(1967) 10 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 1051 of 1965

Dogar Mal — APPELLANT

Vs

Guranditta Mal Malhotra — RESPONDENT

Date of Decision : 30-10-1967

Acts Referred:
East Punjab Urban Rent Restriction Act, 1949 — Section 4

Citation : (1967) 10 P&H CK 0026

Hon'ble Judges : Mehar Singh, J

Bench : Single Bench

Advocate : H.L. Sarin, Balraj Bahl and B.S. Malik, for the Appellant; Ram Lal Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Mehar Singh, C.J.—The dispute between the parties is with regard to the tenancy of an intermediate storey of a. building consisting of a shop, which has been marked B, as to the first storey of the building, an intermediate storey or miani marked A, and two rooms and a courtyard marked C in the plan on the record filed by the tenant. The whole property was let to the tenant by the landlord at a rental of Rs. 35/- p.m., inclusive of electricity charges.

2. The tenant vacated on March 1, 1982, all other parts of the property excepting the intermediate storey or miani marked A in the plan. In other words the tenant surrendered the tenancy of the remaining part of the building and the courtyard to the landlord retaining with himself only the intermediate storey or miani. In April 1962, he remitted by money order a sum of Rs. 90/- to the landlord as rent for the months of January and February, 1962, at the rare of Rs. 35/- per mensem and Rs. 20/- for the month of March, 1962. The landlord received the money order, but noted on the receipt that the payment of the rent was short by Rs. 15/-. It is accepted on both sides that it could only be so short by Rs. 15/- if the rent for the month of March, 1962, was also Rs. 35/-, which would mean that, while the tenant surrendered every other part of the property, excepting

the intermediary storey or miani, the landlord did not reduce the rent from Rs. 35/- to Rs. 20/- per mensem, as claimed by the tenant. On that, the tenant gave a notice to the landlord that the agreed rent for the intermediary storey or miani was Rs. 20/- per mensem, inclusive of the electric energy, and the respondent replied that the rent was Rs. 35/- per mensem inclusive of electric energy.

3. It was after that that the tenant made an application u/s 4 of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act III of 1949) for fixation of the fair rent, which application was opposed by the landlord. The Rent Controller in the first instance dismissed the application of the tenant but on appeal the appellate authority remanded the case for reconsideration, whereon the Rent Controller decided that the landlord having already had fair rent of the whole of the building fixed at Rs. 24.75 Paise, on the basis of the basic rent of Rs. 18/-, per mensem in the year 1954, the rateable basic rent of the intermediary storey or miani came to Rs. 3/- per mensem and with the statutory additions, the fair rent came to Rs. 4.12 paise per mensem. He accordingly fixed the fair rent at that figure from May 12, 1962, but added a direction that the tenant, in case he needs electricity, should instal a separate meter or a sub meter, as the case may be, at his own expense, and the landlord should allow him to do so. The order of the Rent Controller is of April 21, 1965. Against that order the landlord came in appeal before the appellate authority which appeal failed on August 5, 1965, the appellate authority upholding the figure of the fair rent and also the direction given with regard to the use of electricity. This revision application is again obviously by the landlord from the order of the appellate authority.

4. It is not a matter of controversy between the parties at this stage that the rent of the intermediary storey or miani is Rs. 35/- per mensem, the arguments having proceeded on the basis that the rent for that part of the building is Rs. 20/- per mensem, inclusive of electric energy. The first contention of the Learned Counsel for the landlord is that there is a case of composite rent for part of the building let and for use of electricity, which cannot be split on any rational basis, and therefore the case is entirely outside the purview of the East Punjab Act III of 1949. In this respect, he refers to S. Raja Chetty v. Jagannathadas Govindas AIR 1990 Mad. 284, in which the learned Judges held that a lease of land and building together with fixtures, talkie equipments, machinery and other articles is not a lease of a mere building or a building with compound and furniture of the sort covered by the definition of ''building'' in section 2 of the Madras Buildings (Lease and Rent Control) Act (XV of 1946) and an application to evict the tenant therefrom is not governed by that Act. The learned Judges were further of the view that splitting up of the rent into rent for ground and superstructure, for hire of furniture, and for hire of talkie equipments and machinery, fittings and lessors'' fixtures, was extremely artificial and not to effect a division of the lease into separate contracts, namely one of the lease of the building and the other of the hire of the furniture so as to make the provisions of the Act applicable. This case was followed in Konijeti Venkayya and Another Vs. Thammana Peda Venkata Subbarao and Another , and there the case was of a lease of an oil mill consisting

