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

**CR-1963-2021
Decided on:-17.11.2023**

Sahib Singh

....Petitioner

vs.

Gurjinder Kaur and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rajiv Kataria, Advocate and
Mr. Aman Joon, Advocate,
for the petitioner.

Mr. G.S. Punia, Senior Advocate with
Mr. P.S. Punia, Advocate,
for respondent No.1.

HARKESH MANUJA J. (Oral)

1. By way of present revision petition, challenge has been laid to an order dated 19.08.2021 (Annexure P-6) passed by the Rent Controller, Ludhiana, whereby, an application filed at the instance of petitioner-tenant, seeking dismissal of the eviction petition on account of its non-maintainability, stands dismissed.

2. Briefly stating, respondent No.1, claiming herself to be the landlady qua the demised premises i.e. property No.B.XVIII-4221/329ZA/1, situated in Village Jawaddi, Model Town Extension-A, Part-II Block-A, Ludhiana, filed an eviction petition invoking Section 20 of the Punjab Rent Act, 1995 (hereinafter referred to as "1995

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Act”), seeking eviction of the petitioner-tenant as well as respondent No.2, on the ground of arrears of rent. In the eviction petition, it was pleaded that the petitioner as well as respondent No.2 were tenants under the demised premises vide lease deed dated 29.01.2014.

3. Upon notice, the petitioner-tenant appeared before the Rent Controller, Ludhiana and moved an application dated 28.03.2019 (Annexure P-3), while submitting that in view of Section 4 of the 1995 Act and the lease deed dated 29.01.2014 not being a registered document, the eviction petition filed at the instance of respondent No.1 herein, was not maintainable.

In response to the aforesaid application, respondent No.1-landlady appeared and filed her objections thereto.

4. The Rent Controller, Ludhiana vide order dated 19.08.2021, dismissed the application filed at the instance of petitioner-tenant.

5. Impugning the aforementioned order passed by the Rent Controller, Ludhiana, learned counsel for the petitioner-tenant submits that the provision of Section 4 of the 1995 Act enjoins the party to enter into a lease agreement through a registered document only and unless the tenancy was created under a registered document, the landlord was not competent to invoke Section 20 of the 1995 Act and thus, the eviction petition filed at the instance of respondent No.1, was not maintainable. In support, he places reliance upon the judgment of this Court passed in “**M/s A.R.**

Ventures and others vs. M/s Roop Square Pvt. Ltd. and others,

2021(2) RCR (Rent) 276.

6. On the other hand, learned Senior counsel representing respondent No.1-landlady also places reliance upon the same very judgment passed in case of ***M/s A.R. Ventures and others (supra)***, while submitting that the provision of Section 4(2) of 1995 Act was held to be directory in nature and thus, the Rent Controller rightly dismissed the application filed at the instance of petitioner-tenant.

7. I have heard learned counsels for the parties and gone through the paper book as well as law cited at bar. I am unable to find substance in the submissions made on behalf of the petitioner-tenant.

8. Before delving into the issue in hand, it would be necessary for this Court to refer to Section 2(c), 2(m), Section 4 as well as Section 20 of the 1995 Act, which are as under:-

“Section 2(c):- “Landlord” means a person who, for the time being is receiving or is entitled to receive the rent of any premises, whether on his own account or on account of or on behalf of, or for the benefit of any other person or as trustee, guardian or received for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant;

Section 2(m):- “tenant” means any person by whom or on whose account or behalf the rent of any premises is or, but for special contract, would be payable, and include;-

(i) a sub-tenant;
(ii) any person continuing in possession after the termination of his tenancy, but does not include-

(I) any person against whom an order or decree for eviction has been made, except where such decree or order for

eviction is liable to be re-opened;
 (II) any person to whom a licence as defined in Section 52 of the Indian Easments Act, 1882, has been granted;

Section 4:-Registration of tenancy agreement:-

(1) Notwithstanding anything contained in section 107 of the Transfer of Property Act, 1882, no person shall, after the commencement of this Act, let or take on rent any premises except by an agreement in writing.

