

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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IN VIRTUAL COURT
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1. CR No. 7265 of 2019 (O & M)

Date of decision : 12.8.2021

M/s A.R. Ventures and anotherPetitioners

Vs.

M/s Roop Square Pvt. Ltd. and anotherRespondents

2. CR No. 7266 of 2019 (O & M)

M/s A.R. Ventures and anotherPetitioners

Vs.

M/s Roop Square Pvt. Ltd. and othersRespondents

3. CR No. 8023 of 2019 (O & M)

M/s A.R. Ventures and anotherPetitioners

Vs.

Darshan LalRespondent

4. CR No. 8024 of 2019 (O & M)

M/s A.R. Ventures and anotherPetitioners

Vs.

Darshan LalRespondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. D.S. Patwalia, Senior Advocate with
Mr. A.S. Chadha, Advocate, for the petitioners

Mr. B.S. Rana, Senior Advocate with
Mr. Yogesh Goel, Advocate and
Mr. Nayandeep Rana, Advocate, for the respondent

Rajbir Sehrawat, J. (Oral)

This shall dispose of above mentioned four revision petitions filed by the tenant qua two premises upon which he entered as a tenant w.e.f. 15.1.2017 under two separate agreements dated 1.12.2016. The main facts are being taken from CR No. 8023 of 2019.

The common gamut of facts; as can be culled out from the pleadings of the parties are that; the respondent is the owner of the two properties mentioned in the petition; situated in the buildings of M/s Roop Square Private Limited (known as Roop Square Complex), Ghumar Mandi, Mahal Baghat, Tehsil and District Ludhiana. The petitioner had taken the top floor and the 4th floor of the premises on rent from the respondent/landlord vide two separate written agreements dated 1.12.2016. The rent for the top floor was agreed at the rate of Rs. One lakh per month along with 5% increase per annum. The rent for the 4th floor was agreed to be Rs. 4 lakhs per month with a similar increase of 5% per annum. The duration of the said tenancy was fixed to be nine years. As per the allegations, the petitioner paid the rent for 5 months with intermittent defaults in case of premises on top floor and thereafter, defaulted in payments. Almost similar has been the position qua the 4th floor. The respondent/landlord alleges that he had verbally requested the petitioner for making the payment of defaulted amount. After request, some payments were made. However, again, the default was started and is still continuing. As a result, no rent is being paid to the respondent/landlord. Although the petitioner as a tenant is enjoying the property, however, he has not been paying even the electricity charges or any other taxes and charges leviable by the Government. On the contrary, the respondent/landlord is being

forced to pay the GST leviable on the rent, electricity charges and other charges leviable by the Government. As a result, the respondent/landlord had filed two separate petitions under the Punjab Rent Act, 1995 (in short 'the Act'), for recovery of possession from the petitioner for non payment of rent; as well as, claiming his personal requirement so as to expand his business. The petitioner/tenant appeared before the Rent Authority and filed the written statement. However, the petitioner also filed application stating the same to be under Section 20 (2) of the Act, in which it was prayed that since the respondent/landlord had not given him the notice in the prescribed form as required by Section 20 (2) of the Act, therefore, the eviction petitions itself were not maintainable and, therefore, deserved to be rejected. But the Rent Authority dismissed the same in both the petitions vide order dated 26.10.2018.

However, since the petitioner/tenant had also filed the written statements, therefore, taking into consideration the pleadings of the parties, the Rent Authority framed the issues for its determination vide order dated 14.3.2019.

Aggrieved against the above said two orders dismissing his applications for rejection of the eviction petitions, passed by the Rent Authority, the petitioner/tenant filed two appeals before the Appellate Authority questioning the order passed by the Rent Authority. Similarly, aggrieved against not ordering immediate eviction of the tenant and framing of issues, in both the petitions, the respondent/landlord also preferred two appeals before the Rent Authority. Therefore, the Appellate Authority considered four appeals, two filed by the petitioner/tenant and two filed by the respondent/landlord. The Appellate Authority dismissed the appeals filed by the petitioner

and held that the application for rejection of the eviction petitions had rightly been dismissed by the Rent Authority. In the appeal filed by the respondent/landlord, the Appellate Authority held that since the rent has not been paid by the tenant and the default continued even during the pendency of the proceedings before the Rent Authority, therefore, the tenant was liable to be evicted for non payment of rent. Hence, the appeals filed by the landlord were allowed. However, the matter was remanded to the Rent Authority to grant an opportunity to the petitioner/tenant to pay the up-to-date rent to the respondent/land lord, failing which the Rent Authority was directed to pass the eviction order without carrying out any further proceedings. It is against these four orders; passed in two different eviction petitions, that the present four petitions have been filed by the petitioner/tenant.

