

(2000) 02 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2524 of 1982

Shri Pawan Kumar and Others

APPELLANT

Vs

Shri Gopal Dass (Died) through his L.Rs.

RESPONDENT

Date of Decision : 22-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 15(6), 4

Citation : (2000) 126 PLR 133 : (2000) 3 RCR(Civil) 64 : (2000) 1 RCR(Rent) 551

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : C.B. Goel and R.C. Chauhan, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.—The present revision petition has been filed by Pawan Kumar and others (hereinafter described as "the petitioners") directed against the judgment of the learned Appellate Authority, Karnal, dated 22.4.1982. By virtue of the impugned judgment, the learned Appellate Authority fixed the fair rent of the shop in dispute at Rs. 15.40 per month with effect from the date of filing of the application i.e. 28.1.1997.

2. The relevant facts are that the petitioners had filed an application for fixation of fair rent of the suit, premises. It was alleged that Gopal Dass respondent had taken the shop in dispute on rent in 1956 from one Daulat Ram at a monthly rent of Rs. 10/-. He was also liable to pay house tax. Daulat Ram died couple of years before the filing of the petition. Pawan Kumar was the adopted son of Daulat Ram. Thereafter, Pawan Kumar petitioner had been receiving the rent of the shop and had also been joined as a petitioner. The shop in dispute had been constructed and let out much before 31.12.1961. The rent of similar shops situated in the locality was not less than Rs. 150/- per month in the year 1962. It

was, thus, prayed that fair rent should be fixed.

3. The respondent-tenant contested the petition and pleaded that he is in occupation of the suit premises as a tenant from 1949 onwards at a monthly rent of Rs. 10/- besides house tax of 0.60 paise per month. He denied his liability to pay the house tax asserting that no house tax in these days is being charged by Municipal Committee, Panipat. Some disputes were raised about the relationship of landlord and tenant which do not survive for the purposes of the present controversy in this revision petition. However, it was asserted that the basic rent of the shop in dispute and that of similar shops in the locality was not more than Rs. 10/- per month. It was further asserted that since the petitioner had only paid a Court fee of Rs. 15/-, they cannot claim rent more than Rs. 50/- per month.

4. The learned Rent Controller had framed the issues and fixed the fair rent of the shop in question at Rs. 32.50 paise per month.

5. Both the petitioners and the respondent-tenant preferred appeals. The learned Appellate Authority held that the basic rent was Rs. 10/- per month. An application was filed seeking permission to lead additional evidence. The same was dismissed. Thereafter, taking note of the price index, the learned Appellate Authority fixed the fair rent of the shop in dispute at Rs. 15.40 paise per month.

6. Aggrieved by the same, present revision petition had been preferred.

7. The learned counsel for the petitioners at the outset argued that the learned Appellate Authority was in error in dismissing the application filed seeking permission to lead additional evidence and, thus, the impugned order as such cannot be sustained. Before the learned Appellate Authority an application was filed alleging that the petition for fixation of fair rent was prolonged for years. The petitioners had been bringing the evidence but the same, for some reason or the other, was not recorded. He had to file certain documents in the shape of rent note and rent receipts to prove the point in controversy. They had been relied upon. On one date, the statement of the petitioner was recorded. During the course of trial, there were also talks of compromise between the parties. But the same did not mature. On 17.9.1981, the case was fixed for evidence of the petitioner. As the case was old, the learned Rent Controller was interested in disposing of the said matter. During the negotiations, the respondent admitted that in the year 1962 the prevailing rent of similar shops was not less than Rs. 40/-. The petitioners orally admitted that the basic rent of the shop in dispute be taken as Rs. 40/- per month. It is in these circumstances that the learned counsel for the petitioners made a statement that the matter be decided as per this understanding. Needless to state that the averments so made had been controverted.

8. Supreme Court in the case of K. Venkataramiah Vs. A. Seetharama Reddy and Others, , considered the scope of Order 41 Rule 27 of the CPC and held as under:-

".....Clearly, the object of the provision is to keep a clear record of what weighed with the appellate Court in allowing the additional evidence to be produced - whether this was done on the ground (i) that the court appealed from had refused to admit evidence which ought to have been admitted, or (ii) it allowed it because it required it to enable it to pronounce judgment in the appeal or (iii) it allowed this for any other substantial cause. Where a further appeal lies from the decision of the appellate Court such recording of the reasons is necessary and useful also to the court of further appeal for deciding whether the discretion under the rule has been judicially exercised by the Court below....."

9. In the present case in hand, as would be noticed, the details of the documents to be produced were not forthcoming. It cannot, therefore, be held that the same were necessary for the pronouncement of the judgment. Otherwise also, it was the duty of the petitioners to produce the relevant evidence. They were not prevented by any order of the Controller to produce the same.

10. As regards the controversy, whether the parties had agreed to Rs. 40/- to be the basic rent. Once again, the record of the learned Rent Controller does not support the petitioners. The matter was listed before the learned Rent Controller on 17.9.1981. A statement was made by respondent Gopal Dass in which he stated that the shop in dispute was with him since 1953. In 1953, he was paying Rs. 5/- per month as rent. In 1956/-, he paid Rs. 10/- per month as rent and since then paying the same at the same rate. He could not say as to what would have been the rent of similar premises in 1962. The petitioners thereupon had made the following statement through their counsel:-

" We have understood properly the statement of the respondent recorded overleaf. The matter may be decided on the basis of that statement. We need not lead any evidence."

11. It is too late, therefore, in the day to assert that, in fact, it was agreed that in 1962 the shop in question could fetch Rs. 40/- per month. It was clearly stated that the rent was Rs. 10/- per month and had continued to be so till date when the statement was made. The parties necessarily had bound themselves as such and on that account no patent injustice seemingly has been caused whereby it could be termed that some other evidence could have been permitted.

12. Clause (a) of sub-clause (2) of Section 4 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, reads as under:-

"(2) In fixing the fair rent under this section, the Controller shall first determine the basic rent which shall be:-

(a) in respect of the building the construction whereof was completed on or before the 31st day of December, 1961, or land let out before the said date, the rent prevailing in the locality for similar building or rented land let out to a new tenant during the year 1962; and"

13. A perusal of the relevant provision that have been extracted above would

show that in the present case since the building had been constructed on or before 31.12.1961, the basic rent would be the rent prevailing in the locality for similar building or land. In the present case, the respondent was paying Rs. 10/- per month. There is no other reliable evidence as to what would be the prevalent rent of similar building during the year 1962. The findings of the learned Appellate Authority in this regard, therefore, do not require any disturbance.

14. No other plea was raised.

15. Consequently, the revision petition fails and is dismissed.