(2) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), every agreement referred to in sub-section (1) shall be in the Form specified in Schedule I appended to this Act and shall be registered under and in accordance with the provisions of the Registration Act 1908 by the authority specified thereunder, on payment of registration fee of rupees one thousand.

Section 20:-

Section 20. Protection of tenants against eviction - (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Rent Authority in favour of the landlord against any tenant, save as provided in sub-section (2).

(2) The Rent Authority may, on an application made to it in the Form specified in Schedule XII to this Act make an order for the recovery of possession of any premises on one more of the following grounds only, namely:-

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent and other charges payable for three or more consecutive months legally recoverable from him within two months of the date on which a notice in the Form specified in Schedule VII to this Act, of demand for the arrears of such rent and other charges payable and interest at the rate of fifteen percent, for the period of default has been served on him by the landlord in the manner provided in section

106 of the Transfer of Property Act 1882:

Provided that a tenant shall not be entitled to the benefit of service of notice by the landlord under this clause where having obtained such benefit once in respect of any premises, he again make a default in the payment of rent and other charges payable in respect of those premises;

(b)that the tenant has used the premises for a purpose other than that for which they were let;

(c) that the premises were let for use as a residence and,-

(i) neither the tenant nor any member of his family has been residing therein for a period of six months;

Explanation:-*For the purposes of this clause and clause (q), "family" means parents, spouse, dependent sons and daughters or such other relatives as are ordinarily living with the tenant and are dependent upon him;*

(d) that the premises or any part thereof have become unsafe or unfit for human habitation and are required by the landlord for carrying out repairs or reconstruction which cannot be carried out without the premises being vacated.

Provided that no order for the recovery of possession under this clause, clause (J) clause (g) and clause (h) shall be made unless the Rent Authority is satisfied that the plans and estimates of such repairs or re-construction, as the case may be, have been properly prepared and that the landlord has the necessary means to carry out the said repairs or re-construction:

Provided further that if the landlord proposes to change the use of the premises after re-construction, then, he shall so specify in his application for recovery of possession and, after such re-construction, the landlord shall if it is otherwise permissible under law, utilize the built up area equal to the previous area for the original use to the extent required for the purpose of sub-section (i) of section 30 and the rest for any other use;

(e) That the premises or any part thereof are required by the landlord for the purpose of immediate demolition ordered by the Government or any local authority or the premises are required by the landlord to carryout any building work at the instance of the Government or local authority in pursuance of any improvement scheme or development scheme and that such building work cannot be carried out without the premises being vacated;

(f) that the premises or any part thereof are required by the landlord for carrying out any repairs which cannot be carried out without the premises being vacated;

(g) that the premises are required by the landlord for the purpose of building or re-building or making thereto any substantial addition or alteration including construction on the terrace or on the appurtenant land and that such building or re-building or addition or alteration cannot be carried out without the premises being vacated;

(h) that the premises consist of not more than two floors and the same are required by the landlord for the purpose of immediate demolition with a view to re-build the same:

Provided that where the building of which such premises or premises Possession in respect of which has been recovered under clause (d), clause (e) clause (j) or clause (g) from a part has been re-built to an extent of less than seventy five per cent, a tenant so dispossessed shall have a right to re-entry at the new terms of tenancy in a premises in the re-built building equivalent in area to the original premises for which he was a tenant;

(i) that the tenant, his spouse or a dependent son or daughter ordinarily living with him has, whether before or after the commencement of this Act, built or acquired vacant possession of or been allotted a residence on hire purchase basis:

Provided that the Rent Authority may in appropriate case allow the tenant to vacate the premises within such period as he may permit but not exceeding three months from the date of passing of orders of eviction or one year from the date of getting possession of premises referred to in sub-section (1) above.

(j) that the premises were let to the tenant for use as a residence by reasons of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment:

Provided that no order for the recovery of possession of any premises shall be made on this ground if the Rent Authority is of the opinion that there is any bona fide dispute as to whether the tenant has ceased to be in the service of employment of the landlord;

(k) that the tenant has, whether before or after the commencement of this Act, caused or permitted to be caused substantial damage to such alteration of the premises as has the effect of changing its identity or diminishing its value.