It deserves mentioned here that it is not even disputed that the petitioner has not paid any rent after filing of the eviction petition before the Rent Authority. Before the Appellate Authority also, no rent was paid or deposited by the petitioner. Before this Court also, the matter has been pending for about two years but no rent has been paid or deposited by the petitioner. Hence, during the entire period of litigation, the petitioner has been occupying the premises without payment of any rent. Before proceeding further with the arguments, this Court had asked the petitioner whether he was ready to pay the rent and its arrears to retain the premises. The counsel for the petitioner had sought time to get instructions in this regard. However, on the next date of hearing, the counsel for the petitioner submitted that he has the instructions to say that the petitioner is not in position to pay any rent because the petitioner has gone bankrupt. These facts and the assertions by the petitioner itself

disentitle him to continue in possession of the premises in question for even a single minute and the petitioner is liable to be evicted from the premises with immediate effect. However, since the petitioner has raised certain legal questions, therefore, it is appropriate that this Court considers the same and then decide the matter.

Arguing the case, counsel for the petitioner/tenant has submitted that both the Courts below have gone wrong in law in dismissing his application for rejection of the eviction petition filed by the landlord; as not maintainable; as per the mandate of Section 20 (2) of the Act. It is submitted by the counsel that the Act prescribes a mandatory condition of giving notice by the landlord to the tenant; in the prescribed format as given in schedule to the Act. If the same is not complied with, then as per sub section (1) of Section 20 of the Act, the Rent Authority was restrained from passing any order of recovery or decree for possession of the demised premises. Hence, the condition of the issuance of notice is mandatory for maintaining the eviction petition. Therefore, this was a duty cast upon the respondent/landlord to comply with this provision. Counsel has further submitted that the agreement claimed by the respondent/landlord is in writing, therefore, the same was required to be registered as per Section 4 of the Act. Since the agreement has not been registered, therefore, the same is not admissible in evidence as per Section 49 of the Registration Act, 1860. Since Section 4 of the Act starts with *non-obstante* clause, therefore, neither such an agreement has any legal value nor can the same be led in evidence by the respondent/landlord. Counsel has further submitted that during pendency of the petition, the landlord had discontinued the facilities available to the petitioner/tenant, which is against the

mandate of Section 19 of the Act, which prescribes that even if there is a default on the part of the tenant, landlord could not have discontinued or disconnected the amenities available to the tenant.

Counsel for the petitioner has further submitted that the Appellate Authority mainly has gone by the fact that the petitioner has admitted the pleadings raised by the respondent/landlord in the eviction petition. However, this conclusion of the Court below is wrong. The petitioner denies having admitted any pleadings raised by the respondent/ landlord in the eviction petition. Even if the pleadings are taken as admitted, the Rent Authority would still have to assess the pleadings of the parties for arriving at a final decision. Hence, the issues were rightly framed by the Rent Authority. The Appellate Authority has wrongly set aside the order of framing of issues. Still further, the Court below has wrongly assumed the service of notice upon the petitioner by virtue of the fact that the petitioner continued the default in payment of the rent even after filing of the petition. In such a scenario, Section 25 of the Act shall come into play. The Court below could have allowed the arrears of rent with statutory interest even for the period during pendency of the petition. However, non payment of rent during pendency of the eviction petition or during the pendency of the appeal, is not a ground sufficient to order eviction of a tenant. Hence, the order passed by the Courts below are wrong.

On the other hand, counsel for the respondent/landlord has referred to the pleadings of the parties. He has submitted that after payment of rent for some months, the petitioner defaulted in its payment. In the first instance, oral notice was given to the petitioner to pay the rent. Thereafter, he paid the rent for some months but again defaulted in payment. Therefore, the

petitioner forfeits his rights to get any notice for the second time as per the proviso contained in Section 20 (2) of the Act. Counsel has further submitted that the Court below has rightly held that the non payment of rent during the pendency of the petition itself is a sufficient notice to the tenant. Counsel has relied upon the judgment of the Hon'ble Supreme Court rendered in the case of **'V. Dhanapal Chettier v. Yasodai Ammal, 1979 (2) RCR (Rent) 352'**. In the present case since the petitioner did not make the payment of rent during the pendency of the rent petition or during pendency of appeal, therefore, he has rightly been ordered to be evicted. Qua framing of the issues, counsel for the respondent has submitted that the respondent/landlord had made specific pleadings in the rent petition qua the date of agreement, duration of the agreement, rate of rent, increase in rent and qua the other contents of this written agreement between the parties. As per Order 8 Rules 3 and 4 CPC, the petitioner/tenant was required to reply these assertions specifically. However, no specific reply was given by the petitioner/tenant. Only a vague kind of denial was inserted in the written statement. Hence, any vague denial has to be taken as an admission on the part of the petitioner. Counsel has relied upon the judgment rendered in the case of **'Sat Paul Singh v. Hukam Chand, 1991 PLJ 392'**, to support his contention. On the issue of non registration of the agreements in question, counsel has submitted that the Court below has rightly held the same to be only directory in nature. Counsel has relied upon the judgment rendered in the case of **'Utsav Dey v. Sushil Kumar Bhadrara, 2019 (1) RCR (Rent) 188'**. Still further, counsel has relied upon a judgment rendered in the case of **'Gurbax Singh v. Sardara Singh, 1994 (1) PLR 396 (Punjab & Haryana)'** to buttress his arguments that in case the lease deed is

