

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 120

Civil Revision No.3968 of 2022 (O & M)

Date of Decision: September 30, 2022

Sanjay Sharma

..... PETITIONER(S)

VERSUS

Parveen Kumar

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

. . .

PRESENT: - Mr. Namit Gautam, Advocate, for the petitioners.

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Tribhuvan Dahiya, J

This revision petition has been filed under Section 15 of the East Punjab Urban Rent Restriction Act, 1949, against the order of Rent Controller dated 20.07.2022, and the order of the Appellate Authority dated 03.09.2022.

2. The respondent-landlord filed ejectment petition against the petitioner-tenant with respect to demised shop No.1, Ground Floor, Main chowk, Basti Jodhewal, Ludhiana, *inter alia* on the ground of non-payment of rent and nuisance being caused in front of the shop by him. The ejectment petition was conditionally allowed with costs by the Rent Controller by directing the petitioner-tenant to pay arrears of rent along with interest amounting to Rs. 6,95,378/- (at the rate of Rs.12,000/- per month), failing which he was held liable to be evicted on the ground of non-payment of arrears of rent.

3. The Rent Controller framed the following issues based on pleadings of the parties:

1. Whether the respondent is in arrears of rent w.e.f. 15.12.2016 @ Rs.30,000/- per month along with property tax, as prayed for? OPP
2. Whether the respondent is source of nuisance, as prayed for? OPP
3. Whether the petition is not maintainable? OPR
4. Whether the petitioner has not come to the Court with clean hands? If so, its effect? OPR
5. Relief.

4. While recording findings on Issue No.1, based on evidence led by the respondent-landlord, it was held by the Rent Controller that rent of the demised premises was ₹ 12,000/-. The findings were affirmed by the Appellate Authority by holding that the Rent Controller was required to decide rent on the basis of the evidence led, irrespective of the pleadings of the parties. Although it was pleaded by the respondent-landlord that rate of rent of the demised shop was ₹ 30,000/- per month, the same could not be established by him. However, by leading evidence he could duly prove that the shop adjoining the demised shop was fetching monthly rent of ₹ 12,000/- . It was further observed that undisputedly the demised shop was situated in a commercial area at a prime location, wherein the petitioner-tenant is carrying on business of readymade garments. It could not be *prima facie* believed that it's rate of rent would only be ₹ 1100/- per month, especially when the adjoining shop, of a lessor area than the demised shop, with HDFC ATM installed in it, was fetching rent @ ₹ 12,000/- per month, as established by Exh.P1. There is no rent note between the parties as the tenancy is oral, therefore, actual rate of rent is not mentioned. It has been

admitted by the petitioner-tenant in his cross examination that his father had purchased the adjoining shop also. It has not been denied by him that the adjoining shop is fetching rent of ₹ 12,000/- per month.

5. Learned counsel for the petitioner has argued that the Rent Controller as well as the appellate authority committed an error of law in deciding the rate of rent of the demised shop. Issue no.1 is, whether the respondent is in arrears of rent w.e.f. 15.12.2016 @ ₹ 30,000/- per month. Whereas, while deciding the same, rent of the demised shop has been determined as ₹ 12,000/- per month which amounts to assessing fair rent. As per him, the only option with the Controller was, either to assess the rent at the rate of ₹ 1100/- per month, the rent paid by the tenant, or, at the rate of ₹ 30,000/- per month, as claimed by the landlord. No rent in between these two figures, i.e., higher than Rs.1100/- and lesser than Rs.30,000/-, could have been assessed by the Controller which amount to fixation of fair rent. In the absence of any petition for determining fair rent having been filed by the respondent-landlord, it could not have been assessed. In support of his submissions, reliance has been placed upon judgments of this Court in *Dhani Ram (died) through LRs vs. Madan Lal*, 2003(2) PLR 564; and *Harnam Singh vs. Mohinder Singh*, 1997(2) PLR 611.

