

(2012) 10 P&H CK 0204

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2848 of 1999 (O and M)

Rajinder Singh Alias Rajan

APPELLANT

Vs

Sardari Lal and Others

RESPONDENT

Date of Decision: Oct. 17, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 4

Citation: (2013) 169 PLR 211

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Surinder Gandhi, for the Appellant; Kulvir Narwal, for the Respondent

Judgement

K. Kannan, J.

CM No. 25606-CII of 2012

For the reasons stated in the application, the same is allowed and the case is restored to its original number. With the consent of both parties, the case is taken up for disposal as under.

Civil Revision No. 2848 of 1999

1. The revision is against the order of eviction issued against the tenant in rent control proceedings initiated under the Hayana Urban (Control of Rent and Eviction) Act of 1973. The contention of the landlord was that the tenant had stopped paying rent from November, 1986 till September, 1989 when the petition for eviction was filed. The landlord was contending that the rent payable was Rs. 200/-, while the contention of the tenant was that the rent payable was only Rs. 75/-. He also contended that he had not been in arrears of rent, but having regard to the fact that such proof of payment was not available, the tenant tendered at the first hearing the rent @ Rs. 75/- per month for the period of complaint of nonpayment. The Rent Controller, however, found that the rent that was payable was Rs. 200/- per month

and found that the tenant had committed short tender of rent and directed eviction. The judgment of the Rent Controller was approved by the appellate authority as well. During the time of pendency of appeal, it appears that the landlord had died and the legal representatives had been brought on record before the appellate authority. However, when the certified copy of the order was issued, it appears that the copy had not incorporated the names of the legal representatives and the tenant filed a revision before this Court treating the landlord as still alive. When this fact was brought to the attention of the Court that the revision had been filed again a dead person, the tenant had filed an application in CM No. 17719-CII of 1999 for amending the cause title to take the appeal instituted against the legal representatives. The counsel for the respondents states that initially this Court directed the amended copy of appellate authority decree to be filed but states the application itself was later dismissed.

2. Even before the arguments got underway in full throttle, the learned counsel for the respondents would contend that the revision itself is not maintainable and the actual legal representative who ought to have been brought on record, is still not on record. He, however, is appearing only because the tenant has allowed his own deliberate lapse to his advantage of securing a stay and keeping the legal representative at bay and continuing in possession of the property by virtue of the order of stay. I cannot allow for an obvious reality of the death of the landlord and the survival of interest of the legal representative to be put under carpet and proceed by a reference to the fact that the only legal representative has still not been added. I have already pointed out the fact that the tenant had actually filed an application and the learned counsel for the respondents states that this was not ordered. On the other hand, it was rejected. I invoke inherent powers suo motu to direct the impleadment to ensure that the case is not knocked off on a needless technical plea, when parties are here locked in horns fighting bitterly. Indeed the rules of procedure applicable in the Courts of Punjab and Haryana allow for certain flexibility to make the impleadment without any bar of limitation and even a provision for abatement of what is contained under Order 22 Rule 4 CPC is excluded. The law of limitation for setting aside abatement cannot also be attracted. I therefore direct impleadment of the legal representative as originally contained in the array of parties in the application in CM No. 17719-CII of 1999. The Registry shall carry out amendment in the memo of parties.

3. The Rent Controller and the appellate authority have passed the order of eviction only on the essential ground that the tenant had not paid rent @ Rs. 200/- and the payment was only @ Rs. 75/- as contended by him. The interpretation relating to the payment of rent at the first hearing has been a subject of consideration in relation to the proceedings under the East Punjab Rent Restriction Act in [Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others](#),). This judgment has been applied also to the proceedings under the Haryana Urban (Control of Rent and Eviction) Act of 1973. There could not have been ejectment therefore without

affording to the tenant the opportunity to pay what was determined as the rent payable to the landlord. The learned counsel for the tenant is not prepared to join issues again on the quantum of rent that is payable and prepared to concede that the rent payable is only Rs. 200/- in the manner sought for by the landlord in the original petition. Considering the fact that the tenant has paid rent @ Rs. 75/- only till 16.04.2007 and that he has not paid any rent subsequently, I find that the balance of rent @ Rs. 125/- per month commencing from November, 1986 to April 2007 would be for 245 months and the amount payable would be Rs. 30,625/-. For the rent payable from 16.04.2007 till date in October 2012 @ Rs. 200/-, the amount payable for 66 months would be Rs. 13,200/-. The aggregate amount that shall become payable would be Rs. 43,825/- This amount shall be paid before 30.11.2012 along with interest at 9% per annum on Rs. 30,625/- from 16.04.2007 till the date of payment and for Rs. 13,200/-, the same shall be paid at 9% from 16.04.2007 till the date of payment. The amount shall be paid by demand draft drawn in the name of the legal representative, namely, Veena Rani, within the time stipulated. If the amount is so paid, then the order of eviction made shall stand set aside. If the amount is not tendered in the manner as directed, the order of eviction shall be carried out to its logical end and the landlord will be at liberty to execute the same.

4. The learned counsel for the landlord also contends that an application for determination of mense profit was filed in the year 2010 in view of the pendency of the case to secure an appropriate and fair rent payable by the tenant who was enjoying the benefit of order of stay on payment of rent which was fixed more than 3 decades back. The decision of the Supreme Court providing for payment of a sum determined by the Court which is fair and equitable under the market conditions in [B.P. Achala Anand Vs. S. Appi Reddy and Another](#), as a provisional direction at the interlocutory stage and is not to be understood as a legal imperative in all cases even when the case has been finally disposed of. With no uncertainty between the date of disposal of the case and when the Court disposes of the application for stay at the interlocutory stage, it would be possible to apply the Supreme Court dispensation. If the landlord, on filing the application for direction for payment of the higher amount as mense profit, has not obtained consideration of the Court at the interlocutory stage itself, I find no reason to give any such direction now at the conclusion of hearing. It shall be always open to the landlord to secure what is legal and just if the rent which is being paid by the tenant is grossly low or less than what is payable as fair rent. I will not, therefore, find any reason to give a direction for payment of sum more than what is contracted between the parties so far. Any payment of fair rent shall be only in the manner contemplated under the relevant provisions of the Act and the commencement of liability for such payment will also be dictated by the statutory terms in that regard. With these observations, the revision petition is disposed of.