Explanation:- *For the purposes of this clause, "substantial damage" shall mean such damage as shall involve an expenditure equivalent to six month's rent or more, of the premises or such less expenditure as the Rent Authority is satisfied, keeping in view, the special nature of damage, justify the same to be treated as substantial damage for carrying out the repairs for such damage:*

Provided that no order for the recovery of possession of any premise shall be made on the ground specified in this clause, if the tenant within such time as may be specified in this behalf by the Rent Authority, carries out repairs to the damage caused to the satisfaction of the Rent Authority or pays to the landlord such amount by way of compensation as the Rent Authority may direct;

(l) that the tenant or any person residing with the tenant has been convicted of causing nuisance or annoyance to a person living in the neighborhood of the premises or has been convicted of using or allowing the use of the premises for an immoral or illegal purpose.

(m) that the tenant has, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government, while giving him a lease of the land on which the premises are situated; Provided that no order for the recovery of possession of any premises shall be made on this ground if the tenant within a such time, as may be specified in this behalf by the Rent Authority, complies with the condition imposed on the landlord by any of the authority referred to this clause;

(n) that the tenant in his reply having,denied the ownership of landlord has failed to prove it or that such denial was not made in a bonafide manner;

(o) that the person in occupation of the premises has failed to prove that he is a bona fide tenant;

(p) that the tenant after having agreed with or having informed the landlord in writing the date to vacate the premises does not do so on or after the date so agreed or informed.

(q) that the premises let for residential or non-residential purpose are required, whether in the same form or after re-construction or re-building, by the landlord for occupation for residential or non-residential purpose for himself or for any member of his family if he is the owner thereof, or for any person for who benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation;

Provided that where the landlord has acquired the premises by transfer no application for the recovery of possession of such premises shall lie under this clause unless a period of three years elapsed from the date of the acquisition :

Provided further that where an order for the recovery of possession of any premises is made on the ground specified in this clause, the landlord shall be entitled to obtain possession thereof on the expiration of a period of three months from the date of passing of eviction order.

Explanation:-I. *For the purposes of this clause, where the landlord in his application supported by an affidavit submits that the premises are required by him for occupation for himself or for any member of his family dependent on him, the Rent Authority shall presume that the premises are so required.*

Explanation: -II. *For the purposes of this clause of section 21, section 22, section 23, or section 24, an occupation by the landlord of any part of a building of which any premises let out by him forms a part, shall not disentitle him to recover the possession of such premises.*

Explanation:-III. *For the purposes of this clause “owner of the premises” includes a person who has been allotted such premises by the Punjab Housing Development Board or any other local authority by way of an agreement of hire purchase lease or sub-lease, even before the full ownership rights accrue to such hire-purchaser, lessee or sub-lessee, as the case may be.*

(3) In any proceeding for eviction under clause (d), (e), (f), (g) or (q) of sub-section (2) of this section or section 21 or section 22 or section 23 or section 24, the Rent Authority may allow eviction from only a part of the premises if the landlord is agreeable to the same.

Provided that, in case of such part-eviction, the rent and other charges payable by the tenant shall be decreased in proportion to the part vacated.

(4) No order for the recovery of possession in any proceedings under sub-section (2) shall be binding on any sub-tenant referred to in section 27 who

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has given notice of his sub-tenancy to the landlord under the provisions of that section, unless the sub-tenant is made a party to the proceedings and the order for eviction is made binding on him.

A perusal of clauses (c) & (m) of Section 2 read with Section 20 of 1995 Act, makes it abundantly clear that the right of landlord, seeking eviction of tenant under the provisions of 1995 Act has never been made subject to registration of lease deed under Section 4 thereof. The right of a landlord seeking eviction of a tenant under sub-section 1 of Section 20 of 1995 Act has merely been made subject to sub-section 2 of Section 20 and not subject to any other provisions of the 1995 Act.

