

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

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CR No.1178 of 2023
DATE OF DECISION : 22nd FEBRUARY, 2023

Satish Kumar Thareja

.... Petitioner

Versus

Agrim & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Akshay Kumar Jindal, Advocate for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

1. The petitioner-tenant has filed this civil revision under Section 15(6) of the Haryana Urban (Control of Rent & Eviction) Act 1973 (in short the, Rent Act) seeking setting aside of the impugned order dated 23.12.2022 passed by the Appellate Authority, Yamuna Nagar at Jagadhri, whereby the Appellate Authority has reversed the judgment dated 29.01.2018 passed by the Rent Controller, Yamuna Nagar at Jagadhari.

2. Notice of motion.

3. Mr. Divanshu Jain, Advocate, who is present in court accepts notice on behalf of the respondents.

4. The facts, as involved in the case are that the respondents filed eviction petition against the petitioner under Section 13 of the Rent Act for ejectment of the petitioner-tenant from an area measuring 533.95 square yards detailed in the petition. The ground taken in the said eviction petition was non-payment of rent for the period from 01.03.2011 to 30.04.2012. Beside that; the claim qua house tax was also made and

the other ground taken for eviction of the tenant was personal necessity. The assertion of the respondents-landlords was that earlier one Bhushan Lal, Smt. Kamlesh Kumari and Smt. Renu Kumari were the owners and landlords. However, they entered into an agreement to sell dated 07.12.2010 for selling the property involved in the case to the respondents. But they did not execute the sale deed in favour of the respondents. Therefore, the suit for specific performance was filed by the respondents against the above said owners and landlord, which was compromised between the parties; and accordingly; the sale deed was executed in favour of the respondents on 21.02.2012. The other facts which have come on record are that initially the premises in question was, undisputedly, given on rent of ₹52,000/- per month by all the above said landlords; vide rent note dated 23.04.2010. However, after execution of the agreement to sell in favour of the respondents, two of the landlords are alleged to have entered into a tenancy modification agreement with the tenant-petitioner on 29.03.2011 qua reduction of the rent, allegedly, on the ground of loss of business of the petitioner and his consequent desire to vacate the portion of the property. Accordingly, the landlords are stated to have received the rent of ₹18,000/- per month after the amendment rent agreement. However, after becoming owner through the sale deed, the respondents-landlords insisted upon payment of ₹52,000/- per month which was denied by the petitioner-tenant. That led to filing of the eviction petition.

5. The parties led their respective evidence before the Rent Controller. After appreciating the material on record the Rent Controller has held that since none of the rent agreements was duly stamped and/or

registered, therefore, the said document could not be taken into evidence. Accordingly, the eviction petition was dismissed. Aggrieved against the same, respondents-landlords approached in appeal before the appellate authority. During pendency of the appeal, the Appellate Authority had directed the petitioner-tenant to make good the stamp duty. The same was duly deposited. Hence, the documents were read into evidence by the lower appellate court. Thereafter, the said appeal stands partly allowed, whereby, the grounds of personal necessity has not been found to have been made out. The tenant has been directed to pay the rent at the rate of ₹52,000/- per month for the period involved in the eviction petition, along with the house tax, within specified time, failing which the eviction is to follow. It is challenging the said order of the appellate authority that the present petition has been filed by the tenant.

6. Arguing the case learned counsel for the petitioner has submitted that earlier monthly rent was ₹52,000/-, however, subsequently keeping in view the peculiar facts and circumstances prevalent qua the business of the petitioner-tenant; the landlord had agreed to reduce the rent from ₹52,000/- to ₹18,000/- per month. Not only that the said landlord had even received ₹10,00,000/- (Rupees ten lacs) from the petitioner as security at the time of amended/second agreement; and had also received the rent at the reduced rate vide receipts Exhibit R-4 and R-5. The original landlord has even appeared in the witness box to prove the fact that he, in fact, had agreed for the reduced rate of rent w.e.f. 29.03.2011 to 01.04.2011. Hence, it is submitted that the respondent, who acquired his ownership much later, is bound by those terms of tenancy. If the respondent - new landlord claims anything extra he may

have any right qua his vendor, however no such claim can be raised against the petitioner as such. The petitioner had already discharged his rent liability, before the date of execution of the sale deed in favour of the present owner/respondent. The counsel for the petitioner has further submitted that the court has wrongly discarded the second rent agreement by expressing a suspicion that the same was a sham transaction. There was no such evidence on record; led by the respondents-landlord. Once the document had been proved before the court, the same could not have been rejected merely on the basis of suspicion. The suspicion cannot replace the proof.

