

**(1997) 05 P&H CK 0029**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 2009 of 1996

Harnam Singh

APPELLANT

Vs

Mohinder Singh

RESPONDENT

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Date of Decision: May 8, 1997

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13(2), 15(I)

Citation: (1997) 116 PLR 611 : (1997) 2 RCR(Rent) 200

Hon'ble Judges: V.K. Jhanji, J

Bench: Single Bench

Advocate: O.P. Goel and T.P. Singh, for the Appellant; M.S. Jandiala, for the Respondent

Final Decision: Dismissed

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**Judgement**

V.K. Jhanaji, J.

This is landlord's revision directed against the judgments of the Authorities below whereby the application filed against the tenant on the ground of non-payment of rent has been dismissed.

2. Ejectment of the tenant (respondent herein) was sought by the landlord (petitioner herein) on the ground of non-payment of rent. Petitioner in his eviction application pleaded that the tenant is occupying the entire ground floor including a garage and one room above garage since January, 1989. Petitioner alleged that tenant has not paid the arrears of rent since 1.7.1989. On notice of the eviction application, tenant appeared and filed his written statement. Tenant denied the rate of rent to be Rs. 2500/-. He stated that he took the premises way back in the year 1982 at a monthly rent of Rs. 600/- which was subsequently increased to Rs. 800/- and at present, the same stands at Rs. 1100/- per month. He denied that he is in arrears of rent. He stated that he has paid the rent upto February, 1992 in cash and for the months of March and April, 1992, tendered the same together with interest and costs in court for payment to the petitioner. Petitioner accepted the rent under

protest by saying that the tender made is short. Petitioner in his replication denied the stand of the tenant in regard to rate of rent and payment upto February, 1992, and reiterated that the rent is Rs. 2500/- per month and the tenant is in arrears of rent w.e.f. 1..1989. Petitioner also denied that respondent took the premises on rent in 1982. On the pleadings of the parties, the Rent Controller framed the following issues:-

1. Whether the premises were taken on rent by the respondent since 1982 and not since January, 1989 ?. OPA.

2. Whether the rate of rent from the very beginning is Rs. 2500/- p.m. and the premises were not taken on rent initially @ Rs. 600/- which was subsequently increased to Rs. 800/- and then to Rs. 2500/- ?. OPA.

2-A. Whether the tender made by the respondent is legal and valid ?. OPA.

3. Relief.

After receiving evidence from the parties and providing a hearing to their counsel, Rent Controller found that the respondent took the premises on rent in 1982 and not in January, 1989 as alleged by the landlord and the rent initially was Rs. 600/- which was subsequently increased to Rs. 800/- and then to Rs. 1100/-. Rent Controller also did not accept the statement of the landlord that the rent is due from July, 1989. The stand of the tenant that he has paid the rent upto February, 1992 was found to be convincing and in conformity with the evidence on record. In appeal by the landlord, appellate Authority has affirmed the judgment of the Rent Controller. Hence, the present revision petition.

3. Learned counsel for the landlord submitted that burden to prove that the tenant is not in arrears of rent is always on the tenant and in this case, there is no evidence on record as far as payment prior to March, 1992 is concerned, except the oral testimony of the tenant. In this regard, he has cited judgments in Mahesh Chandra v. Smt. Angoori Devi 1989(1) RCR 693; Govind Laxman Solapurkar v. Dattatraya Damodar Kelkar 1991 91 R.C.R. 541, and Karamchand Deojee Sanghavi v. Tulshi Ram Kalu Kumawat 1992(1) RCR 118. Counsel contended that the mere fact that evidence produced by the landlord has been disbelieved in respect of commencement of tenancy or rate of rent is not sufficient to disbelieve the testimony of the landlord concerning non-payment of rent from 1.7.1989 to 1.2.1992. Against this, counsel for the tenant contended that the landlord has not come to the Court with clean hands inasmuch as not only he made a false claim in regard to commencement of tenancy, but also regarding rate of rent and therefore, the Authorities below have rightly dismissed the eviction application filed by the petitioner.

