

(2007) 05 P&H CK 0208

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1005 of 1992

Darshan Singh

APPELLANT

Vs

Kartar Singh

RESPONDENT

Date of Decision: May 9, 2007

Acts Referred:

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

Citation: (2007) 4 CivCC 344 : (2007) 2 RCR(Rent) 338

Hon'ble Judges: Satish Kumar Mittal, J

Bench: Single Bench

Advocate: Ashish Rawal for Mr. Anupam Gupta, for the Appellant; M.L. Saini, for the Respondent

Final Decision: Dismissed

Judgement

Satish Kumar Mittal, J.

The tenant has filed this revision petition against the order dated 24.09.1991 passed by the Additional District Judge, Jalandhar (exercising the power of Appellate Authority under the East Punjab Urban Rent Restriction Act, 1949), whereby the order of the Rent Controller dated 04.04.1989 determining the monthly rent of the demised premises as Rs.30/-, has been set aside while holding that the monthly rent of the demised premises is Rs.200/-.

2. In this case, the respondent landlord filed the ejectment application against the petitioner tenant from the demised premises (shop) u/s 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act") on the ground of non-payment of rent from 01.07.1985 to 30.06.1986. He claimed the rent at the rate of Rs.200/- per month. On the first date of hearing, the petitioner tendered the rent for the claimed period at the rate of Rs.200/- per month along with interest and cost, as assessed by the Rent Controller. However, he contested the petition on the plea that the rate of rent of the demised premises is Rs.30/- per month.

3. The Rent Controller after taking into consideration the evidence led by the petitioner, particularly the Agreement (Ex.RI), receipts (Ex.RW4/A and Ex. RW4B) and the expert report (Ex. RW1/1), held that the monthly rent of the demised premises was Rs.30/- per month as claimed by the petitioner, and consequently dismissed the ejectment application. The Rent Controller did not give much weightage to the evidence led by the respondent landlord, particularly the earlier ejectment applications, i.e. Ex. A1 and Ex. A4 filed by the respondent in the years 1976 and 1984 in which the tenant tendered the rent at the rate of Rs.200/- per month and subsequently permitted the landlord to withdraw those applications without any protest and contest.

4. Feeling aggrieved against the order of the Rent Controller, the respondent landlord filed an appeal before the Appellate Authority. The Appellate Authority while taking into consideration the earlier two applications Ex.A1 and Ex.A4 filed by the respondent landlord on the ground of non-payment of rent, held that the monthly rate of rent of the demised premises was Rs.200/-. The application Ex.A1 was filed in the year 1976 wherein the landlord claimed the rent at the rate of Rs.200/- per month from February, 1976. and the same was tendered by the tenant on the first date of hearing. The said application was got withdrawn by the landlord without any protest and contest. Similarly application Ex.A4 was filed in the year 1976 claiming rent from 01.03.1984 to 30.06.1985 at the rate of Rs.200/- per month. Again the petitioner tendered the claimed rent on the first date of hearing and permitted the landlord to withdraw the said application with-out any protest and contest. The Appellate Authority has also taken into consideration that after tendering the rent in the year 1976 and in the year 1985, the petitioner tenant did not file any application u/s 8 of the Act for recovery of the excess amount of rent which he could have filed within six months of the date of making the tender. The Appellate Authority also did not agree with the findings recorded by the Rent Controller on the Agreement (Ex.RI) and receipts (Ex.RW4/A and Ex.RW4/B) and held that those documents are forged and fabricated. In this regard, the finding recorded by the Rent Controller was reversed by the Appellate Authority while observing as under:

".....The respondent produced Ext. R1 agreement which is on a stamp paper and he also examined RW1 Arvind Sood, RW2 Harbhajan Singh. RW3 Arjan Singh, RW4 Rachhpal Singh and the respondent appeared as RW5. According to the statement of the respondent he took the shop consisting of two rooms in the month of May, 1964 @ Rs.30/- per month. Thereafter, the petitioner requested him to give one room out of those two rooms and then he delivered possession of one room in November, 1965 but the rent of the remaining room remained Rs.30/- per month and a writing was also effected. He further deposed that Kartar Singh has issued to him receipts and those receipts are Ext.RW4/A and RW/B. According to the statement of Harbhajan Singh, Kartar Singh executed agreement and he signed the same after admitting its contents to be correct. In his cross-examination he stated

that he got his motor repaired from Darshan Singh, respondent. Similar is the statement of Arjan Singh, RW3. He also admitted that he had filed a suit against the Kartar Singh for recovery of some amount and that suit was dismissed. Both the witnesses i.e. Arjan Singh and Harbhajan Singh are interested witnesses. The agreement Ex.RI clearly shows that it is a fabricated documents. According to the case of the appellant he had given this stamp paper for obtaining the electric connection in the year 1965. The respondent who is an electric contractor got the same removed from the department and converted it into an agreement of rent. He examined AW2 Kishan Chand, Revenue Accountant, Punjab State Electricity Board, Goraya. He had clearly stated that Kartar Singh applied for an electric connection. Pages 1, 2 and 25 of the electric connection filed are missing from the file. There is no stamp paper in the said file. There was a requirement of the stamp paper. When the stamp paper is taken then it is written on the same "agreement attached herewith". On the stamp paper of Ext.RI pages 1 and 2 are marked in the same pen and ink in which the remaining file of the electricity is there. So, I am of the opinion that the stamp paper Ext.RI was removed from the electric connection file of the appellant and was converted into an agreement of rent by the respondent. The witnesses Arjan Singh and Harbhajan Singh are interested. So no reliance can be placed on their statements. Similar is the position of receipts Ext.RW4/ A and Ext.RW4/B. These receipts are dated 05.06.1964 and 09.07.1964. These receipts are written on the back of account book in which the accounts of 1965 are entered. I am of the considered opinion that receipt Ext.RW4/A and RW4/B are forged documents and have been prepared by the respondents after tendering the amounts in the previous applications, otherwise he would have mentioned these receipts and Ext. RI in his written statement Ext.R2."

