

SIRI CHAND (DECEASED) THR. LRS.

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v.

SURINDER SINGH

(Civil Appeal No. 2617 of 2020)

JUNE 17, 2020

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**[ASHOK BHUSHAN, M.R. SHAH AND
V. RAMASUBRAMANIAN, JJ.]**

East Punjab Urban Rent Restriction Act, 1949 – s. 13 – Registration Act, 1908 – s. 17(1) (d) – Appellant-landlord filed an application u/s. 13 of the Act, 1949 and sought eviction of respondent-tenant along with arrears of rent, house tax and interest on the arrears of rent – The Rent Controller held that rent note is not signed by both the parties – It was further held that although time is not specified, but it is not a lease deed, so not compulsorily registrable – The Rent Controller held that tenant was in arrears of rent and house tax so the respondent-tenant is liable to eviction from the premises in dispute – The Appellate Court did not agree with the findings of the Rent Controller that rent note was not compulsory registrable and set aside the judgment of the Rent Controller – Aggrieved, the appellant filed a revision before the High Court and the same was dismissed – On appeal, held: The present is a case where rent deed does not prescribe any period for which it is executed – When the lease deed does not mention the period of tenancy, other conditions of the lease/rent deed and intention of the parties has to be gathered to find out the true nature of the lease deed/rent deed – The rent note contains only monthly rent and payment month by month – As per law laid down by the Supreme Court in Ram Kumar Das, there shall be a presumption that the tenancy in the present case is monthly tenancy – When the clauses of rent note are cumulatively read, the intention of the tenant is more clear that tenancy was only monthly tenancy, which could have been terminated on default of payment of rent by 5th day of any month or by notice of one month – The rent deed did not confer any right to tenant to continue in the tenancy for a period of more than one year nor it can be said that tenancy was created for a period of more than one year – Therefore, the rent note was not such kind of rent note, which requires compulsory

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- A *registration u/s. 17(1)(d) of the Act, 1908 – The Appellate Court after holding that document-rent deed was compulsorily registrable and having not registered allowed the appeal – No finding was returned by the Appellate Court that tenant was not in default and tenant has deposited the necessary amount to save himself from eviction – Also, there was no finding by the Appellate Court regarding the liability of the tenant to pay the house tax – Thus, the judgment of the Appellate Court is unsustainable – The judgment and decree of the Rent Controller directing eviction of the tenant restored.*
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C **Allowing the appeal, the Court**

- C **HELD:** 1. The rent note, which this Court is considering contains only monthly rent and payment month by month. As per law laid down by this Court in Ram Kumar Das there shall be a presumption that the tenancy in the present case is monthly tenancy. When the clauses of rent note are cumulatively read, the intention of the tenant is more than clear that tenancy was only monthly tenancy, which could have been terminated on default of payment of rent by 5th day of any month or by notice of one month. The rent deed did not confer any right to tenant to continue in the tenancy for a period of more than one year nor it can be said that tenancy was created for a period of more than one year. Clause (9) of rent note, which noticed the promise of the tenant of payment of rent by increasing 10% each year was a promise contingent on tenancy being continued beyond one year but cannot make the tenancy year to year or tenancy for a period of more than one year. Present was a case of tenancy for which no period was specified and looking to all the clauses cumulatively, this Court finds that the rent note was not such kind of rent note, which requires compulsory registration under Section 17(1)(d) of the Registration Act, 1908. [Para 19] [275-G-H; 276-A-C]
- G 2. One may further notice that Rent Controller had returned a finding regarding rate of rent @Rs.2,000/- per month and further the tenant was liable to pay the house tax, which was not paid from 1999 to 2005 and the decree of eviction was passed accordingly. The Appellate Court although accepted the finding of the Rent Controller that rate of rent was @Rs.2,000/- and not H Rs.1,000/- but merely on the finding that landlord cannot claim

10% increase of rent every year since the document was not registered had allowed the appeal and set aside the judgment. There is no specific finding by the Appellate Court regarding the liability of the tenant to pay the house tax. The Appellate Court after holding that document-rent deed was compulsorily registrable and having not registered allowed the appeal. No finding was returned by the Appellate Court that tenant was not in default and tenant has deposited the necessary amount to save himself from eviction. This Court thus, is of the view that the judgment of the Appellate Court is unsustainable on the above ground also. This Court thus, is of the view that the judgment and decree of the Rent Controller directing eviction ought not to have been interfered by the Appellate Court. [Para 20] [276-C-G]

Ram Kumar Das v. Jagdish Chandra Deo, Dhabal Deb and Another AIR 1952 SC 23 : [1952] SCR 269 – relied on.