7. On the other hand, the counsel for the respondents, at the very outset, has submitted that at the moment the respondents have not filed any revision petition, claiming the issue of personal necessity, which remedy they may avail separately, therefore, in this petition he is making submissions only on the issue of non-payment of rent and validity of alleged second agreement of tenancy, which has been agitated by the petitioner. The counsel has further submitted that their vendors had entered into an agreement to sell in December, 2010. Since the respondents had an agreement to sell in their favour and the substantial part of the sale consideration had already been paid till 11.03.2011, therefore, the respondents had acquired rights over the property; as such. Only the sale deed was left to be executed. However, before the sale deed was executed and after agreement to sell was entered into by the then landlords, an amount of ₹2,72,00,000/- was received by the earlier landlords, who were the vendor of the respondents. Therefore, the respondents were entitled to receive the said rent as well. Counsel has

further submitted that the assertion of the petitioner-tenant that the rate of rent was reduced to ₹18,000/- per month is falsified by the fact that even after the second rent agreement dated 29.03.2011, the landlord received rent at the rate of ₹52,000/- on 27.04.2011 as per the original rent agreement. Therefore, it is obvious that the alleged second agreement qua reduction of the monthly rent is nothing but a sham transaction; entered into only by the two of the three of earlier landlords; in collusion with the petitioner. The collusion is writ large on the face of it because the petitioners claim to have paid ₹10,00,000/- to the earlier landlord as security, despite the fact that the earlier no security is stated to have been taken by the landlords under the original agreement even when the rate of rent then was about three times more than the alleged reduced rent. Moreover, the terms of the tenancy have also been unreasonably changed by the second agreement by including a clause that the petitioner shall not be evicted from the property for 15 years. The counsel has submitted that once the earlier landlords had entered into an agreement to sell, then they had no right to prejudice the rights of the respondents; in any case, beyond the date of the sale deed in their favour. Hence, viewed from any angle, the second rent agreement regarding the reducing of rent is nothing but a sham transaction. The lower Court has rightly come to the conclusion in that regard. Hence, the petition deserves to be dismissed.

8. Continuing his arguments qua collusion of the two of the earlier landlords with the present petitioner-tenant, the counsel for the respondent has submitted that there is no reason forthcoming as to why the third landlord has not agreed to reduction of the rent. In any case, since one of the landlord has never agreed for the reduction of the rent,

therefore, the original terms of tenancy cannot be taken to have changed, and this fact would also show that, in fact, the market rate, at the relevant time, was ₹52,000/- per month and the subsequent rent agreement is a collusive document; created with ante-dated marking. The collusion is also verified by the fact that the entire rent from the inception of the tenancy of the petitioner, was received by the earlier landlords through cheque in their bank accounts, whereas as per the alleged receipts Exhibit R-4 and R-5 the rent is stated to have been paid in cash. Incidentally, these are the only two receipts after the alleged agreement of reduction of rent. Hence, it is submitted that, in fact, no payment was even made at the alleged reduced rate of rent. Hence, the receipts Exhibit R-4 and R-5 are created only to create a ground for pleading and asserting an agreement to reduce the rent. The counsel has further submitted that collusion of the petitioner and the earlier landlords is also clearly reflected by the fact that the earlier landlords not only reduced the rate of rent, rather also thrust the liability to pay the house tax upon the owner. This was despite the fact that in the original agreement it was the liability of the tenant to pay the house tax. Moreover, in the alleged subsequent rent note even the roof rights, which were not earlier available to the tenants, were relinquished in favour of the tenants. Even the alleged security of ₹10,00,000/- is stated to have been paid in cash. This also brings the alleged second agreement under the cloud. Hence, it is submitted that the court below has rightly rejected the alleged second rent agreement; and has rightly held the petitioner-tenant liable to pay the rent at the rate of ₹52,000/- per month.

