

Punjab-Haryana High Court

Sunder Lal vs Dial Singh on 18 September, 1990

Equivalent citations: (1990) 98 PLR 606

Author: G Majithia

Bench: G Majithia

JUDGMENT G.R. Majithia, J.

1. This revision petition is directed against the order of the Appellate Authority reversing on appeal that of the Rent Controller and ordering eviction of the tenant/petitioner from the demised premises.

2. The facts :--

The landlord/respondent filed an application for eviction of the tenant/petitioner on the ground of non payment of rent from April 1981 onwards. The rent was claimed at the rate of Rs. 400/- p m exclusive of water and electricity charges. The rent was payable in advance as agreed upon by the parties in the rent note dated August 9, 1980. The tenant denied the relationship of landlord and tenant and also that the rent at the rate of Rs. 400/- was fixed. According to him, he was a tenant on the demised premises under Shri Amar Nath at the rate of Rs. 180/- p m and that the rent was never increased. The rent note dated August 9, 1980 was forged and fabricated document.

3. From the pleadings of the parties, the following issues were framed :--

1. What is the rate of rent of the disputed house? OPP.

2 Whether the respondent is in arrears of rent? If so, to what effect ? OPP

3. Whether the petition is not maintainable in the present form ? OPP

4. Whether there exists relationship of landlord and tenant between the parties ? OPP

5. Relief.

4. On the first date of hearing, the tenant tendered the arrears of rent from December 11, 1979 to February 10, 1983 at the rate of Rs. 180/- per month alongwith interest and costs assessed by the Rent Controller. The landlord accepted the tender under protest on the ground that the tender was insufficient.

5. Under issue No. 1, the Rent Controller held that the rate of rent was Rs. 180/-per month. Issue No. 2 was answered against the landlord. In view of the finding under issue No. (sic) issue No. 3 was not pressed Issue No. 4 was answered in favour of the landlord against the tenant.

6. On appeal, the Appellate Authority reversed the finding of the Rent Controller under issue No. 1 and held that the rate of rent was Rs. 400/- per month as alleged by the landlord and not Rs. 180/-

per month as pleaded by the tenant. It further held that since the tenant, made a short tender on the first date of hearing, he had incurred the liability of ejection.

7. In revision, the only ground urged by the learned counsel for the tenant/petitioner was that the rate of rent was Rs. 180/- per month as pleaded by the tenant and the finding to the contrary is unwarranted.

8. Learned counsel for the parties referred me to the evidence produced at the trial. It is unfortunate that the Rent Controller did not understand the scope and ambit of the dispute between the parties. The application for eviction was filed on December 1, 1982. The tenant was served for February 1, 1983. On that date, the tender was made at the rate of Rs. 180/-per month. An application dated February 18, 1983 was filed by the tenant for a direction to the landlord to produce the rent note. The rent note was filed and the same was inspected by the tenant on February 25, 1983 and the petition was adjourned for filing written statement. On the rent note, an endorsement dated March 23, 1983 was made by the counsel for the tenant stating as under :--

"Denied. Sd/- B K. Bhandari, Advocate."

After the conclusion of the evidence by the landlord, the rent note was sent to the hand-writing expert for opinion. The hand-writing expert rendered the opinion and appeared at the trial. Relying upon this evidence, the Rent Controller found that the rent note cannot be relied upon to prove the enhancement of rent. He further observed that the testimony of the attesting witnesses of the document is reduced to zero. The Rent Controller failed to notice that the execution of the document was never denied by the tenant. The endorsement on the rent note Ex. A/2 by the counsel does not indicate whether the execution of the rent note was denied or the contents of the document were denied. The tenant did not deny his signature on the rent note at any stage. He appeared as his own witness, at the trial as R. W. 2. In his statement, he did not depose that the rent note, Ex A./ 2, does not bear his signatures. In the absence of any denial of the execution of the document by the tenant, it was not proper for the Rent Controller to send the document to the hand writing expert for opinion. If the Rent Controller had applied his mind, he would not have acted in the manner as he has done.

9. The Appellate Authority, after examining the evidence of the hand-writing expert and of the attesting witnesses of the rent note, Ex. A/2, gave a firm finding of fact that the opinion of the hand writing expert was of doubtful veracity and relying upon the evidence of the attesting witnesses, namely, A.W. 2 Heera Lal and A.W. 3 Kashmira Singh, of the rent note, Ex. A.2, came to the conclusion that the execution of the rent note Ex. A.2, by Sunder Lal tenant stood proved.

10. I have examined the statements of the attesting witnesses and those of the parties and am of the opinion that no other conclusion could be arrived at except the one which was arrived at by the Appellate Authority. The conclusions arrived at by the Appellate Authority are further supported by the fact that the execution of the rent note, Ex. A 2, was never denied by the tenant. The ocular evidence of the attesting witnesses has to be preferred over the statement of the hand-writing expert. The hand writing expert hastened to opine that the signatures on the rent note were the result

of a traced forgery. The landlord appeared at the trial. No suggestion was made to him by the tenant that the rent note, Ex. A. 2, did not bear his signatures. The landlord appeared as A. W. 1 and stated that the tenant had executed the rent note, Ex A 2, on July 18, 1980. The only question put to him in cross-examination was whether he had seen the tenant writing or signing before August 18, 1980 and the landlord accepted the suggestion. No other question was put to him with regard to the execution of rent note by the tenant. The order of the Appellate Authority calls for no interference. The conclusions arrived at by it that the rent was at the rate of Rs. 400/- per month as alleged by the landlord and not Rs. 180/-per month as pleaded by the tenant is confirmed.

11. The landlord sought eviction of the tenant under Section 13(2)(i) of the East Punjab Urban Rent, Restriction Act, 1949 (for short, the Act) on the ground that the tenant had not paid on tendered rent due to him in respect of the demised premises. It was proved on record that the tenant was in arrears of rent. Under the proviso to clause (i) of Sub-section (2) of Section 13 of the Act, the tenant could escape his eviction on the ground of non-payment of rent if on the first date of hearing of the application for ejectment after due service, he pays or tenders the arrears of rent and interest at the rate of 6 per cent per annum on such arrears together with costs of the application assessed by the Controller. If the tender is so made, the rent will be deemed to have been paid as mentioned in clause (i) of Sub-section (2) of Section 13 of the Act. The tenant did not make the deposit of rent due as enjoined by the proviso to escape his liability from eviction.

12. For the reasons aforesaid, the revision petition is dismissed with costs and the order of the Appellate Authority dated January 6, 1989 is affirmed. Counsel's fee is assessed at Rs. 1,000/- (Rupees one thousand) only.

13. On an oral request of his learned counsel, the tenant is allowed three months' time to vacate the demised premises, provided :

(i) the tenant pays to the landlord or deposits with the Rent Controller the arrears of rent upto date at the rate of Rs. 400/- per month within one week from the date of the order :

(ii) the tenant gives an undertaking before the Rent Controller within two weeks from the date of this order that he will vacate the demised premises on the expiry of the above period.