

## Harnam Singh Vs Mohinder Singh

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

**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

### 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 shows 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. Bhagwan 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.