

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

103

CR-4800-2019 (O&M)
Date of decision: 26.04.2022

R.S. Thakur @ Raseel Thakur

.....Petitioner

Versus

Mohan Lal

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. H.S. Jalal, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner-landlord (hereinafter called as 'landlord') is impugning the order dated 19.03.2019 (Annexure P-6) passed by the learned Appellate Authority, Chandigarh wherein it upheld the order of the Rent Controller, Chandigarh dated 20.08.2015 wherein the counter-claim of the respondent-tenant (hereinafter called as 'tenant') was allowed and he was held entitled to the refund of excess rent paid by him in terms of provisional assessment order.

Learned counsel for the landlord *inter alia* submits that since the impugned order suffers from patent illegality being against the material on record, it deserves to be set aside. He further submits that both the Courts below erred in ignoring the photocopy of the affidavit signed by the tenant which was placed on record by the landlord as Mark 'A' wherein the rate of rent was mentioned as Rs.6,600/- per month. Since the provisional rent was assessed at the rate of Rs.6,600/- per month on the basis of aforesaid affidavit and the order of assessment was not even challenged by the tenant, it had attained finality and thus the landlord was not even required to prove the rate of

rent any further.

I have heard learned counsel for the landlord and perused the material on record.

It would be apposite to observe that the provisional assessment of rent by the Rent Controller does not in any manner amount to the final adjudication upon the rate of rent. The assessment of provisional rent has a limited purpose to serve at the initial stage whereas the actual rate of interest is a matter of trial to be determined by the Rent Controller after both the parties have led their respective evidence. Furthermore, the onus of proving the rent is on the landlord, which he has to discharge by leading cogent evidence.

Adverting to the case in hand, the landlord has relied upon an affidavit Mark 'A' alleged to have been signed by the tenant to prove the agreed rent at the rate of Rs.6,600/- per month. This Court has no hesitation in observing that the said affidavit was rightly discarded by both the Courts below as neither the original affidavit was produced by the landlord nor were the attesting witnesses examined to prove the said affidavit. Therefore, in the absence of any convincing much less cogent evidence on record, the counter-claim of the tenant was rightly allowed by holding him entitled to the refund of the excess amount paid by him in pursuance to the order of provisional assessment of rent.

Accordingly, the instant revision petition being devoid of merit is dismissed.

26.04.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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