(2012) 08 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 4432 of 1994 (O and M)

Banu Ram — APPELLANT

Vs

Rakesh Kumar — RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 9, 9(1), 9(2)
Transfer of Property Act, 1882 — Section 105

Citation : (2012) 168 PLR 330

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : S.C. Nagpal, for the Appellant;

Judgement

K. Kannan, J.—The revision is by the landlord assailing the order passed by the appellate authority reversing the judgment of the Rent Controller. The ground of eviction was that there had been a short payment of rent by the tenant inasmuch as the municipal tax levied on him ought to have been paid by the tenant, but was not so paid. The landlord has cited the past instance of a similar complaint when the landlord filed a petition for eviction but the tenant paid the tax soon thereafter and consequently, the petition was withdrawn by the landlord. While the Rent Controller accepted the landlord''s contention and ordered eviction on the ground that the tenant had not deliberately paid a portion of the rent that included the tax component levied by the municipal authorities, the appellate authority held that the tenant could not be forced to pay the tax, unless it was proved that the landlord had to pay such tax imposed upon him by the Municipal Committee in respect of the shop under the occupation of the tenant which was admitted by the tenant to be paid by him. The appellate authority has also said that the property has not been properly described. The learned counsel for the revision petitioner assails the judgment of the Rent Controller by making reference to Section 9 of the East Punjab Urban Rent Restriction Act of 1949 that reads as follows:-

9. Increase of rent on account of payment of rates, etc., of local authority, but rent not to be increased on account of payment of other taxes, etc.- (1) Notwithstanding anything contained in any other provision of this Act a landlord shall be entitled to increase the rent of a building or rented land if after the commencement of this Act a fresh rate, cess or tax is levied in respect of the building or rented land by any local authority, or if there is an increase in the amount of such a rate, cess or tax being levied at the commencement of this Act.

Provided that the increase in rent shall not exceed the amount of any such rate, cess or tax or the amount of the increase in such rate, cess or tax, as the case may be.

(2) Notwithstanding anything contained in any law for the time being in force or any contract, no landlord shall recover from his tenant the amount of any tax or any portion thereof in respect of any building or rented land occupied by such tenant by any increase in the amount of the rent payable or otherwise, save as provided in subsection (1).

The learned counsel also relies on a judgment of this Court in Baldev Kishan Vs. Bir Bhan and Another, holding that portion of Section 9(1) of the Act is not automatic. It is merely enabling provision which entitles the landlord to increase rent of premises covered by the Act if a rate, cess or tax in respect of the building is levied after the commencement of the Act. The amount which is recoverable by way of increase from a tenant u/s 9 can either be made the liability of the tenant by mutual agreement or by serving on the tenant a proper notice of increase of rent. The learned counsel contends that such a notice has been issued.

2. I am afraid that there is a complete misunderstanding of the judgment and the Section under the Act in the manner in which the contentions are raised by the landlord. Section 9 protects the landlord from taking additional burden of liability during the subsistence of lease by the enhancement of tax. Such additional amount is the component of liability that can be added as a liability by the tenant himself. Additional liability which a landlord can force on a tenant in such a situation cannot also be more than the actual increase in rent as is provided through Section 9(2). This Court has observed in the cited decision above that the operation of Section 9(1) is not automatic and enabling provision that entitles a landlord to increase the rent could be founded either on a contract by mutual agreement or even without any agreement, a statute would avail to a landlord to cast such liability on the tenant. The situation could be illustrated thus. If during the tenancy when the rent was ''x'' and the tax was a fixed sum say ''a'' if an additional tax is imposed or the tax is raised making it ''a+b'', the rent which the landlord is entitled to claim u/s 9 is ''x + b''. The additional amount that the landlord pays alone is the amount which Section 9 makes possible for a landlord to recover. It could be also seen in another situation where a property is already assessed to tax and the landlord gives the property on rent to a tenant. In such a situation, there is no presumption that the amount covered

under the tax will also be paid by the tenant. There has to be a specific agreement for the same. If in the latter situation there is an addition of liability by the landlord, it is that amount of addition that could be recovered from the tenant even without any agreement with the tenant. While the initial component of tax cannot be presumed to be a portion of rent liability for a tenant, an additional liability that arises to the tenant by virtue of Section 9 need not depend on any agreement. A mere demand by the landlord that the Municipal Committee has levied tax on the building cannot avail to a landlord to plead that since he has issued a notice, he is entitled to claim the same from the tenant. The notice which Section 9(2) contemplates is a notice of additional liability to a tenant arising by a fresh levy after the Act or an increase in the amount of tax. The definition of ''rent'' itself is not defined under the Act. We must therefore look to the definition of ''rent'' u/s 105 of the Transfer of Property Act. The rent is the money, share, service or other thing to be rendered for a lease. Such an amount is invariably a term of contract. The decision of the appellate authority ought to be supported on this ground that the landlord had not established the tax liability as part of the rent. 4. I am not prepared to join issues on whether the property had been properly described or not. The learned counsel argues that the property had been properly described and brought out in the same manner as the assessment register showed. I am prepared to take the same but the end result cannot be different. The eviction sought was on the ground that the tenant had not paid the rent which included the component of tax. Such a contention was untenable and correctly found so by the appellate authority. The civil revision therefore stands dismissed.