admitted, then eviction can be effected even if the said lease deed is not registered. Relying upon the provisions of Section 25 of the Act, the counsel has contended that this provision enshrines upon the tenant a duty to pay the rent as per the agreement latest by 15th day of the month; failing which he is liable to pay interest @ 15% for the period of delay. The same section requires that if the tenant fails to pay the rent during pendency of the petition, then his defence has to be struck off and the case has to be decided on the basis of pleadings of the landlord alone. Therefore, the Court below has not committed any illegality or irregularity in setting aside the order of framing of issues by the Rent Authority. The payment of arrears of rent along with 15% interest has also been rightly ordered by the Appellate Authority in terms of provisions contained in Section 38 sub section (10) of the Act. Accordingly, it is prayed by counsel for the respondent/landlord that the present petitions be dismissed with heavy and exemplary costs, being a blatant misuse of the process of the Court.

Having heard counsel for the parties, this Court finds that the main issues involved and argued in the present case are -

- (i) Whether any application by tenant, for rejection of the eviction petition filed by the landlord, on the ground of non service of notice upon him as required by Section 20 (2) of the Act, is at all maintainable?
- ii) Whether non-issuance of a notice upon the tenant in the prescribed format as required by Section 20 (2) (a) of the Act renders the petition as not maintainable?
- iii) Whether not giving a notice in the prescribed format before

filing of the eviction petition on the ground of non-payment of rent, would defeat the right of the landlord to seek recovery of possession even if there is default in payment of rent during pendency of the petition?

iv) Whether registration of the rent agreement/lease deed under the Act, is mandatory?

v) What is the effect of non-registration of rent agreement under the Punjab Rent Act?

To appreciate the above said points, it is appropriate to have a reference to the provisions of the Act which are relevant for decision of the issues involved in the case -

Section 2. Definitions – (a) to (b) XXX XXX

(c) "Landlord" means a person who, for the time being is receiving or is entitled to receive the rent of any premises, whether on his own account or on account of or on behalf of, or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant:

(d) to (f) XXX XXX XXX

(g) "Premises" means any building or part of a building which is or is intended to be let separately, for use a residence or for nonresidential use or for any other purpose, and includes;-

(i) the garden ground and out-houses, if any, appertaining to such building or part of building but does not include the upper side of roof (Terrace).

(ii) any fittings to such building or part of the building for the more beneficial enjoyment thereof.

(h) to (l) XXX XXX XXX

(m) "tenant" means any person by whom or on whose account or behalf the rent of any premises is or, but for special contract, would be payable, and include;-

- (i) a sub-tenant;
(ii) any person continuing in possession after the termination of his tenancy, but does not include-

(I) Any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened;

(II) any person to whom a licence as defined in section 52 of the Indian Easments Act, 1882, has been granted;

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Section 4. Registration of tenancy agreement - (1) Notwithstanding anything contained in Section 107 of the Transfer of Property Act, 1882, no person shall, after the commencement of this Act, let or take on rent any premises except by an agreement in writing.

(2) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), every agreement referred to in sub-section (1) shall be in the Form specified in Schedule I, appended to this Act and shall be registered under and in accordance with the provisions of the Registration Act, 1908 by the authority specified thereunder, on payment of registration fee of rupees one thousand.

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Before amendment of the Act in the year 2014, the sub section (2) of this Section read as under :-

“Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), every agreement referred to in sub-section (1) shall be in the Form specified in Schedule I to this Act and shall be registered with the Rent Authority concerned on payment of registration fee of rupees one thousand.”

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Section 20. Protection of tenants against eviction - (1)

Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Rent Authority in favour of the landlord against any tenant, save as provided in sub-section (2).

(2) The Rent Authority may, on an application made to it in the Form specified in Schedule XII to this Act make an order for the recovery of

possession of any premises on one more of the following grounds only,
namely:-

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent and other charges payable for three or more consecutive months legally recoverable from him within two months of the date on which a notice in the Form specified in Schedule VII to this Act, of demand for the arrears of such rent and other charges payable and interest at the rate of fifteen percent, for the period of default has been served on him by the landlord in the manner provided in section 106 of the Transfer of Property Act 1882:

Provided that a tenant shall not be entitled to the benefit of service of notice by the landlord under this clause where having obtained such benefit once in respect of any premises, he again make a default in the payment of rent and other charges payable in respect of those premises;

(b) to (o) XXX XXX XXX

(p) that the tenant after having agreed with or having informed the landlord in writing the date to vacate the premises does not do so on or after the date so agreed or informed.