Kashi Nath and Ors. v. Abdur Rahman Khan and Ors.
AIR 1922 All. 54 ; Mengh Raj v. Nand Lal and Ors.
AIR 1939 Lah. 558 – referred to.

Case Law Reference

[1952] SCR 269 relied on Para 14 E

relied on

Para 14

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2617
of 2020.

From the Judgment and Order dated 05.09.2018 of the High Court of Punjab and Haryana at Chandigarh in Rent Revision No. 6544 of 2009.

Dr. P.S. Rao, Dr. Satish Chandra, Ms. Archana Rao Arora, and Ms. Shashi Kiran, Advs. for the appearing parties.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

1. Leave granted.

2. This appeal has been filed questioning the judgment of Punjab and Haryana High Court dated 05.09.2018 dismissing the revision filed by the landlord-appellant.

- A 3. Brief facts giving rise to the appeal are: -
- 3.1 The appellant is a landlord of a shop measuring 14 sq.yds. Respondent took the shop on rent @Rs.2,000/- per month for running a hair cutting and dressing work. The respondent-tenant on 27.07.1993 executed an agreement/rent deed undertaking to pay a sum of Rs.2,000/- each month. The rent deed was to be applicable w.e.f. 28.07.1993. The house tax and electricity bills were undertaken to be paid by the tenant. Rent was to be paid up to 5th day in each month to the owner. In event, the tenant failed to make the payment of rent up to the prescribed date in advance, the owner shall have right to get the shop vacated. The shop owner, if is in need of the shop, can serve notice of one month and get the shop vacated from the tenant. The tenant also undertook to make the payment of rent money by increasing 10 per cent each year.
- 3.2 An application under Section 13 of East Punjab Urban Rent Restriction Act, 1949 was filed by the appellant-landlord dated 18.03.2006 praying for eviction of the tenant along with arrears of rent and house tax and interest on the arrears of rent. The appellant's case was that rent is not paid from 28.01.2004 to 28.07.2004 and from 29.07.2004 to 28.02.2005. House tax since 1999 to 2005 amounting to Rs.22,302/- was not paid.
- E 3.3 The tenant filed objection to the application and contended that rate of rent is Rs.1,000/- per month. It was further pleaded that at the time of taking shop in question, no other condition was agreed or settled. However, the signatures were obtained on some blank paper as security by the landlord, which appears to have been fabricated as alleged rent note. The tenant claimed to have paying the rent @Rs.1,000/- per month till February, 2006, after which landlord refused to accept the rent.
- 3.4 The copy of the rent note dated 27.07.1993 was brought on the record as Exh. A-1. The Rent Controller held Exh.A-1- rent deed as proved. The Rent Controller held that rent note – Exh.A-1 is not signed by both the parties. The Rent Controller further held that although time is not specified, but it is not a lease deed, so not compulsorily registrable. The Rent Controller also held that tenant was liable to pay the house tax. The respondent tendered rent @Rs.2,000/- w.e.f. 28.01.2004, which was accepted under protest. The Rent Controller held that tenant was in arrears of rent and house tax so the

respondent-tenant is liable to eviction from the premises in dispute. The Rent Controller held that there exist relationship of landlord and tenant between the parties. The Rent Controller allowed the application of the appellant and directed eviction of the respondent from the premises in question.

3.5 An appeal was filed by the tenant against the order of the Rent Controller. The Appellate Court did not agree with the findings of the Rent Controller that document Exh. A-1 was not compulsorily registrable. Appellate Court observed that perusal of the document Exh.A-1 reveals that there would be increase in the rent to the tune of 10% every year, hence the document was not executed for a period of less than a year rather the intention of the parties is clear that it was executed for more than one year, hence the document was required to be registered under Section 17(1)(d) of the Registration Act, 1908. However, the Appellate Court rejected the claim of the tenant that rate of rent was Rs.1,000/- only. The Appellate Court after holding that document was compulsorily registrable took the view that the clause regarding 10% yearly increase cannot be relied and judgment of Rent Controller was accordingly set aside and the appeal was allowed.

3.6 The appellant aggrieved by the order of the Appellate Court filed a revision before the High Court. The High Court dismissed the revision referring to the finding of the Appellate Court that rent note – Exh.A-1 was compulsorily registrable. The case of the landlord to enforce condition in lease deed regarding increase of the rent was not relied. Aggrieved by the said judgment, this appeal has been filed.

