

(2006) 05 P&H CK 0082

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 4505 of 2004

Dara Singh

APPELLANT

Vs

Murti Shri Durga Bhawani
(Hetuwali) Regd. TrustRESPONDENT

Date of Decision: May 30, 2006**Acts Referred:**

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 4

Citation: (2006) 144 PLR 579 : (2006) 3 RCR(Civil) 718 : (2006) 2 RCR(Rent) 197**Hon'ble Judges:** Hemant Gupta, J**Bench:** Single Bench**Advocate:** Ashish Aggarwal, for the Appellant; Mahavir Sandhu, for the Respondent**Final Decision:** Dismissed

Judgement

Hemant Gupta, J.

The challenge in the present revision petition is to the order passed by the authorities under the Haryana Urban Control of Rent and Eviction Act, 1973 (for short "the Act") determining Rs. 989/- as a fair rent of the premises in dispute.

2. Respondent herein sought fixation of fair rent u/s 4 of the Act, pleading therein that shop No. 23 was let out to the petitioner in April, 1975. Initially, the rent was Rs. 150/- excluding house tax. It was increased to Rs. 220 per month plus house tax in January, 1984 and Rs. 220/- per month with effect from November, 1986. Subsequently, respondent provided 10 feet constructed space at the back side of the prem-sequently, respondent provided 10 feet constructed space at the back side of the premises and the tenant agreed to pay Rs. 240/- per month for the additional portion vide agreement dated 5.6.1990. Thus, the total rent being paid by the tenant since 1.7.1990 is Rs. 460/- per month. The landlord has sought fixation of fair rent on the ground that the premises let out can easily fetch rent to the tune of Rs. 4,000/- per month.

3. The petitioner-tenant, inter alia, has taken a stand that the additional amount for the construction of 10 feet was paid by the tenant and a fresh agreement was executed. Thus, previous agreement of 1975 stood merged in the agreement of 1990. The learned Rent Controller found that the tenancy cannot be split. There could not be any bifurcation between the premises and, therefore, the fair rent should be fixed from the year 1975 on the basic rent of Rs. 460/- per month. The said finding has been affirmed by the learned Appellate Authority.

4. Learned Counsel appearing for the petitioner has vehemently argued that when additional accommodation was taken on rent, a fresh rent deed was executed clearly stipulating that new building has been taken on rent. Since new building has been taken on rent, it is a case of fresh tenancy, therefore, fair rent cannot be fixed with respect to the date of original tenancy. However, I am unable to agree with the argument raised by the learned Counsel for the petitioner. In agreement Exhibit P.6 dated 5.6.1990, the total rent after the additional space given on rent to the petitioner, is mentioned as Rs. 460/- per month. Still further, the said agreement stipulates that all other conditions will remain in force as in agreement dated 27.5.1975. Such rent was increased when the landlord raised construction of additional 10 feet behind the shop and got installed a shutter in the front verandah. The said agreement is only supplementing the earlier agreement of tenancy in respect of additional premises and, thus, there is no notation of the previous tenancy. Since the tenancy cannot be bifurcated, I do not find any illegality or irregularity in the orders passed by the authorities in holding that the agreed rent shall be basic rent with effect from the year 1975. In fact, this Court in Civil Revision No. 1251 of 2003, in respect of another shop of the same landlord almost in similar circumstances, has dismissed the revision filed by the tenant.

5. Learned Counsel for the petitioner has referred to Santosh Kumar Passi v. Smt. Kamla Wati (1987) 92 P.L.R. 367, [Smt. Veena Gupta Vs. Harcharan Narang](#), and Inder Motor Service v. Haryana Dairy Development 2000 (2) R.C.R. 450, to contend that in view of the fresh agreement a new tenancy comes into existence. However, I am unable to agree with the argument raised by the learned Counsel for the petitioner. It is a question of fact in each case on the basis of facts found and pleaded whether the fresh agreement amounts to notation of earlier tenancy agreement. In the present case the subsequent agreement stipulates that all other conditions of previous agreement will continue. Since the additional space was taken on rent, the rent was increased. It cannot be treated as the new tenancy in respect of the entire premises.

6. Consequently, I do not find any material illegality or irregularity in the impugned orders, which may warrant interference by this Court in exercise of its revisional jurisdiction.

7. Hence, the present petition is dismissed.