(q) that the premises let for residential or non-residential purpose are required, whether in the same form or after re-construction or re-building, by the landlord for occupation for residential or non-residential purpose for himself or for any member of his family if he is the owner thereof, or for any person for who benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation;

Provided that where the landlord has acquired the premises by transfer no application for the recovery of possession of such premises shall lie under this clause unless a period of three years elapsed from the date of the acquisition :

Provided further that where an order for the recovery of possession of any premises is made on the ground specified in this clause, the landlord shall be entitled to obtain possession thereof on the expiration of a period of three months from the date of passing of eviction order.

Explanation.-1. For the purposes of this clause, where the landlord in his application supported by an affidavit submits that the premises are required by him for occupation for himself or for any member of his family dependent on him, the Rent Authority shall presume that the premises are so required. |

Explanation. -II. For the purposes of this clause of section 21, section 22, section 23, or section 24, an occupation by the landlord of any part of a building of which any premises let out by him forms a part, shall not disentitle him to recover the possession of such premises.

Explanation.-III. For the purposes of this clause “owner of the premises” includes a person who has been allotted such premises by the Punjab Housing Development Board or any other local authority by way of an agreement of hire purchase lease or sub-lease, even before the full ownership rights accrue to such hire-purchaser, lessee or sub-lessee, as the case may be.

(3) In any proceeding for eviction under clause (d),(e),(f),(g) or (q) of sub-section (2) of this section or section 21 or section 22 or section 23 or section 24, the Rent Authority may allow eviction from only a part of the premises if the landlord is agreeable to the same.

Provided that, in case of such part-eviction, the rent and other charges payable by the tenant shall be decreased in proportion to the part vacated.

(4) No order for the recovery of possession in any proceedings under sub-section (2) shall be binding on any sub-tenant referred to in section 27 who has given notice of his sub-tenancy to the landlord under the provisions of that section, unless the sub-tenant is made a party to the proceedings and the order for eviction is made binding on him.

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Section 25. Payment of rent during eviction proceedings - (1) During the proceedings for recovery of possession under section 20, a tenant shall ensure timely payment of rent and other charges at the rate at which these were being paid immediately before the commencement of the proceeding.

(2) to (4) XXXX XXXX XXXX

(5) If a tenant fails to make payment or deposit as required by this

section, the Rent Authority may order the defence against eviction to be struck out and proceed with the hearing of the application.

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Section 29. Recovery of possession for occupation and re-entry

- (1) Where a landlord recovers possession of any premises from the tenant in pursuance of an order made under clause (q) of sub-section (2) of section 20 or under sections 21,22,23,24, or 31, the landlord shall not,except with the permission of the Rent Authority obtained in the Form specified in Schedule IX to this Act, re-let the whole or any part of the premises within three years from the date of obtaining such possession, and in granting such permission, the Rent Authority may direct the landlord to put such evicted tenant in possession of the premises:

Provided that where a landlord recovers possession or any premises from the tenant in pursuance of an order made under clause (q) or sub-section (2) of section 20 for occupation after reconstruction or rebuilding, the period of three years shall be reckoned from the date of completion of re-construction or re-building, as the case may be.

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Section 38. Procedure to be followed by Rent Authority - (1) No

order which prejudicially affects any person shall be made by the Rent Authority under this Act without giving him a reasonable opportunity of showing cause against the order proposed to be made and until his objections, if any, and any evidence he may produce in support of the same have been considered by the Rent Authority.

(2) Subject to any rule made under this Act and other provisions of this Act, the Rent Authority shall,while holding an enquiry in any proceeding before him follow as far as may be; the practice and procedure of a court of small causes, including the recording of evidence.

(3) The Rent Authority shall not ordinarily allow more than three adjournments at the request of a party throughout the proceedings and in case he decides to do so, he shall inform the chairman the reasons therefore and order to pay the other party the reasonable cost.

(4) The Rent Authority shall issue summons in relation to every application under this Act in the form specified in Schedule III to this Act.

(5) The Rent Authority shall, in addition to, and simultaneously with the issue of summons for service on the opposite party, also direct the summons to be served by registered post, acknowledgment due, under certificate of posting addressed to the opposite party or his agent authorised to accept the service at the place where the opposite party or his agent actually and voluntarily resides or carries on business or personally works for gain, and shall also direct affixing of the same on the door of the premises in dispute and get a *munadi* in this behalf. This shall constitute valid service of summons.