9. In this view of the matter, the arguments raised at the instance of petitioner-tenant that in case the premises has been leased out by virtue of an unregistered document-lease deed, after coming into force of the 1995 Act, the eviction petition was not maintainable, is apparently not made out. The right to seek eviction of a tenant by landlord under Section 20 of 1995 Act has never been made subject to the provisions of Section 4 of 1995 Act and the legislature in its wisdom never made application/eviction petition filed under sub-section 1 to Section 20 being subject to or save as provided under Section 4 thereof. The restrictions envisaged under Section 20 are that the application should be made only on the basis of grounds (one or more) specified under Section 20(2) and it should be in the form as specified under Scheduled XII. Even in Form of

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application as defined under Scheduled XII, there is no such requirement for any averment to be made to this effect about premises having been rented out/leased out under a registered lease deed.

10. The judgment in ***M/s A.R. Ventures and others*** (supra), rather than helping the petitioner-tenant, comes to the rescue of respondent No.1-landlady, wherein, it has been specifically observed that the provisions as contained in sub-section (2) of Section 4 of the 1995 Act, are only directory in nature as no consequences are provided in case of non-compliance. The relevant portion from para 11 of ***M/s A.R. Ventures and others*** (supra) is reproduced hereunder:-

“In the Punjab Rent Act there is no other provision also, prescribing any consequences for non-registration of rent agreement. Therefore, this provision, as contained in Section 4(2) of the Act is only directory in nature. Once an agreement is in writing, as is contemplated under sub-section (1) of Section 4, it becomes a valid agreement. Mere non-registration of this agreement, does not divest it of its essential character and nature. Since the provisions as contained in sub-section (2) requires registration and procedure thereof, and no further consequences are provided for it, this registration can be interpreted to be only by way of ensuring that the public authorities are having the record of the rent agreements and the scope of disputes between the parties to the agreements is narrowed down. But non-registration of the agreements as such would not make the agreements to be void.”

11. Still further, it was held by Hon’ble Apex Court in “**Atlas Cycle Industries Limited & Others v. State of Haryana**”, reported as (1979) 2 SCC 196, that even when a statute uses the word "shall", a provision may be held as directory if no consequences are

provided or its strict compliance would cause serious inconvenience and prejudice to the general public. Courts are required to ascertain the real intention of the legislature, after considering the nature and the design of the statute and also by analysing that, whether strict enforcement of compliance with the provisions, the object of the legislation will be defeated or furthered. The relevant paras of this judgment are reproduced hereunder:-

"19. Though sub-section (6) of Section 3 of the Act provides that every order made by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament as soon as may be after it is made the important point to be considered in the absence of analogous statutes like the Statutory Instruments Act, 1946 and the Laying of Documents Before Parliament (Interpretation) Act, 1948 prescribing the conditions the period and the legal effect of the laying of order before the Parliament is whether the provision is directory or mandatory. It is well to remember at the outset that the use of the word 'shall' is not conclusive and decisive of the matter and the Court has to ascertain the true intention of the Legislature which is the determining factor, and that must be done by looking carefully to the whole scope, nature and design of the statute. Reference in this connection may be made to the decision of this Court in State of U.P. v. Manbodhan Lal Srivastava, 1958 SCR 533. Reference in this behalf may also be made with advantage to another decision of this Court in the State of Uttar Pradesh v. Babu Ram Upadhyaya, (1961)2 SCR 679 where Subba Rao, J. (as he then was) after quoting with approval the passage occurring at page 516 in Crawford "On the Construction of Statutes" as well as the passage occurring at page 242 in 'Craies on Statute Law', 5th Edition, observed as follows :-

"The relevant rules of interpretation may be briefly stated thus : When a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia the nature and the design of the statute, and the consequences which would follow from

construing it one way or the other the impact of other provisions whereby the necessity of complying with the provisions in question is avoided the circumstances namely, that the statute provides for a contingency of the non-compliance with the provisions the fact that the non-compliance with the provisions is or is not visited by some penalty the serious or trivial consequences that flow therefrom, and above all, whether the object of the legislation will be defeated or furthered."

20. Thus two considerations for regarding a provision as directory are : (1) absence of any provision for the contingency of a particular provision not being complied with or followed and (2) serious general inconvenience and prejudice that would result to the general public if the act of the Government or an instrumentality is declared invalid for non-compliance with the particular provision."