5. In view of the above finding, the Appellate Authority set aside the order of the Rent Controller and held that the rate of rent of the demised premises was Rs.200/- per month. Against the said order, the instant revision petition has been filed.

6. Learned counsel for the petitioner argued that the Appellate Authority has gravely erred in rejecting the agreement (Ex.R 1) as well as the receipts (Ex.RW4/A and Ex.RW4/B) holding them as fabricated documents. He further submitted that the Appellate Authority has also committed grave illegality while treating the tender of the rent in the previous litigation at the rate of Rs.200/- per month by the petitioner as proof of the rate of rent. He submitted that in spite of the fact that in the earlier ejectment application the tenant did not contest the rate of rent and tender the same at the rate claimed by the landlord, the tenant cannot be debarred from contesting the rate of rent subsequently on the third application by leading the evidence to prove the rate of rent claimed by him.

7. On the other hand, learned counsel for the respondent while relying upon the judgment of this Court in [Deva \(Dead\) thr. Lrs. Vs. Sajjan Kumar \(Dead\) by Lrs.](#), submitted that once in the earlier ejectment application the tenant tendered the

monthly rent at the rate of rent claimed by the landlord, without protest, he is estopped from questioning his liability to pay the same rate of rent in the subsequent proceedings. Learned counsel further submitted that in the earlier two applications filed by the respondent landlord for ejectment of the petitioner tenant in the year 1976 and 1984, the petitioner tenant tendered the rent at the rate of Rs.200/- per month with interest and costs on the first date of hearing without protest. He did not file any written statement to those ejectment applications and contested the claim of the respondent landlord about the rate of rent. He further submitted that even after tendering the rent at the rate claimed by the landlord in the ejectment application, may be in order to avoid his ejectment, the tenant could have filed an application u/s 8 of the Act for refund of the excess rent within a period of six months from the date of tender. But he did not file any such application within the stipulated period. In such circumstances, in the third application, the petitioner tenant cannot be permitted to dispute the rate of rent claimed by the respondent-landlord at the rate of Rs.200/-per month. He also contended that the Appellate Authority after carefully considering the evidence led by the respondent, has rightly come to the conclusion that the documents Agreement (Ex.RI) as well as the receipts (Ex.RW4/A and Ex.RW4B) are forged and fabricated documents, therefore, no interference is required in the instant revision petition.

8. After hearing the counsel for the parties and going through the judgments passed by both the Courts below, I do not find any substance in the revision petition filed by the petitioner. Undisputedly, on earlier two occasions, the respondent landlord filed the ejectment application against the petitioner tenant for non-payment of rent. In both the ejectment applications, the respondent landlord claimed the rent for a particular period at the rate of Rs.200/- per month. On both the occasions, though the petitioner tenant tendered the rent at the rate of Rs.200/- per month under protest, but did not contest the claim of the landlord by filing the written statement and asking the Rent Controller to proceed further with the case in order to determine the rate of rent. It is also undisputed fact that the petitioner tenant did not file any application u/s 8 of the Act for refund of the excess amount of rent paid by him to the landlord within six months of the tender. The Rent Controller has observed that the tenant had tendered the rent on the first date of hearing at the rate of Rs.200/- per month under coercion or threat. This reasoning cannot be accepted because when the landlord made the statement for withdrawal of the ejectment applications, the tenant should have protested and insisted before the Rent Controller to contest the rate of rent as claimed by the landlord, but he permitted the landlord to withdraw the ejectment applications without any protest and contest. Therefore, after having got the two previous applications dismissed as withdrawn by tendering the arrears of rent at the rate of rent claimed by the respondent landlord, the petitioner tenant was estopped from questioning his liability to pay the rent at the rate of Rs.200/- in the instant proceedings. In this regard, reliance can be placed upon a decision of this court in Bhagwan Singh's

case (supra), wherein the tenant questioned his liability to pay the house tax in the third ejectment application when in earlier two ejectment applications he tendered the claimed house tax without contesting the said claim and permitted to landlord to withdraw those applications. In such situation, it was held that the tenants were estopped from questioning their liability to pay the house tax in the subsequent proceedings. Similarly, in the instant case, the petitioner-tenant is estopped from questioning his liability to pay the rate of rent of Rs.200/- per month in view of the fact that on earlier two occasions, he did not file any written statement to the ejectment applications and contested the claim of the respondent landlord about the rate of rent.

9. Even otherwise, I do not find any illegality or perversity in the finding recorded by the Appellate Authority whereby the finding of the Rent Controller regarding claiming the rate of rent of the demised premises at the rate of Rs.30/- per month on the basis of Agreement (Ex.RI) as well as the receipts (Ex.RW4/A and Ex.RW4/B), was set aside. The Appellate Authority has properly appreciated the evidence led by the tenant and rightly come to the conclusion that those documents are forged and fabricated one and on the basis of which no finding regarding rate of rent as claimed by the petitioner can be given. Counsel for the petitioner could not point out any perversity or illegality in the finding recorded by this Appellate Authority in his regard.

10. In view of the above, there is no merit in this revision petition and the same is hereby dismissed with no order as to costs.