Harbans Kaur . vs Iqbal Singh And Anr. on 29 January, 2019

Equivalent citations: AIRONLINE 2019 SC 2335, AIRONLINE 2019 SC 2604

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Bench: K.M. Joseph, Ashok Bhushan

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.12561-12562 OF 2017

HARBANS KAUR … APPELLANT(S)

VERSUS

IQBAL SINGH & ANR. … RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

These appeals have been filed by the appellant, the landlord of the premises in question, challenging the judgment of the Rajasthan High Court dated 09.10.2014 allowing the writ petition filed by the tenant setting aside the order of eviction passed by Rent Tribunal as well as Appellate Rent Tribunal. Division Bench of the Rajasthan High Court vide its judgment dated 14.12.2015 dismissed the Special Appeal(Writ) of the landlord as not maintainable.

2. Brief facts of the case necessary to be noticed for deciding these appeals are:

> The appellant is landlord of Shop No.3 and 4 in Plot No.362 which was let out to the respondent-tenant in August, 1995 at the rent of Rs.8,500/- per month. A Rent Deed dated 19.08.1995 was executed between the parties. Rent deed contained a clause for yearly increase of rent by 10%. The tenant continued to pay rent to the landlord as per the agreed rent with 10% enhancement yearly. In the year 2003 the tenant was making payment of rent at the rate of Rs.16,564/- per month. In April, 2003, rent which was paid by the tenant was Rs. 16,564/-, upto July, 2003 the tenant paid the rent at the rate of Rs.16,564 per month. The landlord issued notice

dated 27.03.2004 stating that with effect from 01.08.2003 upto 29.02.2004, for a period of seven months, the tenant has neither paid or tendered rent, arrears from 01.08.2003 to 29.02.2004 amounting to Rs.1,15,945/- were asked to be deposited in the bank account of landlord. Notice mentioned that in the event the tenant does not deposit the amount in the account, landlord shall be compelled to carry out legal proceedings for eviction of the tenant. After the aforesaid notice dated 27.03.2004 the tenant deposited an amount of Rs.95,200/- on 26.04.2004 in the bank account of the landlord. Landlord filed an Application No.1258 of 2004 under Section 9 of the Rajasthan Rent Control Act, 2001 (hereinafter referred to as the "Act, 2001") praying for eviction on the ground of arrears of rent. The tenant filed reply opposing the abovesaid application. The tenant took stand in the application that in accordance with the provisions of Act, 2001, which has come into effect from 01.04.2003, on increasing the rent under the provisions of Section 6 in the prescribed rent of Rs.8,500/- @ 7.5% per annum the rate of rent from 01.04.2003 comes to be Rs.13,600/- per month. It was stated In the written statement that tenant has deposited rent upto February, 2004 @ Rs.13,600/- per month i.e. a total of Rs.95,200/- in the bank account.

3. Rejoinder was filed by the landlord where it was pleaded that respondent-tenant has been paying rent from August, 2002 @ Rs.16,564/- per month which rent was paid till July, 2003. It was claimed that the respondent-tenant is liable to pay rent @ Rs.16,564/- per month. The Rent Tribunal heard the parties and by its judgment and order dated 22.04.2011 directed for eviction of the tenant. The Rent Tribunal held that the case of tenant that rent is payable @ Rs.13,600/- per month cannot be accepted. The tenant having not deposited at the rate of Rs.16,564/- per month, has committed default in paying rent. An appeal was filed by the tenant before the Rent Appellate Tribunal which too was dismissed by order dated 15.01.2014. The order of the Rent Tribunal was upheld. The tenant aggrieved by the order of the Appellate Tribunal filed Writ Petition No.6965 of 2014 in the High Court which writ petition was allowed by the learned Single Judge vide its judgment and order dated 09.10.2014. Against the judgment of the learned Single Judge dated 09.10.2014 Special Appeal (Writ) No.2075 of 2014 was filed which was dismissed by the Division Bench vide its judgment dated 14.12.2015 holding writ appeal as not maintainable. Aggrieved against the judgments of the High Court landlord has filed these appeals.