12. In the present provision as well, no consequences have been provided by the legislature in case of non-compliance of Section 4 of 1995 Act. Additionally, considering the object and reasons of the 1995 Act, which is primarily to provide for the regulation of rents, repairs, maintenance and eviction relating to premises, connected therewith in the State of Punjab, the purpose of inclusion of Section 4 under the 1995 Act is that the terms of a tenancy are reduced into writing and registered, making the parties to the said agreement to be aware of their rights and liabilities more clearly. If on the basis of non-compliance of Section 4(2) of 1995 Act, eviction petition is held to be non maintainable and jurisdiction of the Rent Controller/Tribunal is ousted, it would dilute the object and purpose of 1995 Act, as this legislation has only been enacted for the specific purpose of resolving disputes between landlord and tenant.

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13. If compliance of Section 4(2) is held mandatory as advanced by learned counsel for the petitioner and eviction petition is held to be not maintainable, it could also act as a double edged sword against the tenant as well, for whose benefit 1995 Act is legislated. Because, if tenant continue to occupy such premise without having any license/lease from the landlord and without having any other legal entitlement, in that eventuality, the tenant would not be a statutory tenant and consequences as stipulated in **M/s A.R. Ventures and others (supra)** would follow, which would be against the interest of tenant only. Relevant para of this judgment, discussing the consequences in such scenario is reproduced hereunder:-

“Issue No. (iv) In this regard; a perusal of the provisions of Section 4 of the Act shows that it has two distinct portions. Sub section (1) of Section 4 creates a prohibition both, against a tenant, as well as against the landlord qua taking or giving a property on rent except by a written agreement. This prohibition starts with a non-obstante clause against the provision of the Transfer of Property Act. Since there is a non-obstante clause even against the transfer of Property Act, therefore, if a person enters into a property as a tenant without a written agreement to that effect then such a person does not get any legal right qua such property. In absence of written agreement, landlord shall not be a statutory landlord under the Act and the tenant shall not be a statutory tenant. The status of such a person shall not be even of permissive possession. Such a person shall not be more than a rank- trespasser. He shall not be entitled to any kind of protection or defence against the landlord. However, the landlord shall still be having full ownership rights over such property, including his right to un-interrupted possession to the property; being a lawful owner. Hence, the landlord shall be fully entitled to ask such a person to vacate the property, and if not so vacated, to throw out such a person without recourse to any legal process. Even if the landlord takes recourse to a legal process, then the Court shall also be bound to order restoration of possession

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without entertaining any defence on the part of any such alleged tenant.”

It was held in **M/s A.R. Ventures and others** case (*supra*) that if the tenant would not be a statutory tenant, he shall not be entitled to any kind of protection or defence against the landlord who shall be fully entitled to ask such a person to vacate the property, and if not so vacated, to throw out such a person without recourse to any legal process. Though, in the present case, it is the tenant who is contesting that the petition is not maintainable on account of non-registration of the lease deed and prolonging the proceedings but its implication could back fire against him. Even landlord may intentionally not register the lease-deed and directly approach the Rent Tribunal to dispossess the tenant. Such a circumstance would be disastrous against the interest of the tenants for whose benefit as well, the 1995 Act has been legislated and accordingly Section 4(2) of 1995 Act cannot be held to be mandatory in its nature.

14. Once, the provision of sub-section (2) of Section 4 is held to be directory in nature, the tenancy in the present case arising out of a written lease agreement dated 29.01.2014, covers the compliance of sub-section (1) of Section 4 of the 1995 Act and thus, the eviction petition is maintainable and non-compliance of Section 4 thereof as alleged, cannot be made out in the facts of the present case. In view of Section 49 of the Registration Act, 1908, non-registration of lease-deed would only affect its admissibility as a piece of evidence and as held by learned Rent Controller, impact thereof

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on the present proceedings has to be adjudged during the trial only.

15. Resultantly, in view of the discussion made herein-above, finding no merit in the present petition, the same is thus, dismissed.

16. Considering the fact that the eviction petition was filed way-back in the year 2018, the Rent Controller, Ludhiana is requested to dispose of the eviction petition within a period of one year from the date of receipt of certified copy of this order.

17. All pending applications stand disposed of.

17.11.2023
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(HARKESH MANUJA)
JUDGE

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