4. We have heard learned counsel appearing for the appellant. No one appeared for the respondent, though served.

5. Learned counsel for the appellant in support of the appeal contends that rent note dated 27.07.1993, which was signed by the tenant was valid Rent note and was covered within the definition of lease as given in the Registration Act, 1908. The document was not registrable under Section 17(1)(d). It is further contended that the Appellate Court has without recording the finding that there was no default on the part of tenant in payment of rent and house tax has set aside the order of the Rent Controller.

6. We have considered the submissions of the learned counsel for the appellant and has perused the records.

- A 7. First issue, which has arisen for consideration in this appeal is as to whether the rent note dated 27.07.1993, which is brought on record as Annexure P-3 to the appeal was a document, which required compulsory registration under Section 17(1)(d) of the Registration Act, 1908. The second issue to be considered is as to whether the Appellate Court could have set aside the decree of eviction without recording finding that there was no default on the part of the tenant in payment of rent and house tax etc. and the amount deposited by the tenant was sufficient to save him from eviction.
- B 8. The Registration Act, 1908 contains the definition of a “lease” under Section 2(7), which is to the following effect: -
- C “(7) “lease” includes a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease;”
- D 9. We may notice that in the present case, the rent note is not claimed to be signed by the landlord-appellant rather it is signed only by the respondent-tenant. The trial court after considering materials on record has returned the findings that appellant has proved the rent note. The case of the respondent that appellant has got his signatures on a blank paper has not been accepted. RW1- Surinder Singh, respondent in his cross-examination has admitted his signatures on the rent note. The trial court also held that by virtue of clause (9) of the rent note, the respondent is liable to pay increased rate @10% every year and further he was liable to pay house tax. Landlord having paid the house tax, he was entitled to recover the house tax from the respondent.
- E 10. Section 17(1)(d) of the Registration Act deals with documents of which registration is compulsory. Section 17(1)(d), which is relevant for the present case and has been relied by the Appellate Court is as follows: -
- F **“17. Documents of which registration is compulsory.—(1)**
G The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—
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(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;" A

11. As per Section 17(1)(d), leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent requires compulsory registration. Whether the rent deed can be treated to be a lease of immovable property – (i) from year to year, B (ii) for any term exceeding one year, (iii) or reserving a yearly rent?

12. We need to notice the relevant clauses of the rent deed to find out as to whether Section 17(1)(d) was applicable in the facts of the present case making Exh.A-1 compulsorily registrable. The agreement/rent deed, which is written and signed by the respondent alone contains 16 clauses, which were promises made by the respondent written in the rent deed. Clause 1 to 3, 9, 10, 14, 15 and 16, which are relevant, are as follows: - C

"1) I will make the payment of the sum of Rupees 2,000/- (Two Thousand only) each month in advance in cash currency up to date 5 (Five) to the owner of the shop, Sri Chand. D

2) The rent deed will be applicable from 28.07.1993

3) The amount of the house tax and the electricity bills regarding the abovesaid shop will be paid by me.

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9) I will be bound for making the payment of the rent money by increasing 10% (ten percent) each year.

10) If I may not make the payment of the rent up to the prescribed date in advance and then there will be right to the shop owner F that he can get the shop vacated.

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14) I have paid the amount of Rupees 3600/- (Three Thousand Six Hundred only) to the shop owner as a security, vacating the shop, handing over the possession to the shop owner, I will be entitled for the refunding of this security amount. G

15) If the shop owner is in need of this shop and then serving the notice of one-month period, he can get the shop vacated from me, there will be no objection to me in this regard.