4. Learned counsel for the appellants submits that the High Court committed error in interpreting the provisions of Sections 4, 6, 7 and 14 of the Act, 2001. He submits that the rent which was being paid by the tenant on the enforcement of the Act i.e. w.e.f. 01.04.2003 was Rs.16,564/- per month, the tenant was liable to pay the rent at the same rate. It is not the case of the appellants that they are demanding rent with the hike of 10% after the enforcement of Act, 2001. The tenant, however, is calculating the rent by revising the rent with effect from year 1995 as per the provisions of Section 6 of the Act. The tenant's case that rent payable was Rs.13,600/- per month is erroneous. By the notice given by the landlord dated 27.03.2004 an amount of Rs.1,15,945/- which was due from August, 2003 to February, 2004 was demanded at the rate of Rs.16,564/- per month. The tenant having not deposited the due amount and having deposited amount of only Rs.95,200/- on 26.04.2004 has committed default. The rent which was being paid on the date of the

commencement of the Act, 2001, shall be treated as agreed rent between the parties. There is change in the statutory scheme of Act, 2001 which now entitles landlord to seek revision of the rent. As per the provisions of Act, 2001 the tenant has not been given a right to get revision of the agreed rent under the statutory scheme.

5. Learned counsel for the respondent refuting the submission of the learned counsel for the appellants submits that the High Court has rightly taken the view that the landlord was not entitled to enhancement of the rent more than 5% in view of the Act, 2001. The landlord was not at liberty to claim rent with enhancement at the rate of 10% per annum. The High Court had rightly held that permitting the landlord to demand rent with increase of 10% shall be contrary to the Section 6 of the Act, 2001. Any agreement cannot be given effect if it provides the revision of rent above @ 5%. Learned counsel for the respondents additionally submitted that in the event the rate of rent as claimed by the landlord is accepted the agreed rent, after the receipt of the notice by the tenant, tenant has deposited amount of Rs.95,200/□, which covered rent upto December, 2003 and part of rent of January, 2004. The tenant was not in default for four months, hence he could not have been evicted under Section 9 of Act, 2001. He submits that unless there is default for payment of 4 months rent eviction cannot be ordered. He submits that due to this reason the orders of eviction were unsustainable and this Court may not interfere with the judgment of the High Court.

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

7. We need to look into the statutory scheme of Act, 2001 for considering the respective submissions. The Rent Control Legislation which was in operation prior to Act, 2001 also need to be noted for appreciating the changes in law brought by the Act, 2001. The issue in these appeals pertains to rate of rent and the revision of rent as prescribed by the Act, 2001, hence, only those provisions of both the earlier Act and the Act,2001 need to be noted. Act, 2001 has repealed the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. We may first notice the provisions of Act, 2001 which are relevant for the present case. Section 4 provides for rent to be as agreed which is to the following effect:

> "Section 4. Rent to be as agreed. □The rent payable for any premises shall, subject to other provisions of this Act, be such as may be agreed upon between the landlord and the tenant and it shall not include the charges payable for amenities which may he agreed upon separately; and shall be payable accordingly."

8. Chapter II of the Act, 2001 deals with "Revision of Rent". Section 6 of the Act (as existing on relevant day) provides as follows:

> "Section 6. Revision of rent in respect of existing tenancies. □(1) Notwithstanding anything contained in any agreement, where the premises have been let out before the commencement of this Act, the rent thereof shall be liable to be revised according to the formula indicated below :□

> (a) where the premises have been let out prior to 1st January, 1950, it shall be deemed to have been let out on 1st January, 1950 and the rent payable at that time shall be liable to be increased at the rate of 7.5% per annum and the amount of increase of rent shall be merged in such rent alter ten years. The amount of rent so arrived at shall again be liable to be increased at the rate of 7.5% per annum in similar manner upto the year of commencement of this Act;

(b) where the premises have been let out on or after 1st January, 1951, the rent payable at the time of commencement of the tenancy shall be liable to he increased at the rate of 7.5% per annum and the amount of increase of rent shall be merged in such rent after ten years. The amount of rent so arrived at shall again be liable to be increased at the rate of 7.5% per annum in similar manner upto the year of commencement of this Act. (2) Notwithstanding anything contained in Sub□section (1), where the period of ten years for merger of increase of rent under Sub□section (1), is not completed upto the year of the commencement of this Act, the rent at the rate of 7.5% per annum shall be increased upto the year of the commencement of this Act and amount of increase of rent shall be merged in rent.

(3) The rent arrived at according to the formula given in Sub□section (1) and (2) shall, after completion of each year from the year of commencement of this Act, again be liable to be increased and paid at the rate of 5% per annum and the amount of increase of rent shall he merged in such rent after ten years. Such tent shall further be liable to he increased at similar rate and merged in similar manner till the tenancy subsists.

(4) The rent revised as per formula given under Sub□section (1) or Sub□section (2) shall be payable, after the commencement of this Act, from the date agreed upon between the landlord and the tenant or where any petition is filed in a Rent Tribunal, from the date of filing of such petition."