6. The arguments raised by learned counsel for the appellant have no merit. A perusal of the judgments of the courts below establishes that to adjudicate Issue No.1, rent of the demised shop has been assessed on the basis of evidence led by the respondent-landlord. PW/1 Inderjit Singh, Clerk from MC Ludhiana, proved rent of the adjoining shop as Rs.12,000/- per month. The shop is of lesser area as compared to that of the demised shop. The fact has not been denied by the tenant. Veracity of the evidence

led has not been disputed by learned counsel for the petitioner-tenant, nor that the tenancy is oral and rent note does not exist. Merely because the landlord could not establish rate of rent of the demised shop as ₹ 30,000/- per month, as pleaded by him, there was no bar on the Rent Controller to assess actual rent of the demised shop based on the evidence led. Once the issue has been framed, as to whether the tenant is in arrears of rent at the rate of ₹ 30,000/- per month, it does not take away jurisdiction of the Rent Controller to adjudicate and assess actual rent of the demised shop, and direct the tenant to pay the arrears calculated on that basis. Rather, this is what the Controller is required to do. He is to adjudicate the issue framed with a view to meeting the ends of justice. The adjudicatory process cannot be truncated by taking restrictive and pedantic view. Besides, neither the wording of the issue, nor any provision of law, restrains the Controller from doing so. No law to the contrary could be cited by the learned counsel either.

7. The second limb of the argument raised by the learned counsel also deserves rejection. It is not acceptable that Rent Controller, while deciding a petition for ejectment on account of non-payment of rent under Section 13 of the Act of 1949, cannot decide actual rent of the demised premises and direct the tenant to pay the same, merely because there is a provision for fixing fair rent of the premises under Section 4 of the Act. Section 4 of is not in derogation of any other provision of the Act. Besides, Section 13 provides non-payment of rent of the premises as a ground of ejectment. To decide such an issue, the Rent Controller will be required to assess actual rent of the premises as well. Any such assessment cannot be termed 'assessment of fair rent' by the Controller, nor can he be barred from determining actual rent of the premises, as that is the very

basis to decide upon ejectment being sought on account of non-payment of rent. To read the provision of Section 4 into Section 13 of the Act, and bar the Controller from assessing actual rent of the premises, would render the provision of Section 13, to the extent it provides for ejectment on the ground of non-payment of rent, otiose, which is impermissible. Every provision of a statute must be given effect to, unless repugnant to any other law. No such eventuality arises here, nor is there any conflict in these two provisions of law. Both operate separately, for different purposes. One cannot be read into the other.

8. The judgments relied upon by learned counsel for the petitioner have no application to the facts of the case. Both the judgments refer to unfair conduct of the landlord and the consequences thereof on ejectment petition, which is not an issue in the instant case. In *Dhani Ram's case (supra)*, this Court held that landlord's conduct in claiming rent at a higher rate than the one determined by the courts below, and also for the period rent was already claimed by him in earlier ejectment petition, was not appreciable. No such situation arises in the instant case, as the rent claimed by the respondent-landlord is not contrary to any assessment of rent of the demised shop by any court earlier. In fact, no assessment of rent was ever done at earlier point of time, nor the rent was earlier claimed by the landlord. Besides, his conduct has never been in question, nor in the instant petition.

9. The next judgment relied upon by the learned counsel in *Harnam Singh 's case (supra)* also has no application to the facts of the instant case, as therein claim raised by the landlord regarding the commencement of tenancy, rate of rent and day from which the rent was

payable, were found to be false. In the instant case, no such situation arises, as no pleading of the respondent-landlord has been found false.

10. In view of the aforesaid analysis, there is no ground to interfere with the impugned orders, which do not suffer from any error of law or jurisdiction. This revision petition is, accordingly, dismissed.

11. Since the main case stands decided, pending applications, if any, are disposed of as having been rendered infructuous.

(Tribhuvan Dahiya)
Judge

September 30, 2022
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No