4. After hearing the learned counsel for the parties at length, I am of the view that no case is made out for interference. Rent Controller and the appellate Authority have concurrently found that the tenant took the premises on rent in 1982. In fact at

the threshold, tenant had submitted that he took the premises on rent in the year 1982 and the rent was Rs. 600/- which was subsequently increased to Rs. 800/- and then to Rs. 1100/- per month. Landlord had the opportunity to come clean by admitting that he let out the premises in 1982 and the rate of rent initially was settled at Rs. 600/-. He however, chose to persist with his stand which has been found to be false. The finding of the Rent Controller in regard to falsity of the claim of the landlord, reads as under :-

"11. In the present petition, it is alleged by the petitioner that the rate of rent is Rs. 2500/- p.m. that the respondent has refuted this rate of rent and alleged that rate of rent of the demised premises was initially Rs. 600/- and subsequently enhanced to Rs. 800/-. The law on this point is very clear that it is for the landlord to prove the rate of rent as claimed by him. On this score the only evidence on behalf of the petitioner is his own statement as PW1 and no other evidence is produced by the petitioner but in my opinion the bald statement of the petitioner cannot be believed in lack of any documentary evidence. Moreover, as discussed by me in issue No. I, the petitioner has taken a false plea that he has rented out the demised premises in 1989 whereas it has been amply proved that the respondent is a tenant much prior to that. When the petitioner has not come in the court with clean hands, then his plea regarding rate of rent cannot be believed. Even the petitioner Harnam Singh in the cross-examination has clearly stated that he used to pay Income Tax and was filing the Income Tax returns for the rent collected by him for the demised premises and he also stated that he shows that rate of rent in his Income Tax returns duly filed for the year 1988-89 and 1989-90. as Rs. 2500/- p.m. When he was asked about Income Tax number, he stated that he does not remember the same. He was further asked by that if he can bring his Income Tax returns and his reply was that he cannot. This show the conduct of the petitioner that he is telling one lie after the other and he has been suppressing the truth from the court. Had he been filing his Income Tax return by mentioning rate of rent as Rs. 2500/- what was the hitch with him to produce the same in the court. This shows that actually the petitioner never claimed the rent @ Rs. 2500/- P.M. and his version is totally wrong. As such, it is held that the rate of rent is Rs. 1100/- as claimed by the respondent."

The finding recorded by the Rent Controller, as noticed above, in regard to falsity of the claim set up by the landlord, has been affirmed by the appellate Authority. It is true that burden to prove payment of rent is on the tenant and by adding proviso to Sub-section (2) of Section 13, further opportunity has been given to the tenant to pay all arrears due on the first date of hearing of the application for eviction, with interest and costs on the application as assessed by the Rent Controller and if this payment is made on the first date of hearing, then by fiction tenant is deemed to have duly paid or tendered the rent within the time prescribed. However, to allow the tenant to take advantage which the Statute gives to a tenant to escape eviction by making statutory payment, landlord must state his case with clarity in regard to the commencement of the tenancy, rate of rent and the date from which the rent is

due and payable. By making vague and indefinite allegations, the landlord cannot be permitted to deprive the tenant of statutory protection. Right to receive rent from the tenant is different from right to secure eviction under the provisions of the Act. In case the Authorities under the Act on appreciation of evidence on record find that the claim set up by the landlord is false, it would be within their jurisdiction to dismiss the eviction application on this score alone. Reference in this regard be made to judgments in Mehar Chand and Anr v. Tilak Raj Girhdar (1982)84 P.L.R. 13, Mangat Rai v. D.D. Mehta and Anr. (1987)92 P.L.R. 80, and [Fakir Chand and Another Vs. Bhaqwan Dass](#),. In these judgments, landlord was held not entitled for eviction on false pleadings. In the circumstances of this case, I am of the view that the Authorities below have not acted erroneously in dismissing the eviction application filed by the landlord on finding that the landlord has set up a false claim in the eviction application.

5. Resultantly, this revision petition being without any merit shall stand dismissed. No costs.