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- A 16) If in any situation, I may not comply with this agreement/ rent deed and then there will be right to the shop owner that vacating the shop forcible, he can take over the possession from me and may dispossess me, there will be no objection and claim of mine or any of my legal heir.”
- B 13. Clause (1) of the rent deed specifically makes it clear that monthly tenancy was created on payment of rent of Rs.2,000/- per month. The payment was to be made before 5th of each month to the owner. The rent deed does not provide for any specific period for which the rent deed was executed. When a rent deed/lease deed does not provide for a period and when it provides for payment of rent monthly, whether tenancy can be treated from year to year or for any term exceeding one year or reserving a yearly rent? The rent deed does not reserve yearly rent, hence the third condition as noted above is not applicable. The rent deed is not also a lease of immovable property from year to year. There is no mention in the rent deed that it is a lease from year to year, hence the said condition is also not applicable.
- C 14. Only clause which need to be, thus, considered is as to whether the rent deed was “for any term exceeding one year”. The present is a case where rent deed does not prescribe any period for which it is executed. When the lease deed does not mention the period of tenancy, other conditions of the lease/rent deed and intention of the parties has to be gathered to find out the true nature of the lease deed/ rent deed. The two conditions written in the rent note are also relevant to notice. First, if payment of rent in any month is not made up to 5th of month, owner shall have right to get the shop evicted and second if the owner is in need of shop, he by serving notice of one month can
- D get the shop vacated. This Court had occasion to consider the provision of Section 106 of the Transfer of Property Act, 1882 and noted the rule of construction, which is to be applied when there is no period agreed upon between the parties in a lease deed. In **Ram Kumar Das Vs. Jagdish Chandra Deo, Dhabal Deb and Another, AIR 1952 SC 23** after quoting Section 106 of the Transfer of Property Act, 1882,
- E this Court held that when there is no period agreed upon between the parties, duration has to be determined by referring to the purpose and object with which the tenancy is created. Following observations were made: -
- F “13. The section lays down a rule of construction which is to be applied when there is no period agreed upon between the parties.

In such cases the duration has to be determined by reference to the object or purpose for which the tenancy is created. The rule of construction embodied in this section applies not only to express leases of uncertain duration but also to leases implied by law which may be inferred from possession and acceptance of rent and other circumstances. It is conceded that in the case before us the tenancy was not for manufacturing or agricultural purposes. The object was to enable the lessee to build structures upon the land. In these circumstances, it could be regarded as a tenancy from month to month, unless there was a contract to the contrary.....”

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15. This Court further held that “it has no doubt been recognised in several cases that the mode in which a rent is expressed to be payable affords a presumption that the tenancy is of a character corresponding thereto. Consequently, when the rent reserved is an annual rent, the presumption would arise that the tenancy was an annual tenancy unless there is something to rebut the presumption.”

16. Clauses of the rent note makes it clear that there was a categorical promise that tenancy is a monthly tenancy and rent is paid every month by 5th of every month. It is true that although in clause (9), it was mentioned that the tenant will be bound for making the rent money by increasing 10% each year, that was promise by the tenant to increase the rent by 10% each year for the period of tenancy, though the period of tenancy was unspecified. Clause (9) may or may not operate in view of specific clauses reserving right of landlord to evict the tenant on committing default of non-payment of rent by 5th of every month or when landlord requires shop by giving one month’s notice. Clause (9) was a contingent clause which binds the tenant to increase the rent by 10% each year, which was contingent on tenancy to continue for more than a year, but that clause cannot be read to mean that the tenancy was for a period of more than one year. We may notice a judgment of Allahabad High Court in **Kashi Nath and Ors. Vs. Abdur Rahman Khan and Ors.**, AIR 1922 All. 54. Allahabad High Court had occasion to consider an agreement where defendant had contracted to pay eight annas a year as a rent of the site. Section 17 of the Registration Act, 1866 was also referred to and relied by the High Court. The High Court held that when the terms of the lease are looked at, one sees that though in fact it might continue for an undefined number of years, there was no certainty that it would last for more

- A than one year, hence lease was held not exceeding a term of one year. Following was held by the High Court:-

- B “.....The terms of the kabuliyat have been read to us. Shortly, they are to the effect that the Zamindar let the site to Sheo Prasad on a payment of eight annas a year and incidental obligations but the kabuliyat provided that if the eight annas was not paid in any one year, or if the tenant failed to make the incidental payments for marriages et cetera, the lease would thereby come to an end. Furthermore, the lease would also come to an end if the lessee did not conduct himself properly towards the Zemindar. Therefore, when the terms of the lease are looked at one sees that though in fact it might continue for an undefined number of years, there was no certainty that it would last beyond the term of one year. Therefore, it did not come within the classification of Section 17(d) as being a lease for a term exceeding one year. That being so, it was not a document which had compulsorily to be registered.....”