9. Having heard the counsel for the parties and having gone through the paper book, this court does not find any substance in the argument raised by the counsel for the petitioner qua the rejection of the second rent agreement by the lower appellate Court. There are umpteen circumstances on the record to bring the factum of collusion within the probability of being correct. The counsel for the respondents is right in highlighting the fact that before the alleged second agreement the entire rent is paid through the bank transactions. However, no rent is paid at the reduced rate of ₹18,000/-, through any bank transactions. Although, the counsel for the petitioner has emphasized that the payment was made in cash and due receipts were issued by the landlord, which are Exhibits R-4 and R-5, however, the receipts itself become suspicious because it is stated to have been issued only by the two of the three landlords. The veracity of the said receipts could have held some value if the landlord was found not colluding. Otherwise also; the nature and extent of change of terms of tenancy is such drastic that no landlord would accept in ordinary course. No reason is forthcoming as to the drastic reduction in the rent from ₹52,000/- to ₹18,000/- per month; despite the fact that no part of the property is stated to have been vacated by the petitioner-tenant, rather the petitioner is given more rights qua the property, including the roof rights, which were earlier denied to them. Not only that the second alleged agreement of reduction of rent has also bound down the landlord for not evicting the tenant for next 15 years, and has also conferred right upon the tenants to sublet the same to any other person. This kind of conduct on the part of the property holder of ordinary prudence is not possible in ordinary course, unless he is acting for non-bonafide reasons or in collusion.

10. Not only that, the lower appellate Court has also tried to test validity of the document, as such, and it has found that the time of

purchase of the stamp papers, upon which the same is written, is also not beyond doubt. It has come on record that the stamp vendor has deposed that the stamp papers were sold at 9 a.m. in the morning, whereas the entry in his register is found to be just the last but one, which shows that it was sold in the evening just before closure of the day. Hence, the manipulation and creation of the said document is visible from the very beginning of the document. Moreover, although the petitioner-tenant has examined one attesting witness of the agreement, however, the said witness has admitted in the very first line of the cross-examination that he is an old friend of the petitioner-tenant. Therefore, his testimony has to be tested very cautiously, vis-à-vis the other attending circumstances. Still further, the very fact that out of three, only two landlords have signed the alleged second agreement of reduction of rent, creates a doubt upon the validity of the said agreement. The third share holder is nowhere in the picture in the said second agreement, whereas, the original agreement was signed by all the three landlords. Beside this, the lower appellate court has rightly appreciated various contradictions and inconsistencies in the testimonies and the documents placed before it. Hence, this court finds itself in agreement with the lower appellate court to the extent that the second agreement dated 29.03.2011 is a sham transaction, created only to harm the interests of the respondent-subsequent purchasers of the property, knowing fully well that the above said two landlords would not be having any concern with the property any more after execution of the sale deed. Accordingly, findings recorded by the lower appellate court on the said aspect, are upheld. The rent payable by the petitioner at the rate of ₹52,000/- per month, as held by the court below, is upheld.

11. However, this court finds that the respondents were having only an agreement to sell before the execution of the sale deed in their

favour. There was no assignment of the rent in their favour in the said agreement to sell. Therefore, till the sale deed was executed in favour of the respondents, it was for the earlier landlords to deal with the issue of actual receipt of the rent. The respondents-landlords, in any case, would not have anything to do with the actual payment of rent before the date they acquire the right of ownership over the property in question. Hence, the respondents are held entitled to the recovery of rent at the rate of ₹52,000/- per month, along with house tax, for the period involved in the rent petition, but with effect from the date they acquired the title over the property, i.e. the date of sale deed in their favour.

12. Accordingly, the petitioner-tenant is granted time to tender the rent at the rate of ₹52,000/- per month, along with the amount of house tax, for the above said period; with the Rent Controller; within a period of four weeks from today, failing which the eviction of the petitioner shall stand upheld.

13. However, it is clarified that the present petition is being decided only qua the issue of non-payment of rent and the validity of the alleged second agreement of tenancy. This shall not be taken as expression of opinion on merits on any other aspect.

14. The revision petition stands disposed of in above said terms.

22nd FEBRUARY, 2023
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>