9. Section 7 deals with revision of rent in respect of new tenancies which is to the following effect:

> "Section 7. Revision of rent in respect of new tenancies. □(1)In the absence of any agreement to the contrary, the rent of the premises let out alter the commencement of this Act shall be liable to be increased at the rate of 5% per annum and the amount of increase of rent shall be merged in such rent after ten years. Such rent shall further be liable to be increased at the similar rate and merged in similar manner till the tenancy subsists.
>
> (2) Any agreement for increase of rent in excess of 5% per annum shall be void to that extent."

10. Section 14 provides the procedure for revision of rent. Section 14 sub□section (1) is as follows:

> "Section 14. Procedure for revision of rent. □(1) The landlord may seek revision of rent under Section 6 or Section 7 by submitting it petition before the Rent Tribunal accompanied by affidavits and documents, if any."

11. Now we notice the relevant provisions as existed in Act, 1950. Section 5 dealt with the payment as agreed rent to the following effect:

> "Section 5. Rent to be as agreed.—The rent payable for any premises situated within the areas to which this Act extends for the time being shall, subject to the other provisions thereof, be ordinarily such, as may be agreed upon between the landlord and the tenant."

12. Section 6 dealt with fixation of standard rent. Section 6(1) is as follows:

> "Section 6. Fixation of standard rent.—(1) Where no rent has been agreed upon or where for any reason the rent agreed upon is claimed to be low or excessive, the landlord or the tenant may institute a suit in the lowest court or competent jurisdiction for fixation of standard rent for any premises.
>
> (2)....."

13. In the Act, 1950, Section 7 provided for fixation of provisional rent, which provided that upon the institution of a suit under Section 6, the Court shall forthwith make an order fixing in a summary manner a provisional rent for the premises in question, which shall be binding on all parties concerned and shall remain in force till a decree fixing the standard rent therefor is finally made in such suit.

15. The important differences between the statutory scheme as contained in Section 6 of Act, 1950 and as now contained in Act, 2001 are:

> (i) Under the old Act the landlord or the tenant both were entitled to file a suit for fixation of standard rent, if it is claimed that rent is either low or excessive. Thus, landlord could have moved the Court for enhancement of the rent and equally the tenant could have instituted a suit in the event the rent was excessive and the Court after holding inquiry was to determine the standard rent for such premises.
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> (ii) In Section 6 of Act, 2001 the tenant has not been given any right to apply for revision of the rent on any ground. The old Act did not contain any prohibition regarding the annual increase of rent whereas Section 6 now contains the prohibition, restricting annual increase only by 5% for both the tenancies which were in existence prior to enforcement of the Act as well as tenancies which commenced after the commencement of the Act, 2001.

14. The moot question to be answered is as to whether the agreed rent which was being paid by the tenant immediately before the commencement of Act, 2001 i.e. with effect from 01.04.2003 is liable to be re-determined as per provisions of Section 6 of Act, 2001 by a tenant and tenant can unilaterally revise the rent under new Section 6. Reverting to the facts of the present case, it is on the record that tenant was paying the rent of Rs.16,564/- per month immediately before the

enforcement of the Act and even subsequently till the month of July, 2003. In the rent agreement there was mutual agreement between the parties for annual increase @ 10% and the rent of Rs.16,565/- per month was arrived at complying @ 10% increase annually to the tenancy which commenced from 01.08.1995. As per tenant the rent which was become payable after the enforcement of the Act has to be re-determined applying Section 6 and instead of 10% as agreed between the parties calculation has to be on the basis of increase at the rate of 7.5% w.e.f. 01.08.1995 as per provision of Section 6.

15. A comparison of scheme of Section 6 as it existed in Act, 1950 and Section 6 as it brought under Act, 2001 makes it clear that although the tenant under the old Act was entitled to apply for fixation of standard rent if the rent was excessive whereas under Section 6 of the Act, 2001 tenant has not been given any right to pray for reduction of the rent. It is true that Section 6(1) begins with the words "Notwithstanding anything contained in any agreement". Section 6(1) sub-clause

(b) provides for "where the premises have been let out on or after 01.01.1950", the provision contemplates that the rent payable at the time of commencement of the tenancy shall be liable to be increased at the rate of 7.5% per annum.

16. Sub-section (4) of Section 6 further provides that rent revised as per formula given under sub-section (1) and sub-section (2) shall be payable, after the commencement of this Act from the date agreed upon between the landlord and the tenant or where any revision petition is filed, from date of filing of such petition.