- C 17. We may notice another judgment of Lahore High Court in **Mengh Raj Vs. Nand Lal and Ors., AIR 1939 Lah.558.** In the above case, in the lease, rate of rent was payable per mensem, condition D of payment of annual rent was also mentioned there. The High Court noted the condition of the lease and has also applied the provisions of Section 17(1)(d) of the Registration Act, 1908 and held that the said lease was not registrable. In paragraph 1 of the judgment, the contents E of the lease have been quoted, which are to the following effect: -

- F “.....The main provisions of the lease in question may be translated as follows:

- G We, Nand Lal and Murli, sweepers of Hazro, have taken on rent a house from MenghBaj of Hazro on condition of payment of an annual rent of Rs. 40-8-0 for a period of one year certain. We agree that we will live as tenants in this house and will pay rent at the rate of Rs. 3-6-0 per mensem, month by month on a receipt being granted to us by the landlord. In default of payment of rent the landlord can eject us and recover arrears of rent in any manner he likes. After the expiry of the term it will be the option of the landlord to give the house to us on rent or eject us H and give it to other tenants. We will have no objection to this.

The term of the lease is from the 1st Har, Sambat 1984 to the end of Jeth, Sambat 1985. We have been tenants under the landlord for a long time and have been paying rent.” A

18. After considering the conditions of the lease and referring to Section 17(1)(d), the High Court laid down following in paragraph 3:- B

“3. On a construction of the above deed it is obvious that it is not a lease from year to year, nor for a term exceeding one year, and the sole question is whether or not by it a yearly rent has been reserved which brings it within the letter of the Section. In Mt. Aishan v. Municipal Committee Lahore 92 Ind.Cas. 526 Campbell J. held that a mere recital of an annual rate of rent did not constitute the lease, a lease reserving a yearly rent within the meaning of Section 17, Registration Act. The lease in that case was determinable at any time at the will of the landlord. In the present case after the expiry of one year for which the lease was granted, this lease too was determinable at the end of Jeth, Sambat 1985. In this aspect the present lease constituted no more than a tenancy-at-will after the expiry of the first year and so appears to be covered by the decision of Campbell, J. referred to above. There is considerable body of authority for the proposition that where there is a tenancy-at-will created even though the rent is fixed and is payable annually, the document is not subject to compulsory registration. Reference in this connexion may be made to Muhammad Masam Khan v. Mt. Bakhtawar (1895) 70 P.R. 1895 where a Division Bench held on a construction of the document before them that only those leases must be registered which are in terms for a period exceeding one year, a lease reserving a yearly rent, and containing no other provision establishing a tenancy-at-will, being presumably a lease from year to year.” C D E F

19. We may notice that in the above case although the annual rent was mentioned but, however, payment of monthly rent was mentioned in the lease deed. The rent note, which we are considering contains only monthly rent and payment month by month. As per law laid down by this Court in Ram Kumar Das(supra) there shall be a presumption that the tenancy in the present case is monthly tenancy. When the clauses of rent note are cumulatively read, the intention of the tenant is more than clear that tenancy was only monthly tenancy, G H

- A which could have been terminated on default of payment of rent by 5th day of any month or by notice of one month. The rent deed did not confer any right to tenant to continue in the tenancy for a period of more than one year nor it can be said that tenancy was created for a period of more than one year. Clause (9), which noticed the promise of the tenant of payment of rent by increasing 10% each year was a promise contingent on tenancy being continued beyond one year but cannot make the tenancy year to year or tenancy for a period of more than one year. Present was a case of tenancy for which no period was specified and looking to all the clauses cumulatively, we find that the rent note was not such kind of rent note, which requires compulsory registration under Section 17(1)(d).

- 20. We may further notice that Rent Controller had returned a finding regarding rate of rent @Rs.2,000/- per month and further the tenant was liable to pay the house tax, which was not paid from 1999 to 2005 and the decree of eviction was passed accordingly. The Appellate Court although accepted the finding of the Rent Controller that rate of rent was @Rs.2,000/- and not Rs.1,000/- but merely on the finding that landlord cannot claim 10% increase of rent every year since the document was not registered had allowed the appeal and set aside the judgment. There is no specific finding by the Appellate Court regarding the liability of the tenant to pay the house tax. The Appellate Court after holding that document-rent deed was compulsorily registrable and having not registered allowed the appeal. No finding was returned by the Appellate Court that tenant was not in default and tenant has deposited the necessary amount to save himself from eviction. We, thus, are of the view that the judgment of the Appellate Court is unsustainable on the above ground also. We, thus, are of the view that the judgment and decree of the Rent Controller directing eviction ought not to have been interfered by the Appellate Court.

21. In result, the appeal is allowed. The judgment and decree of the Rent Controller directing eviction of the tenant is restored. No costs.

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Ankit Gyan

Appeal allowed.