(6) (a) An application under section 19 for cutting off essential service shall be dealt with in accordance with the procedure specified in this sub-section.

(b) The Rent Authority shall commence the hearing of the application within seven days of the filing thereof and shall dispose of the same within thirty days of starting of such hearing, failing such commencement of hearing of application within such time, the Rent Authority shall inform the Chairman of the Tribunal the reasons therefor.

(7) (a) Every application by a landlord for the recovery of possession of any premises on the ground specified in clause (d) or clause (e) or clause (g) of sub-section (2) of section 20 or under section 21, or under section 22 or under section 23 or under section 24 or under section 31 shall be dealt with in accordance with the procedure specified in this sub-section.

(b) The tenant on whom the summons is duly served in accordance with sub-section (5) in the Form specified in schedule III to this act shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Rent Authority as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(c) The Rent Authority shall give to the tenant leave to contest the

application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises.

(d) Where leave is granted to the tenant to contest the application, the Rent Authority shall ordinarily commence the hearing of the application within seven days of the grant of such leave and shall provide day to day hearing and shall dispose of the application within thirty days of starting of such hearing failing such commencement of hearing or disposal of application within such time, the Rent Authority shall inform the Chairman of the Tribunal the reasons therefor.

(e) Where the leave to contest under clause (c) is denied to the tenant he may file an application for review before the Rent Authority within ten days of such denial and the Rent Authority shall endeavour to dispose of such application within seven days of its filing.

(8) Every application made to the Rent Authority shall be heard as expeditiously as possible and subject to the provisions of sub-section (6) and (7) endeavour shall be made to conclude the hearing and to dispose of the application within six months of its being filed.

(9) In all proceedings before him, the Rent Authority shall consider the question of costs and award such costs to or against any party as the Rent Authority considers reasonable.

(10) When the ejectment decree is passed under this Act, the Rent Authority shall in addition pass order for recovery of arrears of rent and other charges alongwith interest at the rate of fifteen per cent per annum, recoverable as arrears of Land Revenue.

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Section 38(A). Application to Rent Authority - Every application to the Rent Authority shall be in such Form as is provided in the relevant Schedule to this Act alongwith relevant documents and other required evidence, Fees for various applications and processes shall be the same as applicable to a Rent Controller under the provisions of the Court Fees Act, 1870, as amended by the State of Punjab.

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Registration Act, 1908.

Section 49. Effect of non-registration of documents required to be registered. — No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882) to be registered shall—

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.”

After considering the provisions of the Act and the material on record, the findings of the Court on the issues culled out above are as under :-

Issue No. (i) For speedy disposal of the cases, the provisions of the Act as mentioned above, prescribe a procedure meant for Court of Small Causes to be followed by the Rent Authority. Therefore, the Act also restricts the filing of applications before the Rent Authority only to the ones as are prescribed in the schedule to the Act. Hence, no further applications, except as prescribed in the schedule; or as envisaged by other Sections like Section 38 (7) (b) is to be entertained by the Rent Authority. Needless to say that the 'Rent Authority' has been created as a statutory authority whose powers are circumscribed by the provisions of the Act and not as a Court. The application for rejection of an eviction petition for want of service of notice upon a tenant, as was moved by the petitioner in the present case, is not maintainable in itself, under the provisions of the Punjab Rent Act.

Issue No. (ii) A perusal of Section 20 shows that it is only the passing of the order or decree for recovery of possession of a premises on the grounds

mentioned in sub section (2); which has been prohibited by the Act if the notice in specific format as in Schedule VII is not given by the landlord to the tenant. The question of passing of order or decree for recovery of possession of a premises comes only at the stage of disposal of the petition. Therefore, prohibition created by *non-obstante* clause of sub section (i) of Section 20 cannot be invoked at the stage of filing of the petition. Hence, merely because of want of notice, as contemplated by sub section (2) of Section 20 of the Act, the petition filed by the landlord for recovery of possession, as such, cannot be rejected as non-maintainable. This is made more clear by the fact that the non payment of rent is not the only ground for seeking recovery of possession, rather, there are other grounds as well, for which a landlord can seek recovery of possession under Section 20 (2) of the Act without there being any requirement of notice being served upon the tenant in a specified format. Therefore, the consequences of not giving notice to the tenant by the landlord in the format specified in VII Schedule may arise at a later stage, which may be considered by the Rent Authority/Court, as per prevalent legal situation, however, mere non service of any such notice in itself, is not a ground for rejection of the eviction petition filed by the landlord.