17. Section 14 of the Act contains procedure for revision of rent which provides that landlord may seek revision of rent under Section 6 and 7 by submitting a petition before the Rent Tribunal accompanied by affidavits and documents, if any. Section 14 sub-section (1) uses the words "landlord may seek revision". It is not obligatory for every landlord to seek revision of rent in accordance with Section 6. Section 6 contains provision entitling landlord to seek revision of rent notwithstanding anything contained in any agreement between landlord and tenant. Section 6 empowers the landlord to obtain revision of rent and to calculate the rent from date of initiation of tenancy. But in the event landlord does not choose to invoke the machinery of revision of the rent as provided in Section 6 and Section 14, the agreed rent between the parties shall not automatically be changed nor the tenant can unilaterally revise the rent. Section 6 is also beneficial to the tenant to the extent that any contrary agreement between the parties to increase the rent annually more than as provided under Section 6 cannot be enforced by a landlord after the enforcement of the Act. In the event landlord applies for revision of the rent, the revision of rent has to be in accordance with the formula as provided under Section 6(1) and 6(2) of the Act. The statutory scheme does not indicate that the tenant can unilaterally compute the rent as per formula under Section 6(1) from the inception of the tenancy and reduce the amount of rent which he was paying immediately before the enforcement of the Act. In the present case, the tenant has come up with the case in his written statement that he has recomputed the rent from inception of tenancy and has arrived at calculation that the rent payable with effect from the enforcement of Act, 2001 was Rs.13,600/- only and relying on the said computation he deposited an amount of Rs.95,200/- in response to the notice. The High Court in its judgment has held that after the enforcement of the Act, 2001 no agreement

can provide for higher revision of rent. The High Court in its judgment has made following observation:

> "Section 6 of the Act starts with non□obstantive clause, thus no agreement to provide higher or lower rate of revision of rent would operate after commencement of the Act of 2001.
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> The landlord was thus not at liberty to claim rent with enhancement @ 10% per annum."

18. Ultimately, the High Court held following:

> "The landlord was entitled to the rent as was payable on the date of commencement of the Act of 2001 without its revision, in facts and circumstances of this case. In view of above, I find that demand of rent based on the agreement was not proper so as to consider it to be a case of short remittance and default in payment of rent thereof. In the background aforesaid, the findings of the default in payment of rent, recorded by the Rent Tribunal so also by Appellate Rent Tribunal cannot be allowed to stand. The impugned orders passed by the Rent Tribunal so also by Appellate Rent Tribunal are thus, quashed. A case of default in payment of rent is not made out."

19. The observation of the High Court that landlord was entitled to the rent as was payable on the date of commencement of the Act, 2001 without its revision is perfectly correct. The landlord cannot claim revision of rent as per agreement at the rate of 10% per annum after the enforcement of the Act. The present is not a case that the landlord is claiming rent after the enforcement of the Act by adding 10% increase in the rent. The landlord's case throughout is that the rent at the rate of Rs.16,564/□per month was being paid by the tenant since before the commencement of the Act and even after the commencement of the Act, till the month of July, 2003 the tenant paid rent at the rate of Rs.16,564/□per month.

20. Section 4 of the Act which deals with the agreed rent provides that rent payable for any premises shall subject to the provisions of this Act, be such as may be agreed between the landlord and the tenant. When the tenant was paying the rent of Rs.16,564/□per month before the enforcement of the Act as per the rent agreement, the said amount was agreed amount which was being paid before the enforcement of the Act. It is true that in the agreed amount which was being paid immediately before the commencement of the Act, the landlord cannot increase @ 10% of the rent as per agreement. The increase after the enforcement of the Act shall be in accordance with Section 6 and in the event the tenant does not agree for the said increase, the landlord is free to file application under Section 6 read with Section 14. In view of the foregoing discussion, we are of the view that the High Court has not appreciated the true import of Sections 6 and 7 of the Act, 2001 in observing that the tenant is not in default.

21. One more submission which has been pressed by the tenant to relieve the tenant from eviction has to be considered. Section 9 of the Act provides for eviction of the tenant which is to the following

effect:

"Section 9. Eviction of tenants. □Notwithstanding anything contained in any other law or contract but subject to other provisions of this Act, the Rent Tribunal shall not order eviction of tenant unless it is satisfied that, □

(a) the tenant has neither paid nor tendered the amount of rent due from him for four months :□ Provided that the ground under this clause shall not be available to the landlord if he has not disclosed to the tenant his hank account number and name of the bank in the same Municipal area, in the rent agreement or by a notice sent to him by registered post, acknowledgment due :

> Provided further that no petition on the ground under this clause shall he filed unless the landlord has given it notice to the tenant by registered post, acknowledgment due, demanding arrears of rent and the tenant has not made payment of arrears of rent within a period of thirty days from the (late of service of notice.
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> Explanation.□For the purposes of this clause, the rent shall be deemed to have been tendered when the same is remitted through money order to the landlord by properly addressing the same;or having been deposited with the Rent Authority;or"

22. Section 9(a) provides that eviction can be ordered only when the tenant has neither paid nor tendered the rent due from him for four months. He submits that admittedly after the receipt of the notice dated 27.03.2004 demanding arrears of rent of Rs.1,15,945/□, the tenant has paid an amount of Rs.95,200/□which covered the payment of rent upto December, 2003 and part of rent of January, 2004. He submits that notice was issued demanding arrears of rent from August, 2003 to 29.02.2004 and the rent upto December, 2003 having been deposited there was no default for four month entitling the landlord to claim eviction.

