(2011) 02 P&H CK 0452

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 6604 of 2010 (O and M)

Shri Niwas Gupta	APPELLANT
Vs	
Parmod Gupta	RESPONDENT

Date of Decision: Feb. 24, 2011

Acts Referred:

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 22, 22(2), 22(3), 4, 6

Citation: (2011) 1 ILR (P&H) 803 : (2011) 162 PLR 519

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Kumar Jain, J.
The question involved in this revision petition is as to "whether a tenant can seek prosecution of the landlord u/s 22(2) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 [for short "the Act"] if the landlord had recovered arrears of rent beyond a period of 3 years prohibited u/s 13(2)(i) 3rd proviso of the Act or the landlord is liable for penalty only if there is a violation of Section 6(a) of the Act"?

2. In brief, the demised premises (shop) was let out to the tenant by father of the landlord on 01.08.1975 at a monthly rent of Rs. 300/- apart from house tax. Fair rent of the demised premises was fixed in terms of Section 4 @ Rs. 558.40/- vide order dated 08.11.2000 and the landlord received the enhanced rent according to fair rent up to 30.06.2001. Thereafter, fair rent was again determined @ Rs. 623/- per month which was received by the landlord up to 31.05.2003. The landlord then filed petition bearing No. 32 of 06.06.2007 in order to claim fair rent of the demised premises @ Rs. 623/- per month w.e.f. 01.06.2003. In this petition, the tenant tendered rent for a period of 38 months preceding the date of petition i.e. 06.06.2007 w.e.f. 01.06.2003 to 31.07.2007 total amounting to Rs. 30,212/-, but despite receiving the rent up to 31.07.2007, the landlord claimed another sum of Rs. 9,600/- for one year extra which was paid by the tenant to the

landlord on 17.09.2007. The tenant then filed an application to the Rent Controller for lodging a complaint to the Sub Divisional Judicial Magistrate, Narwana for prosecution of the landlord in terms of Section 22(3)(b) of the Act for violation of Section 6(a) read with Section 13(2)(i) of the Act or for granting sanction to sue the landlord in terms of Section 22(3)(a) of the Act for committing an offence by receiving extra amount of Rs. 9,600/- over and above the fair rent. This application has been dismissed by the learned Rent Controller vide its impugned order dated 29.07.2010 resulting into the present revision petition.

3. Learned Counsel for the Petitioner has argued that a landlord cannot claim anything in excess of fair rent and if he does so, he makes himself liable for prosecution in terms of the provisions of Section 22(2) & (3) of the Act. He has further submitted that the fair rent was assessed by the Rent Controller @ Rs. 623/- per month which was paid for preceding 38 months amounting to Rs. 30,212/-, but still the landlord had claimed another sum of Rs. 9,600/- for one year extra which had to be paid by the tenant under pressure on 17.09.2007, therefore, he had violated the provisions of Section 6(a) of the Act for which the learned Rent Controller should have allowed his application for either granting permission to sue or himself to lodged a complaint, but the learned Rent Controller has committed a patent error of law in dismissing the application on the ground that the tenant at the most cannot recover the rent for more than a period of 3 years which is prohibited u/s 13(2)(i) 3rd proviso but it does not attract penalty u/s 22 of the Act.

4. I have heard learned Counsel for the Petitioner and perused the available record with his able assistance.

5. In order to appreciate the controversy involved, it would be worthwhile to refer to the relevant provisions of the Act, namely Sections 6, 13(2)(i) and Section 22 of the Act, which read as under:

6. Landlord not to claim anything in excess affair rent.- Save as provided in this Act, when the Controller has fixed the fair rent of a building or rented land u/s 4, -

(a) the landlord shall not claim or receive any premium or other like sum in addition to fair rent or any rent in excess of such fair rent, but the landlord may stipulate for an receive in advance an amount not exceeding one month''s rent;

(b) any agreement for the payment of any sum in addition to fair rent or of rent in excess of such fair rent shall be null and void.

13. Eviction of tenants. -

(1) XXX

(2) A landlord who seeks to evict his tenant shall apply to the Controller, for a direction in that behalf.

If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied,-

(i) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable:

Provided that if the tenant, within a period of fifteen days of the first hearing of the application for ejectment after due service, pays or tenders the arrears of rent and interest, to be calculated by the Controller, at eight per centum per annum on such arrears together with such costs of the application, if any, as may be allowed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid:

Provided further that the landlord shall not be entitled to claim arrears of rent for a period exceeding three years immediately preceding the date of application under the provisions of this Act;

(ii) xxx

22,. Penalties.-

(1) If any person contravenes any of the provisions of Sub-section (2) of Section 8, Sub-section (1) of Section 10, Section 11 or Section 21, he shall be punishable with fine which may extend to one thousand rupees.

(2) If any person contravenes any of the provisions of Clause (a) of Section 6, he shall be punishable with imprisonment for a terms which may extend to two years, or with fine, or with both.

(3) No Court shall take cognizance of an offence under this section except upon -

(a) a complaint in writing (of facts which constitute such offence) filed with the sanction of the Controller; or

(b) a report in writing of such facts made by the Controller.

6. As per the scheme of the Act, the rent being paid by the tenant can be re-determined at the instance of the landlord which is termed as fair rent. It could be revised after every 5 years, but in terms of Section 6 of the Act, once the Controller fixed the fair rent u/s 4 of the Act, the landlord is not entitled to claim or receive any premium or other like sum in addition to fair rent or any rent in excess of such fair rent except for stipulating for and receive in advance an amount not exceeding one month''s rent or can enter into any agreement for the payment of any sum in addition to fair rent or of rent in excess of such

fair rent.

7. Thus, the prohibition is for the landlord to claim or receive "any premium or other like sum in addition to the fair rent or any rent in excess of such fair rent", but in the present case the landlord had claimed rent of 50 months instead of 38 months which is contrary to Section 13(2)(i) 3rd proviso of the Act. The question is as to whether it is an offence in terms of Section 22(2) of the Act or not? Section 22 of the Act stipulates two types of penalties. There is a punishment with fine for violation of Section 8 Sub-section (2), Section 10 Sub-section (1), Section 11 or Section 21 Sub-section (1) and there is an imprisonment which may extend to two years and also fine or both if there is a violation of Section 6(a) of the Act as per Section 22(2) of the Act, whereas Section 22(3) provides the procedure of taking cognizance of the offence which could be either on a complaint in writing seeking sanction of the Controller or by the Controller himself by reporting in writing to the Criminal Court. Thus, any violation of Section 13(2)(i) 3rd proviso is not made a part of Section 22 and is, thus, not punishable as suggested by learned Counsel for the Petitioner. Hence, I do not find any illegality in the order passed by the learned Rent Controller in dismissing the application of the Petitioner.

8. In view of the above discussion, the present revision petition is found to be without any merit and as such, the same is hereby dismissed, however, without any order as to costs.