Therefore, as a cumulative effect of the decision on issues (i) and (ii) above, this Court holds that no application at the instance of a tenant for rejection of an eviction petition on the ground of non service of notice specified in the VII schedule is maintainable. The Rent Authority cannot even entertain any such application as such. Still further, the eviction petition cannot be rejected and dismissed as non-maintainable only because of the fact that the landlord had not given any notice before filing the same on account of

non-payment of rent. Therefore, the arguments of counsel for the petitioner against dismissal of his applications by the Courts below, qua rejection of the eviction petition, is rejected. The orders passed by the Courts below in this regard are upheld.

Issue No. (iii) The aspect of notice was considered by the Hon'ble Supreme Court through a Bench comprising of 7 Hon'ble Judges in the context of provisions contained in Rent Acts of various states, in the judgment of V. Dhanapal Chettier v. Yasodai Ammal, 1979 (2) RCR (Rent) 352, wherein it was held as under (in para No. 7) -

“If the State Rent Act requires the giving of a particular type of notice in order to get a particular kind of relief, such a notice will have to be given. Or, it may be, that a landlord will be well advised by way of abundant precaution and in order to lend additional support to this case, to give a notice to his tenant intimating that he intended to file a suit against him for his eviction on the ground mentioned in the notice. But that is not to say that such a notice is compulsory or obligatory or that it must fulfill all the technical requirements of Section 106 of the Transfer of Property Act. Once the liability to be evicted is incurred by the tenant, he cannot turn round and say that the contractual lease has not been determined. The action of the landlord in instituting a suit for eviction on the ground mentioned in any State Rent Act will be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee and the jural relationship of lessor and lessee will come to an end on the passing of an order or a decree for eviction.”

Therefore, it is clear that the Hon'ble Supreme Court has categorically opined that even if the prescribed notice is not given by the landlord that would not, in all situations, defeat his petition. If in an eviction petition filed on the ground of non-payment of rent; the tenant continues to default in payment of rent even during the Court proceedings then the filing of

petition itself shall be deemed to be a valid notice to the tenant. By filing the eviction petition, the landlord expresses his intention to evict the tenant, by all means, on the grounds mentioned therein. Therefore, it is clear that the requirement of giving notice to the tenant in the prescribed form, as prescribed under sub section (2) of Section 20 of the Act, is only to enable the landlord to express his intention to evict the tenant in clear cut terms by specifying the grounds mentioned in the notice. Consequent purpose of this provision is that the tenant understands in clear terms that the amount specified in the notice is outstanding against him and that if he does not pay the same within statutory prescribed time, then he is liable to face the statutory consequences as prescribed under the Act. Hence, the provision of giving notice by the landlord to the tenant is only in the nature of abundant caution to enable parties to make themselves clear qua the issue of non payment of rent. Therefore, this provision, in itself, is not a ground to defeat the eviction petition filed by the landlord against her/his tenant.

Issue No. (iv) In this regard; a perusal of the provisions of Section 4 of the Act shows that it has two distinct portions. Sub section (1) of Section 4 creates a prohibition both, against a tenant, as well as against the landlord qua taking or giving a property on rent except by a written agreement. This prohibition starts with a *non-obstante* clause against the provision of the Transfer of Property Act. Since there is a *non-obstante* clause even against the transfer of Property Act, therefore, if a person enters into a property as a tenant without a written agreement to that effect then such a person does not get any legal right qua such property. In absence of written agreement, landlord shall not be a statutory landlord under the Act and the tenant shall not be a statutory tenant.

The status of such a person shall not be even of permissive possession. Such a person shall not be more than a rank- trespasser. He shall not be entitled to any kind of protection or defence against the landlord. However, the landlord shall still be having full ownership rights over such property, including his right to un-interrupted possession to the property; being a lawful owner. Hence, the landlord shall be fully entitled to ask such a person to vacate the property, and if not so vacated, to throw out such a person without recourse to any legal process. Even if the landlord takes recourse to a legal process, then the Court shall also be bound to order restoration of possession without entertaining any defence on the part of any such alleged tenant. Hence, it is only with a written agreement, the tenant becomes a statutory tenant under the present Act and the landlord becomes a statutory landlord under the Act; and both are to be governed by the provisions of the Act making them entitled to some legal rights and subjecting them to certain legal liabilities. Sub section (2) of Section 4, which requires registration of Rent agreement, also starts with a *non-obstante* clause. However, this *non-obstante* clause is made operable against all the provisions contained in the Registration Act. Before the amendment of the year 2014 even the authority where the rent agreement was to be registered was specified to be the Rent Authority itself. The authorities under the Registration Act had no concern with the rent agreement. Hence, it was not a document compulsorily registrable under Section 17 of the Registration Act. Rather, due to *non-obstante* clause, it was registrable only under Section 4 of the Punjab Rent Act. The provision of Section 4 as amended by the amendment Act of 2014 prescribes that the rent agreement under the Act shall be in the format specified in the schedule to the Act and the