23. Section 9 second proviso of Act, 2001 contemplates a notice by landlord demanding arrears of rent and the tenant has not made payment of rent within 30 days from the service of the notice. The words "arrears of rent" mean the arrears as demanded by notice and the ground for eviction as contemplated under Section 9(a) is "the tenant has neither paid nor tendered the amount of rent due from him for four months". The payment and tendering of rent thus relates to rent for four months. The tenant cannot be heard saying that since although his payment was done complying the arrears of rent as demanded but since he has made the payment upto December, 2003 and the part of January, 2004, he should be relieved from eviction. What Section 9 contemplates is payment or tendering the amount of rent due from him for four months, thus, tendering of payment of rent is rent due from him for four months. In the event rent due from him for four months is not paid the ground as contemplated under Section 9(a) is made out. We in this context notice a judgment of this Court in Prakash Mehra vs. K.L.Malhotra, (1989) 3 SCC 74. In the above case this Court has occasion to consider the provision of Section 14(1)(a) of Delhi Rent Control Act. The arrears demanded by the notice were the arrears which were required to be paid by the tenant. The High Court has held that Section 14(1)(a) of the Act made out a ground for eviction only where the tenant had neither paid nor tendered the whole of the arrears of rent legally recoverable from him within

two months of the date on which a notice of demand for the arrears of rent was served on him by the landlord. In the above case the contention of the landlord was that the rent which was due after the notice should also be treated to be as defaulted rent which argument was not accepted. In paragraph 7 of the judgment following was laid down:

> "7. It is urged before us by learned Counsel for the appellant that Section 14(1)(a) of the Act contemplates the payment or tender of the whole of the arrears of rent legally recoverable from the tenant on the date when the demand notice is sent including the rent which has accrued after service of the demand notice. When the notice was sent on 7 May 1976, rent for the months of April and May 1976 lad become due, and as two months was given for payment of the arrears, it would include also the rent which had accrued during the said period of two months. We are not satisfied that there is substance in the contention. The arrears of rent envisaged by Section 14(1)(a) of the Act are the arrears demanded by the notice for payment of arrears of rent. The arrears due cannot be extended to rent which has fallen due after service of the notice of demand. In this case, the two bank drafts representing the arrears of rent covered by the notice of demand had been tendered within two months of the date of service of the notice of demand. The High Court is right in the view taken by it. We are not satisfied that the construction placed by B. C. Misra, J. in Jag Ram Nathu Ram v. Surinder Kumar [S.A.O. No. 52 of 1975 decided on 28 April, 1976 (Del)] and in S.L Kapur v. Dr. Mrs. P. D. Lal, [1975 Ren C.J. 322 (Del)] lays down the correct law on the point. "

24. This Court in the above case has held that arrears of rent as envisaged in provision of Section 14(1)(a) of the Delhi Rent Control Act are the arrears demanded by the notice for payment of arrears of rent. In the present case arrears demanded by the notice i.e. Rs.16,564/☐per month starting from December, 2003 to February, 2004 totalling Rs.1,15,945/☐were required to be paid by the tenant, the tenant having paid only Rs.95,200/☐as per his calculation of the rent at the rate of Rs.13,600/☐ per month has committed default. According to the learned counsel for the tenant, the rent paid by the tenant was sufficient to cover the rent upto December, 2003 and part of January, 2004, admittedly, the arrears as demanded having not been paid and we having found that the landlord has demanded arrears of rent for seven months according to rate of rent Rs.16,564/☐per month which was being paid by the tenant even before the enforcement of the Act, 2001 and after the enforcement of the Act, 2001. The landlord having not added 10% increase in the rent demanded, there was no breach of Section 6 and the High Court has committed error in allowing the writ petition of the tenant.

25. In view of the foregoing discussions, we allow the appeals, set aside the judgment and order of the High Court and restore the order of the Rent Tribunal.

.....J. (ASHOK BHUSHAN) .....J. (K.M. JOSEPH) New Delhi, January 29, 2019.