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Court : Punjab and Haryana

Decided On : Jul-28-2004

Reported in : (2004)138PLR385

Judge : M.M. Kumar, J.

Acts : [East Punjab Urban Rent Restriction Act, 1949](#) - Sections 13(1); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 102

Appeal No. : Civil Revision No.3654 of 1985

Appellant : Gian Chand

Respondent : Pawan Kumar

Advocate for Def. : Munish Jolly, Adv.

Advocate for Pet/Ap. : D.D. Bansal, Adv.

Disposition : Petition dismissed

Judgement :

M.M. Kumar, J.

1 This petition filed under Section 15(5) of the [East Punjab Urban Rent Restriction Act, 1949](#) (for brevity, 'the Act') raises a limited question as to whether the fair rent assessed by the Courts below has to be enforced prospectively. In other words,

when rent has already been paid by the tenant-petitioner in earlier applications for ejectment filed by the landlord-respondent, could the tenant-petitioner claim that even in respect of the payment made in those cases the fair rent as assessed by the Rent Controller later on in an application filed by him should be applied and the excess amount be refunded.

2. Brief facts of the case are that in pursuance by applications filed under Section 13(2)(i) of the Act, the tenant-petitioner had tendered the rent at the rate of Rs. 300/- per month as demanded by the learned-respondent. He had tendered the rent under protest but he did not claim any issue in those applications filed by the landlord-respondent in which prayer for ejectment on the ground of non-payment of rent was made. However, the tenant-petitioner subsequently, filed a Rent Application No. 1 dated 8.1.1983 under Section 4 of the Act with a prayer for fixation of fair rent in respect of the demised shop. The Rent Controller recorded a finding and determined the fair rent at the rate of Rs. 200/- per month. He made his order operative from the date of institution of the application.

3. On appeal filed by the landlord-respondent, the Appellate Authority made only one modification that the fair rent of Rs. 200/- per month as fixed by the Rent Controller would be effective from 1.9.1984 as the rent with respect of the period upto 31.8.1984 as the rent with respect to the period upto 31.8.1984 stood already paid. The basic reason which weighed with the Appellate Authority is that decision in those five applications had attained finality and no issue with regard to rate of rent was claimed by the tenant-petitioner. The applications filed by the landlord-respondent under Section 13 for ejectment of the tenant-petitioner on the ground of non-payment of rent were dismissed as withdrawn. The view of the Appellate Authority in this regard reads as under;-

' It is correct that tenant has paid rent to the landlord at the rate of Rs. 300/- per month till 31.8.1984 but it was to avoid eviction. Amount tendered as arrears of rent in ejectment proceedings on the ground of ejectment, cannot be said to have been voluntarily and gladly paid. The effect of failure of the tenant to join issue with the landlord in those proceedings in regard to rate of rent is only this that on the plea of constructive res judicata, he might be debarred from claiming the refund of

excess deposit, but there is no estopped (sic estoppel) against him. On this question, (sic) He is well within his right to plead that though rate of rent was Rs. 200/- per month, yet he paid Rs. 300/- per month to the landlord to avoid ejection. A party in possession of best evidence has to produce it irrespective of the question of onus of proof and duty to prove the rate of rent was of the landlord. Specific plea of the appellant was that tenant came on the premises through duly executed rent note on 1.4.1981. At the trial, he tended to deviate from his pleaded position. In examination-in-chief, he stated that tenancy was oral, but during cross-examination he pleaded ignorance if any rent note was executed by the tenant in his favour. And then, Pawan Kumar deposed that rent note is with his father, who is very much alive and that he has not produced the rent note. He also stated that he is living with his father. The stance of the landlord to deviate from his pleaded cases and not to produce rent note prompted the learned Rent Controller to raise adverse inference against him and I entirely concur in this approach. Besides that Gian Chand stated that rate of rent agreed with him was Rs. 200/- per month, it was clear from the statement of Pawan Kumar Municipal Clerk (AW1) that shop No.393-A is assessed to annual rental value of Rs. 2400/- in the house tax assessment register. Smt. Sant Kaur v. Balwant Singh, 1983(2) R.L.R. 520 is on the aspect that entries made in the house tax assessment register at the instance of person in occupation of the premises form basis for determination on the rate of rent. Failure of the landlord to produce the rent note and continuous insistence of the tenant that he took the premises for Rs. 200/- per month, coupled with the entries of house tax assessment register, constituted sufficient evidence for the Rent Controller to find that agreed rate of rent was Rs. 200/- per month. In the absence of any evidence to satisfy the requirement of section 4(2), East Punjab Urban Rent Restriction Act, there is abundant authority to hold that contractual rate, if not exorbitant, is the fair rent.'

4. Mr. D.D.Bansal, learned counsel for the tenant-petitioner has assailed the order of the Appellate Authority by arguing that the rate of fair rent i.e. Rs. 200/- determined by both the Courts below should be made operative from the date of the order as was rightly held by the Rent Controller and not from any other date. He has maintained that once there was objection raised with regard to rate of rent and Rs. 300/- was paid under protest in order to avoid ejection, the tenant-

petitioner is not estopped by filing an application for determination of fair rent and to get a refund, therefore, it has been submitted that the fair rent should be applied even in respect of the period for which payment at the rate of Rs. 300/- has been made although no adjudication in those proceedings has taken place.

5. Mr. Munish Jolly, learned counsel for the landlord-respondent has argued that the tenant-petitioner did not claim any issue with regard to the excess payment of rent in five applications filed by the landlord-respondent where the rent was claimed at the rate of Rs. 300/-. According to the learned counsel the tenant-petitioner appeared on the date fixed by the Rent Controller and paid rent at the rate of Rs. 300/- albeit, under protest and the landlord-respondent withdrew the partition each time. The learned counsel has maintained that it was for the tenant-petitioner to claim an issue that the rent is being demanded by the landlord-respondent at a rate higher than the agreed rate of rent or he could have paid rent at the rate of Rs. 200/- and could have joined issue. The learned counsel has also pointed out that he has already filed a civil suit seeking refund of the excess amount of rent in respect of the period 1.4.1981 to 31.5.1982.

6. After hearing the learned counsel for the parties, I am of the considered view that this petition: is liable to be dismissed because the tenant-petitioner had failed to claim any issue in the proceedings initiated by the landlord-respondent under Section 13(2)(i) of the Act seeking his ejection on the ground of non-payment of rent. It appears that on the first date of hearing, he simply tendered the rent and the landlord-respondent having no other ground to press the petition for ejection, then withdrew the petition. It was in 1983 that the tenant-petitioner filed an application under Section 4 of the Act seeking fixation of rent. He has already paid the rent to the landlord-respondent at the rate of Rs. 300/- per month upto 31.8.1984 till the time, the application for fixation of fair rent under Section 4 of the Act was decided by the Rent Controller. Even otherwise, no material difference is likely to be made if the order fixing fair rent is to operate from 31.8.1984 instead of the date of application which was instituted on 8.1.1983. The difference of Rs. 100/- from 8.1.1983 to 31.8.1984 would bring the balance which would not exceed Rs. 2000/-. By any standard it is a paltry sum which may not warrant exercise of revisional jurisdiction of this Court under Section 15(5) of the Act. The policy of

the law is reflected by Section 102 of the Code of Civil Procedure, 1908 which provides that a second appeal involving an amount of less than Rs. 25.000/- cannot be filed under Section 100. Therefore, there is no merit in this petition and the same is accordingly dismissed.

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