same shall be registered under and in accordance with the provisions of and with the authorities prescribed under the Registration Act. However, the fee to be paid for such registration has been specified by the provision of Section 4 itself. Hence, it is clear that while sub section (1) of Section 4 overrides Section 107 of the Transfer of Property Act, sub section (2) is enacted in the nature of over riding the provisions of the Registration Act, 1908; except to the extent of same being saved by the language of this very sub section, that is, regarding the authorities with which and the manner in which it is to be registered. The compulsory registrability and the form of the rent agreement is not arising from Section 17 of the Registration Act. Rather, the registrability, the format of agreement and the fee payable for such registration are referable, exclusively, to Section 4 of Punjab Rent Act and not Section 17 or any other provision of the Registration Act. Any other interpretation would render the *non-obstante* clause used against Registration Act as nugatory. Hence, even the word 'under' used in Section 4 has to be read as relating to formalities and requirement to be completed for undergoing the procedure of registration under the Registration Act. Therefore, registration of rent agreement is referable to Section 4 of the Punjab Rent Act and not to the provision of Section 17 of the Registration Act. The second aspect of this provision is that it does not create any consequences for non registration of a rent agreement entered into between the parties under the Act. In the Punjab Rent Act there is no other provision also, prescribing any consequences for non-registration of rent agreement. Therefore, this provision, as contained in Section 4 (2) of the Act is only directory in nature. Once an agreement is in writing, as is contemplated under sub section (1) of Section 4, it becomes a valid agreement. Mere non

registration of this agreement, does not divest it of its essential character and nature. Since the provision as contained in sub-section (2) requires registration and procedure thereof, and no further consequences are provided for it, this registration can be interpreted to be only by way of ensuring that the public authorities are having the record of the rent agreements and the scope of disputes between the parties to the agreements is narrowed down. But non registration of the agreements as such would not make the agreements to be void.

Issue No. (v). As found above, since Section 4 (2) is enacted with a *non-obstante* clause, the provision of the Registration Act, except to the extent the same are saved by this very sub section stand excluded. Section 49 of the Registration Act, 1908 is not saved by this Section. Therefore, the non-registration of rent agreement cannot be interpreted to have the effect upon it as are prescribed under Section 49 of the Registration Act. Moreover, the prohibition created by Section 49 of the Registration Act is invited only qua the documents which are required to be compulsorily registered under Section 17 of the Registration Act or under the provisions of the Transfer of Property Act. As observed above, the registerability of a rent agreement under the Punjab Rent Act is referable to Section 4 (2) of the Punjab Rent Act and not to Section 17 of the Registration Act or any provision of the Transfer of Property Act. Rather, sub section (1) of Section 4 of the Rent Act uses non-obstante clause even against the Transfer of Property Act in the matter of requirement or execution of the rent agreement. Therefore, merely because a rent agreement is not registered one, that would not operate as a bar for leading the same in evidence. Section 4 of the Act is a complete code in itself on the point of

execution and registration of the agreement. This being a subsequent and specific Act, shall be deemed to have superseded the provisions of the Registration Act on the matters dealt with by it; other than specifically protected by the language of this very Act. This is particularly so; because of the language introduced in this Act by the legislature, which has been used in the nature of over riding the provisions of the Registration Act and Transfer of Property Act.

Accordingly, this Court finds that the Appellate Authority has rightly arrived at the conclusion that non-registration of the agreement would, per se, neither make the agreement as void and liable to be not considered by the Courts; nor would the same make it inadmissible in evidence. The registration, if resorted to by the parties, would have the presumption of truth attached to the document. However, even in absence of such registration, either of the parties can rely upon the same, if it is admitted by the other side or is proved by one side, in accordance with law.

So far as the present case is concerned, a bare perusal of the pleadings of the parties show that the respondent/landlord has mentioned in specific details the terms and conditions of the agreement entered into between the parties. The petitioner, in the written statement filed before the Rent Authority has not denied anyone of the details mentioned in the petition filed by the landlord; rather, he has resorted to only a vague denial by saying 'wrong and denied'. Provisions of Order 8 Rules 3 and 4 CPC requires the pleadings of the parties to be specific so as to decipher the dispute between the parties. If the defendant in a proceeding does not specifically denies the categoric and specific pleadings of the plaintiff, then the Court would be well within its

authority to presume that such a party has admitted the contents of the plaint/petition. The reliance by counsel for the respondent in this regard on judgment rendered in the case of **Sat Paul Singh** (supra) is well placed. Since the petitioner herein/respondent in the eviction petition, has not specifically denied anyone of the specific details of pleadings of the landlord, therefore, the the Lower Appellate Authority has rightly taken it to be the admission on the part of the petitioner. Once there was admission on the part of the petitioner; qua his default in payment of rent, qua relation of landlord and tenant, then nothing more was required to be adjudicated by the Court. Hence, the Court below has rightly passed the order setting aside the issues framed by the Rent Authority, as well.

