

(1998) 08 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Civil Revision No. 81 and C.M.P. No. 324 of 1995 and Civil Revision No. 152 of 1995

Madan Lal Sharma

APPELLANT

Vs

Jagmohan Singh Khera
 Jagmohan Singh Khera Vs
Madan Lal Sharma

RESPONDENT

Date of Decision : 19-08-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Himachal Pradesh Urban Rent Control Act, 1987 — Section 1(3), 2, 4, 5

Citation : (1999) 1 ShimLC 106

Hon'ble Judges : P.K. Palli, J

Bench : Single Bench

Advocate : Bhupender Gupta, in C.R. No. 81 of 1995, K.D. Sood and Sanjeev Kuthiala, in C.R. No. 152 of 1995, for the Appellant; K.D. Sood and Sanjeev Kuthiala, in C.R. No. 81 of 1995 and Bhupender Gupta in C.R. No. 152 of 1995, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Palli, J.—Both these revision petitions are proposed to be disposed of through a common judgment as these arise from the judgment passed by the appellate authority, Shimla, dated March 8, 1995. Civil Revision No. 81 of 1995 has been filed by the tenant, whereas Civil Revision No. 152 of 1995 has been filed by the landlord. The parties, hereinafter in this judgment, shall be referred to as "landlord" and "tenant".

2. A petition u/s 4 of the Himachal Pradesh Urban Rent Control Act, 1987, hereinafter referred to as the Act, was filed by the landlord against the tenant for determination of fair rent in respect to the premises in question. The Rent Controller, on appreciation of the material placed on record by the parties, proceeded to dismiss the petition. The appeal filed by him stands partly allowed fixing the fair rent of Rs. 100/per month with effect from 1971 and further statutory increase.

3. The landlord not being satisfied with the amount fixed by the appellate authority has filed Civil Revision No. 152 of 1995 and the tenant being aggrieved with the fixation of this rent has filed separate revision bearing No. C.R. 81 of 1995.

4. The landlord had claimed Rs. 1,000/- as the fair rent of the premises consisting of two rooms, kitchen and bathroom-cum-latrine. These premises are in the first floor of the building known as Prime Rose No. 1, Cart Road, Shimla. Initially the rent was Rs. 14.50 paise per month and was enhanced to Rs. 16.50 paise at some later stage. The tenant is, admittedly, occupying the premises as tenant since 1957. It is said that the rent at that time was Rs. 6/- per month and was increased to Rs. 10/- and then again was increased to Rs. 16.50 paise.

5. Mr. Bhupender Gupta, learned Counsel for the tenant, contends that there is no evidence on record that rent of similar accommodation in the locality is not less than Rs. 1,000/- per month and the appellate authority has gone wrong in fixing Rs. 100/- per month as fair rent. The next contention that is being raised is that the Act came into operation on August 18, 1987 and the appellate authority has further gone wrong in holding that the landlord would be entitled to Rs. 100/- per month with effect from 1971 and to further increase as provided for in the statute. My attention has also been brought to C.M.P. bearing No. 324 of 1995 where a prayer has been made by the tenant for allowing additional evidence under Order 41, Rule 27 of the Code of Civil Procedure. Annexures P-1 to P-4 have been placed on record in this respect in order to project that the rent of the premises similarly situated was much less in the year 1971.

6. In reply the landlord has placed on record an order dated December 19, 1997 Annexure R-1, where rent was fixed at Rs. 200/- on the basis of a compromise and Annexure R-2 is the statement of the tenant agreeing to pay that rent. The application would be considered after the appreciation of evidence and the relevant provisions of law applicable to the situation.

7. In his statement, the landlord appearing as AW-1, has stated that the rent of similarly situated accommodation in the locality is not less than Rs. 1,400/- per month. Amarjit Singh appearing as AW-2 has stated the rate of Rs. 1,000/- of similar accommodation. Exts. AW-2/A and AW-2/B are the rent receipts proved by him. Significantly, he has proceeded to state that in the year 1971 the rent of such accommodation was Rs. 100/- per month. The third witness examined by the landlord is Ravinder Singh, who has appeared as AW-3 and stated that the rent of the similar accommodation is not less than Rs. 1,500/- per month.

8. As against the above said evidence placed on record from the side of the landlord, the tenant has appeared as his own witness as RW-1. He has denied that Rs. 1,500/- is the fair rent in these days.

9. Section 4 of the Act lays down that fair rent shall be fixed in respect of the building, the construction whereof was completed on or before January 25, 1971 and the rent prevailing in the locality for similar building or rented land let out to

a new tenant during the year 1971. Sub-section 5 of this Section lay down that the fair rent fixed shall be operative from the date on which the application is filed under this Section.

10. Admittedly, the premises in question were already existing in the year 1957. Rent Control Act, 1971 was earlier in force before coming into operation of the above said Act and there was a provision for determination of fair rent u/s 4 of that Act. Although, some of provisions of that Act have been saved in the present Act, but for the purpose of fair rent notice has to be taken of Section 1 Sub-sections (3). Provisions contained in Section 4 have been held to be applicable from the appointed day and appointed day in Section 2 has been given as August 18, 1987.

In view of the above said provisions, the appellate authority has certainly gone wrong in holding that the landlord shall be entitled to the fair rent of Rs. 100/- per month from 1971. The findings recorded are, thus, set aside.

11. There is an important admission from the side of the landlord in the statement of AW-2 Amarjit Singh, who has stated that rent of similar accommodation in the year 1971 was Rs. 100/- per month. This version is further supported by two rent receipts Exts. AW-2/A and AW-2/B.

12. There is no evidence from the side of the tenant that this was not the prevailing rent at that time and the rent of such like accommodation was much less. In the given situation, I have no difficulty to hold that Rs. 100/- per month would be the fair rent of the premises in question and the appellate authority has correctly fixed the fair rent of the premises in accordance with the provisions of the Act. Rs. 100/- per month are held to be the fair rent. However, the landlord shall be entitled to the increased rent from the date of the application filed by him subject to such further increase as is permissible under the statute.

13. So far as the miscellaneous application noticed above is concerned, I find that the parties had been granted ample opportunity to place on record material to prove their respective pleas and it is too late at the stage of the hearing of these revision petitions that the tenant should be allowed to place on record additional evidence. No case has been made out by the tenant that despite exercise of due diligence this evidence was not within his knowledge or could not be produced earlier. It may be noticed that the case remained pending with the Rent Controller from 1990 to 1993 and before the appellate authority from 1993 to 1995. The application does not appear to be bona fide and is rejected.

In view of what has been said above, the revision petition filed by the tenant is allowed to the extent indicated above and the revision petition filed by the landlord is hereby dismissed. No costs.