of buildings, machinery and plant intended to be used for purposes of manufacturing oil and the question before the learned Judges was whether such a lease was governed by the provisions of the Madras Buildings (Lease and Rent Control) Act, 1949. The learned Judges held that the property leased was really a factory and the terms and conditions of the lease showed that the machinery and the oil expellers were considered to be important components of the property leased. They were further of the opinion that it could not be said that the lessees would be entitled to remain on the land and the building but could not have possession of the machinary, plants and other property let by invoking the provisions of the Madras Buildings (Lease and Rent Control) Act, 1949, and they observed that the split of a composite lease such as in that case into separate contracts of lease of the buildings and hire of the machinery would be to destroy the lease altogether and frustrate its object. It is immediately apparent that on facts neither of the two cases has any bearing on the facts of the present case. Here the lease is of a building and in the rent is included the cost of amenity in the shape of cost of electric energy. The Learned Counsel for the landlord refers to section 2(a) of the East Punjab Act III of 1949 which defines the word ''building'', and contends that the rent of Rs. 20/- per mensem is not for a building ''as defined in that provision'', but this is a fallacy for the figure of Rs. 20/- is rent for intermediary storey or miani of the house for the tenancy of the tenant and for the use of electricity therein. It is rent for ''building'' as that word is defined in. section 2(a) of the Act and in addition a charge for the use of electricity therein. So there is a lease of the intermediary storey or the miani with a rent for it and in addition a charge for use of electricity this is not a case of composite rent as in the two cases already cited. No doubt the parties do not say what amount out of Rs. 20/?was agreed to be rent of the intermediary storey or miani and what sum was to remain for electricity charges. The authorities have found that basis from the fair rent of the whole of the property which the landlord had fixed because he is himself a tenant of another person in the year 1954 and they have worked out the proportionate basic rent on which they have arrived at the figure of the fair rent of Rs. 4.12 Paise per mensem for the part that remains let with the tenant. It is not open to the landlord in view of the previous decision in regard to the fair rent of the whole of the building to challenge this figure and it has not been seriously challenged. This does provide of sound and adequate basis on which the figure of Rs. 20/- per mensem can be split into what is fair rent per mensem and the balance remains as the cost of electric energy per mensem.

5. The Learned Counsel for the landlord, however, presses that the integrity of the lease cannot be broken in this manner and the rent cannot be split up in this manner, but the integrity of the lease was broken when the tenant surrendered a major part of the property and the rent of Rs. 25/- per mensem inclusive of electricity charges, was reduced to Rs. 20/- per mensem inclusive of electricity charges for what has remained with the tenant.

6. The Learned Counsel for the landlord then urges that there is no provision in

the East Punjab Act III of 1949 under which the direction could be given by the Rent Controller for the tenant: to have his separate meter or sub meter for use of electricity. He points out that section 10 of the Act is not attracted to any such direction to the tenant, though under sub section (1) of that section, direction can be given to the landlord not to cut off or withhold any of the amenities enjoyed by the tenant, which would include the use of electricity. If a device of this kind was countenanced, then to evade the provisions of the East Punjab Act III of 1949 all that the landlord has to do is a simple approach as in the present case, that is to say, he has to fix rent for the premises inclusive of the cost of electric energy, and then he can avoid fixation of fair rent for the demise premises. This is what will defeat the very provisions of the statute and a device which will not be supported in revision in this Court.

7. In the circumstances, the authorities had one of the two courses open. One course is the one adopted by them in fixing the fair rent of the part of the premises with the tenant at Rs. 4.12 p. per mensem and directing the landlord not to obstruct the setting up of an independent meter or sub-meter by the tenant so that the tenant may continue to enjoy the amenity of electricity. The other course open to the authorities was to fix the fair rent at the figure as given already and to treat the remaining amount of Rs. 15.58 paise as the cost of electricity that may be used by the tenant every month. This second course is open to this objection that in this manner a landlord may evade the provisions of the East Punjab Act III of 1949 by fixing exorbitantly high rate of electricity charge when the actual amount of electricity consumed not cost more than a fraction of that amount. In the circumstances, the only fair and just course open to the authorities was the one that they have adopted.

8. There is only one other argument that needs to be considered and that is that, according to the Learned Counsel for the landlord, initially the appellate authority had no jurisdiction to set aside the order of the Rent Controller, whereby the application of the tenant had been dismissed, and to remand the case for reconsideration, but assuming, without deciding, this to be so, in this revision application a just order in the terms of the order made by the Rent Controller can be upheld.

9. The consequence is that this revision application by the landlord is dismissed with costs. Counsel fee Rs. 50/-.