One more aspect which deserves mentioned herein is that the landlord/respondent had also taken the personal requirement as the ground for filing the eviction petition. On that, the Rent Authority below had framed an issue as to whether the requirement of the landlord was *bona-fide* or not? This approach of the Court below is against the provisions of the Act. Provision regarding seeking ejectment of a tenant on the ground of personal requirement under Punjab Rent Act, 1995 is drastically different than its predecessor Act. Right of Landlord to seek ejectment on expiry of duration of agreement is totally unqualified. The Landlord is not required to show any personal necessity. Even in case of seeking ejectment before expiry of tenure, the Act does not contemplate the *bona-fide* requirement of the landlord. The only thing which is prescribed under Section 20 (q) of the Act is that the landlord should not have any other reasonably suitable accommodation. Hence, the requirement of reasonableness is qua the suitability for the requirements of the

landlord and not qua the intentions of the landlord. Therefore, whether the landlord is filing a petition with totally mala fide intention or *bona-fide* one, that is irrelevant under the Act. No Court can defeat the eviction petition of a landlord on the ground that his requirement is not *bona-fide*.

Needless to say that 'suitability' for his requirements, is primarily, the concern of the landlord and not of the tenant or the Courts as such, unless the Courts find that the suitability claimed by the landlord qua this requirement is not reasonable. Again, the word 'reasonably' would not mean '*bona-fide*' or 'just' or 'fair'. The word 'reasonably' used in the Section would have a reference to a logical deduction as to the propriety of the claim of the landlord as per an ordinary person of ordinary prudence; vis-a-vis his proposal with respect to his stated requirement and the consequences which the landlord may have to suffer in case such a property is not restored to him. This exercise of reasoning has to be carried out by the Court only with reference to the requirements and consequences qua the landlord. The requirement or concern of the tenant are totally irrelevant for this purpose. This provision is not by way of any sympathy towards the tenant. The law does not permit interpolation of any unnecessary socialism into a provision of an Act by way of Court interpretations except to the extent it is so introduced in the provision of the Act itself. The socialistic approach, whatever though fit by the legislature qua the tenant; is already included in the Act itself; as contained in Section 29 wherein the Act prescribes that if after getting the possession of the property, the landlord again lets out the same within a period of 3 years, then the tenant can apply for restitution of his possession; and also in Section 67 of the Act whereunder a landlord is liable to be punished for use or lease of his own

property just to protect the interest of a tenant! Therefore, qua the requirement of a landlord the provision contained in Section 20 (2) (q) is the start and end of the socialistic sympathy towards the tenant. No more condition can be created by the Courts against the landlord by importing the concept of '*bona-fide* necessity' of the landlord. Needless to say that a landlord purchases the property either for his enjoyment or for his income and not for the benefit of any unscrupulous or even of a genuine tenant, if the same is not suitable for the purposes of the landlord. Hence, while dealing with an eviction petition filed under Section 20 (2) (q), the Rent Authority cannot frame an issue as to the requirement of the landlord to be of a '*bona-fide* necessity'. Order of the Lower Appellate Authority qua setting aside the order of the Rent Authority framing issues, is also justified for this reason.

In view of the above; and for the undisputed fact that the petitioner has not paid the rent even during long pendency of proceedings before various authorities/Court, this Court finds the present petitions to be a blatant misuse of the process of the Courts. Hence, all these petitions are dismissed with cost of Rs. One lakh in total. Further, the petitioner is ordered to be evicted from the premises in question with immediate effect. The landlord is held entitled to arrears of rent at the rate as per the agreement and with statutory rate of interest @ 15% per annum from the date of filing of the petitions till actually receiving the possession of the premises in question. Accordingly, the Rent Authority is directed to :-

- (a) ensure immediate eviction of the petitioner from both the premises in question;
- (b) calculate the arrears of rent as per the rent agreement, along with 15% per annum interest, for the period from the date of filing

of the petitions till the date of actual handing over of the possession to the landlord; and to order immediate recovery of the same as arrears of land revenue;

(c) ensure immediate recovery of amount of arrears of rent, as determined by the Lower Appellate Authority for the period prior to the date of filing of the petitions, as arrears of land revenue.

The cost imposed hereinabove is ordered to be deposited with Poor Patients Welfare Fund, PGI, Chandigarh, within a period of 45 days from today. If no receipt of such deposit is submitted by the petitioner to the registry of this Court, then the matter shall be placed before a Bench of this Court for necessary recovery process.

A photocopy of this order be placed on the files of the connected cases.

(RAJBIR SEHRAWAT)
JUDGE

12.8.2021

Ashwani

Speaking/Reasoned : Yes/No
Reportable : Yes/No