
(1992) 11 P&H CK 0082

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 946 of 1992

Chatru Lal

APPELLANT

Vs

Parkash Chand

RESPONDENT

Date of Decision: Nov. 9, 1992

Acts Referred:

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 15(6), 5

Citation: (1993) 103 PLR 152 : (1993) 1 RCR(Rent) 398

Hon'ble Judges: H.S. Bedi, J

Bench: Single Bench

Advocate: H.L. Sarin and Ashish Handa, for the Appellant; Jaswant Jain, for the Respondent

Judgement

H.S. Bedi, J.

The present petition has been filed by the tenant aggrieved by the order of the Rent Controller, allowing the application for fair-rent filed by the respondent-landlord.

2. The facts of the case are that an application for fixation of fair rent of the premises in dispute was filed by the respondent on September 7, 1983 and after notice to the petitioner-tenant, was allowed on May 9, 1985 and the fair rent in respect of the premises in dispute was fixed with effect from September 7 1983. The respondent thereafter moved another application on 1 2.1989 again for re-fixation of fair rent on the ground that there has been a very sharp rise in the Price Index, which necessitated its revision. This application was opposed by the petitioner stating that as it had been filed within a period of five years from August 14, 1986 the date on which the fair rent had been fixed pursuant to the first application filed on September 7, 1983, this application was not maintainable, in view of the embargo placed by Section 5 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, (hereinafter called "the Act"). The Rent Controller vide his order dated May 23, 1989, framed the following preliminary issue :-

"Whether this petition is not maintainable ? OPR" This issue was decided in favour of the respondent-landlord and the matter was taken up in appeal by the petitioner before the Appellate Authority, who found that the appeal against such an order was not maintainable and accordingly dismissed it on that ground. The present petition was, thereafter, filed along with an application for condonation of delay and after the delay had been condoned, the present petition was admitted.

3. The sole argument made by Mr. H. L. Sarin, Senior counsel appearing for the petitioner is that a bare reading of Sections 4 and 5 of the Act indicates that the period of five years was to be reckoned from the date on which the earlier application had been allowed and not with retrospective effect from the date on which that application had been filed. Coming to the facts of the present case, he has stated that as the first application had been allowed on May 9, 1985, the second application filed on February 1, 1989, being within five years from that date was not maintainable. In support of his case, he has cited *Kishori Lal v. Hari Chand* (1988) 94 P. L. R. 671, and *Vijay Kumar and another v. Kaithal v. Ram Lal* 1987 H. R. R. 349. This stand has been controverted by the respondent's counsel Mr. Jaswant Jain. He has urged that the very reading of Sections 4 and 5 would indicate that when the fair rent has been fixed u/s 4 of the Act, no increase or decrease in such fair rent, would be permissible for a period of five years as enjoined by Section 5 and this Section does not refer to the date of the application but to the date from which the fair rent has been re-fixed. He has, therefore, urged that as the fair rent had been re-increased from the date of filing of the application, as enjoined by law the starting point for determining the period of five years, would be the date of application. In support of his case, he has relied upon some of the judgments cited by the counsel for the petitioner and also *Shakuntla Devi v. Nafe Singh* 1990 H. R. R. 349.

4. After hearing the learned counsel for the parties, I find no merit in the stand of the petitioner. It would be apparent from the bare reading of sections 4 and 5 of the Act that the embargo that has been placed is from the date of re-fixation of the fair rent and there is no reference whatever to the date on which the order fixing the fair rent has been made. It would also be apparent that the very purpose of these sections would be defeated in case the interpretation suggested by the petitioner is accepted. By way of illustration, it may be mentioned that an application filed before the Rent Controller, might well linger on for years together and might ultimately be disposed of even after a period of five years, which is not really unusual these days. To hold therefore, that the period of five years would start after the final decision of the Rent Controller, would be to deny the very purpose of sections 4 and 5 of the Act, for the fixation of fair rent which can be done both at the instance of either, the landlord or the tenant as the case may be. The judgment cited by Mr. Jaswant Jain that is *Shakuntla Devi's* case (Supra) supports his case whereas the judgments cited by Mr. Sarin, learned counsel for the petitioner do not deal with the situation such as the present one.

5. For the reasons recorded above, the present petition is dismissed holding that period of five years fixed by section 5 of the Act, would be computed from the date of filing of the

application and not from the date that the order on that application is made. The matter is, therefore, remanded to the Rent Controller, Hissar, for fresh decision in the light of the observations made above. The parties are directed to appear before that Court on December 3, 1992. No costs.