rent Controller has passed an order wherein it has been noticed that the respondent (petitioner herein) appeared and admitted that monthly rent was Rs.1000/- per month. However the written statement is totally to the contrary.

Per Contra, learned counsel for the respondent states that the ejectment order has rightly been passed and in support of his argument he relies upon a judgment of the Hon'ble Supreme Court in the case of **Asha Rani Gupta Vs. Sri Vineet Kumar [2022(3) RCR (Civil) 540]**.

Heard.

In the present case the admitted fact is that the property in dispute is registered in the name of the father of the parties. The respondent approached the Rent Controller claiming himself to be a landlord on the

basis of some oral tenancy. In the ejectment petition there is no averment of any receipts having been issued by the respondent qua the rent received by him. Prima facie there appears to be no evidence on the basis of which it could be said that relationship of landlord and tenant existed between the parties. It is also an admitted position that the petitioner is none other than the real brother of the respondent and has been residing in the said property for over a period of two decades. The reliance placed by the learned counsel on the judgment of Asha Rani Gupta (*supra*) is wholly misplaced inasmuch as in the said judgment their Lordship of the Supreme Court have held that where the defendant otherwise does not deny the status of being a lessee in that case it would be imperative for him to have scrupulously complied with the requirements of law and to have deposited the arrears of rent.

In the case of **M/s Chopra Jewellers vs Rajender Pal Gupta** [2010 (1) RCR Rent 228] it was inter-alia held as under :

“3. It is not in dispute that the petitioner-tenant has specifically denied the relationship of landlord and tenant between the parties.

4. As ruled by the Hon'ble Supreme Court in Rakesh Wadhawan and others versus M/s Jagdamba Industrial Corporation and others, 2003 (2) Civil Court Cases 361 (SC), where the tenant has disputed the relationship of landlord and tenant, the Rent Controller is not obliged to assess the provisional rent. Since in the case in hand also, the petitioner-tenant has specifically denied the relationship of landlord and tenant and asserts himself

to be a tenant under one Kishore Chand and thereafter under Smt.Shakuntla Devi, daughter in-law of Kishore Chand, there was no occasion for the Rent Controller to pass the impugned order of provisional assessment of the rent.”

In view of the peculiar facts of the present case and in view of the law laid down, the order of the Rent Controller assessing the provisional rent cannot be sustained and subsequently the order of ejectment also cannot be sustained.

In view thereof, the present revision petition is allowed and the impugned orders dated 11.03.2014 and 24.03.2014 are set aside. The Rent Controller shall frame a specific issue as to whether there exists relationship of landlord and tenant between the parties and incase such an issue is decided in favour of the respondent herein, no opportunity shall be granted to the petitioner herein to tender the arrears of rent.

Pending applications, if any, also stand disposed off.

December 05, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO