

(2019) 03 SHI CK 0028
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 153 Of 2014

Uttam Chand (Since Deceased) Through His Legal Heirs And Others APPELLANT

Vs

Seesh Ram (since deceased) through his legal heirs RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Himachal Pradesh Urban Rent Control Act, 1987 — Section 4, 4(2), 5, 14

Citation : (2019) 03 SHI CK 0028

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Ajay Sharma, Rajneesh K. Lall, Sanjeev Sood

Final Decision : Dismissed

Judgement

1. Sureshwar Thakur, J

1. The landlords is aggrieved by a common verdict pronounced by the learned Appellate Authority, upon, CMA 2 of 2003, and, upon Cross-appeal No. 33 of 2003, (i)wherethrough, the learned Appellate Authority hence set aside the order of eviction of the tenants/respondent herein, arising from, non payment of rent, from, October, 1990 to March, 1995 at the rate of Rs.65/- per month, (ii) given the afore rent along with interest and costs, standing already deposited, and, paid by the tenants to the landlords, in pursuance to orders of 15.3.1995, rendered in Civil Revision No. 85 of 1997. Furthermore, the appellate authority also assessed fair rent qua the demised premises @ Rs.95/- per month, from, the date of the petition. The landlords/petitioners being aggrieved therefrom, hence, assail the afore common verdict, as, pronounced by the learned Appellate Authority, upon, the afore appeals.

2. Briefly stated the facts of the case, are ,that the petitioners/landlords have instituted the petition under Section 4 of the H.P. Urban Rent Control Act for determination of fair rent of the demised premises as detailed in the petition,

and, also for eviction of the tenant on the ground of non payment of rent since August, 1990. It has been claimed that the demised premises were rented out to the tenant on the monthly rent of Rs.65/- vide rent deed of 10.04.1969, in which year the building was constructed. Similar buildings in the same locality are stated to be rented out at the rate of Rs.1000/- per month. It has been further claimed that the tenant is in arrears of rent since August, 1990, which he has not paid, so liable to be evicted. Fair rent was not fixed earlier though the rent stands increased manifolds.

3. The respondents/tenants, in their reply, filed to the petition, have pleaded qua the rent standing offered to the landlords which they refused to accept. He/they expressed willingness to pay the arrears whatever found due. But denied the entitlement of the landlords for fixation of fair rent at the rate of Rs.1000/- per month. Claimed that the rent of the similar building in the same locality is not more than Rs.40/- per month, so no fixation of fair rent required.

4. The landlords/petitioners herein filed rejoinder to the reply of the tenants/respondents herein, wherein, he denied the contents of the reply and re-affirmed and re-asserted the averments, made in the petition.

5. On the pleadings of the parties, the learned trial Court struck following issues inter-se the parties in contest:-

1. Whether the respondent is in arrears of rent since August, 1990 at the rate of Rs.65/- per month, if so to what effect? OPP

2. Whether the petitioner are entitled for determination of fair rent, if so what rent p.m.?OPP.

3. Whether the petition is not maintainable?OPR.

4. Whether the petitioners are estopped to file the petition by their act and conduct?OPR.

5. Relief.

6. On an appraisal of evidence, adduced before the learned Rent Controller, the learned Rent Controller, hence, allowed the apt petition preferred therebefore by the landlords/petitioners herein. In appeals, preferred therefrom, by, the tenants/respondents herein, as well as, by the landlords/petitioners herein, before, the learned Appellate Authority, the latter allowed the appeal preferred by the tenants/respondents, hence, modified the order of the learned Rent Controller concerned, whereas, it dismissed the cross-appeal, as, preferred therebefore by the landlords/petitioners, on anvil, of, it being not maintainable.

7. Now the landlords/petitioners herein, have instituted the instant Civil Revision Petition, before this Court, for hence assailing the findings recorded, in its impugned common order, by the learned Appellate Authority.

8. The rent controller in a petition, cast under the provisions of Section 4, of, the

Himachal Pradesh Urban Rent Control Act (hereinafter referred to as the Act, (a) wherethrough, the landlords, hence, sought the assessment of fair rent, vis-a-vis, the demised premises, rather assessed qua therewith hence fair rent quantified at the rate of Rs.300/- per month, w.e.f. April, 1995, (b) and, also held qua the respondents/tenants herein, falling, in arrears of rent, commencing from October, 1990 to March, 1995, at the rate of Rs.65/- per month, worked out at Rs.3510/-, and, thereon also levied interest @9% per annum, worked out at Rs.722.55 paise. The provisions relevant, for making, an apt determination, whether the contractual rent, borne in a sum of Rs.65/- per mensem, hence, falling within the ambit, of, the provisions of Section 4 of the Act, hence are, borne in clause (a), of, sub-section (2) of Section 4 of the Act, provisions whereof stand extracted hereinafter:-

"4. Determination of fair rent- (1) The Controller shall, on application by the tenant or the landlord of the building or rented land, and after holding such enquiry as he may thing fit, fix the fair rent for such a building or rented land.

(2) The fair rent under sub-section (1) shall be;-

(a) in respect of the building, the construction whereof was completed on or before the 25th day of January, 1971 or in respect of 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 1971; and

(b) in respect of the building, the construction whereof is completed after 25th day of January, 1971 or in respect of land let out after the said date, the rent agreed upon between the landlord and the tenant preceding the date of the application, or where no rent has been agreed upon, the rent shall be determined on the basis of the rent prevailing in the locality for similar building or rented land on the date of application.

(3) xxxxxxxxxxxxxxxxxxxx

(4)xxxxxxxxxxxxxxxxxxxxxxxx

(5) The fair rent fixed under this section shall be operative from the date on which application is filed under this section."

A circumspect reading thereof, (i) unfolds that the afore clause (a), of, sub-section (2) of Section 4 of the Act, rendering discardable, the, contractual rate of rent, in respect of those buildings, whose constructions rather stood completed, hence on or before 25th January, 1971. Uncontrovertedly, the, building in part whereof, the relevant premises are located, stood constructed, prior thereto, (ii) hence, with clause (a) of sub-section (2) of Section 4 of the Act, rendering discardable, the, afore contractual rate of rent, (iii) thereupon, the afore contractual per mensem quantum of rent, hence, cannot be construed to be a fair rent qua therewith. Since, the afore amendment, came into being, through an amendment, made to the H.P. Urban Rent Control Act, 1987, (iv) and, furthermore, with the afore mandate, carried, in, the afore statutory provisions,

rather not being given any retrospectivity, (v) thereupon, the afore provisions are construable to be holding only prospective operation, (vi) in sequel, the contractual per mensem rent, as, tendered by the tenant to the landlord(s), is to be, construed to be the apposite liability, vis-a-vis, the demised premises, (vii) and, any retrospective determination of fair rent, vis-a-vis, the demised premises, would, hence, hence engraft an impermissible retrospectivity, to, the mandate of Section 4 of the Act, (viii) and, also would override the or subsume, the, prior thereto hence contractually agreed liquidation(s), made by the tenant, to the landlord, especially upto 1987. Moreover, the determination of fair rent, within, the domain of clause (a) of sub-section (2) of Section 4 of the Act, vis-a-vis, the demised premises, is to be made, only subsequent thereto, and, also is to commence, from, the period, when, the claim is reared, in the apt rent petition. Since, the rent petition, for the afore purpose, rather stood instituted in the year 1993, and, evidently not prior thereto, thereupon, only subsequent thereto determination(s) of fair rent, vis-a-vis, the demised premises, rather were enjoined to be made. However, even gauging thereof, has to be made, solitarily within the domain, of, clause (a) of sub - section (2) of Section 4 of the Act, and, tritely on anvil, of, statutory expostulation, that, the rent prevailing, in the locality, and, vis-a-vis, similar building(s), let out, to a new tenant, conspicuously in the year 1971. The learned Appellate Authority, bearing in mind the testifications, rendered by PW-2, wherein, he discloses, that, rent since 1.9.1971, vis-a-vis, the relevant premises rather was borne in a sum of Rs.60 per month, and, PW-2 also testifying that in 1971, the apt quantum of per mensem rent, was, Rs.30/-. Moreover, the attorney, of the petitioner concerned, delivered a testification, qua the property, owned by the temple concerned, standing hence in 1971, rented out to different persons, at Rs.30/- and Rs.35/- per month, (ix) and, when all the afore premises, are located, at ward No.6, whereat the demised premises are also located, (x) thereupon, in the learned Appellate Authority, hence, making a conclusion, that, the contractual rate of rent, besides, the fair rent, vis-a-vis, the demised premises, being both borne in a sum of Rs.95/- per month, from, the date of the petition, does not, obviously appear to commit, hence, any gross infirmity.

9. Furthermore, upon, the afore per mensem quantum of the afore rent, the, mandate of Section 5, of the Act, provisions whereof stand extracted hereinafter, rather also enjoined application, hence, inconsonance therewith also a 10% increase in rent, vis-a-vis, the afore contractually agreed rent, was, also enjoined to be made.

"5. Revision of standard rent in certain cases.- (1) Save as provided in section 4, when the standard rent of a land or rented building has been fixed under section 4, no further increase or decrease in such standard rent shall be permissible for a period of three years.

(2) Notwithstanding anything contained in any law for the time being in force or in any contract shall, in addition to the increase in rent provided in this Act, be

entitled to increase the rent of a building or land at the rate of ten per cent of standard rent or the agreed rent, as the case may be, after every three years."

Since, in consonance therewith, the learned Appellate Authority has assessed, rent per mensem hence borne in a sum of Rs.95/-, and, has also made an order, that, it shall accrue, vis-a-vis, the demised premises, from, the date of presentation of the apposite petition, thereupon, the impugned order obviously, does not, suffer from any infirmity.

10. However, the learned counsel, appearing for the petitioners, has contended, that, merely for want, of, deposit of the contractual rate of rent @ Rs. 65/- per mensem, along with, interest at the rate of 9% p.a., accrued thereon, by the tenant, vis-a-vis, the landlord, (i) and, conspicuously, vis-a-vis, the demised premises, rather not estopping the landlord to also seek, rather liquidation(s) even, of, the afore per mensem quantum, of, the afore determined fair rent, borne in a sum of Rs.95/- per month, (ii) nor estopping, the, landlord, to espouse qua it rather being accruable from the date of petition, (iii) also, his being not estopped, for evident want, of, liquidation thereof being made by the tenant, for, hence his avoiding his eviction from the demised premises, rather to espouse, for, the tenants' eviction therefrom. In determining the afore factum, it is relevant to allude, to, a decision rendered in C.R. No. 85 of 1997, decided on 29th April, 1999, (iv) wherein, this Court, upon, being seized with the mandate(s) of Section 4, and, of Section 14 of the Act, hence (v) concluded that the afore, proviso encompassing areas, only vis-a-vis, the contractually agreed rent, and, rather not taking within its/their ambit or domain, the fair rent, assessed or determined, in, a petition in respect(s) thereof, as, cast by the landlord. Consequently, liability, vis-a-vis, liquidation, of, fair rent, vis-a-vis, the demised premises, by the learned Appellate Authority, as, borne in a sum of Rs.95/- per mensem, hence, commence(s) only from 30.03.1993, (vi) and, also it is not enjoined, to be, on termination of the afore petition, hence liquidated, by the tenant, to the landlord, (vii) nor for want of liquidation thereof, the, tenant would face the wrath of eviction, from, the demised premises, (viii) hence, in consonance, with, the afore verdict rather evidently, only the liquidation(s), of, the contractual rate of rent, hence, rather saves his eviction, vis-a-vis, the demised premises.

11. In view of above discussion, there is no merit in the present petition, and, it is dismissed accordingly. In sequel, the order impugned before this Court is maintained and affirmed. All pending applications also stand disposed of. No order as to costs.