

law laid down by the Apex Court in **Rakesh Wadhawan and Others v. M/s. Jagdamba Industrial Corporation and Others, Judgment Today 2002 (Suppl. 1) S.C. 11**, the tenant in any case is placed on a much better footing and has to be given an opportunity to pay rent even after filing of the petition.

9. In the circumstances afore-stated, there is no merit in this petition and the same is dismissed leaving the parties to bear their own costs.

Petition dismissed.

PUNJAB AND HARYANA HIGH COURT

Before Mr. Justice N. K. Sud

Civil Revision No. 1615 of 1987

Decided on 21.05.2003

Vijay Pal and Another

Petitioners

Versus

Smt. Kaushalya Devi and Others

Respondents

For the Petitioners: Mr. G.S. Jaswal, Advocate.

Haryana Urban (Control of Rent and Eviction) Act, 1973 – Section 4 (1) (2) – Fair rent – Agreement of lease period expired on 31.12.1969 – The application for determination of fair rent was filed on 20.12.1980 -- There was no subsisting agreement between the parties when the application for determination of fair rent had been filed on 20.12.1980 -- The approach of both the Courts below in adopting the rent on the basis of agreement which was subsisting upto 31.12.1969 as the basic rent was totally erroneous.

(Para 4)

Cases referred:

1. Gobind Ram v. Kanshi Ram, 2002 HRR 37.

ORDER

N. K. Sud, J. – This civil revision is directed against the order dated 9.3.1987 of the Appellate Authority, Kurukshetra dismissing the appeal of the landlord-petitioners against the order of the Rent Controller, Kaithal dated 6.1.1984.

2. The petitioners had filed an application for fixation of fair rent under section 4 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short the "Act") on 20.12.1980. The Rent Controller vide his order dated 6.1.1984 determined the fair rent at Rs. 189 per year i.e. Rs. 15.75 Ps. per month besides house tax. The appeal of the landlord-petitioners against the above determination has been dismissed vide the impugned order.

3. Mr. Jaswal, Counsel for the petitioners, contends that the basic approach of both the authorities below in proceeding to determine the fair rent by adopting Rs. 15/- per month as the basic rent is contrary to law. He points out that the demised premises had been let out on 1.1.1969 for a period of one year i.e. upto 31.12.1969 at a monthly rent of Rs. 15/-. However, the tenant continued to occupy the said shop by paying the same amount of rent even

after the expiry of the period of lease. In such circumstances, learned counsel contends that the tenant ceased to be a contractual tenant and became a statutory tenant and, therefore, the basic rent could not be adopted at Rs. 15/- per month.

4. I find merit in the contention raised on behalf of the petitioners. This issue has already been decided by this Court in **Gobind Ram v. Kanshi Ram, 2002 HRR 37** in which it was held that if there was no subsisting agreement of tenancy on the date on which the fair rent had to be fixed, the rate of rent mentioned in the agreement prior thereto could not be said to be the rent agreed between the landlord and the tenant. In the present case also, there was no subsisting agreement between the parties when the application for determination of fair rent had been filed on 20.12.1980. Thus, the approach of both the Courts below in adopting the rent on the basis of agreement which was subsisting upto 3.12.1969 as the basic rent was totally erroneous.

5. In view of the above, civil revision is allowed. The impugned orders of the Rent Controller dated 6.1.1984 and of the Appellate Authority dated 9.3.1987 are set aside and the matter is remanded to the Rent Controller for fresh determination of the fair rent in accordance with law.

6. Since no one has put in appearance for the respondents, there shall be no order as to costs.

Petition allowed.

PUNJAB AND HARYANA HIGH COURT

Before Mr. Justice Satish Kumar Mittal

Regular Second Appeal No. 1028 of 1985

Decided on 05.11.2003

Isa (deceased) alias Hesa through LRs. Farju
and Another

Appellants

Versus

Ahmad Khan

Respondent

For the Appellants: Mr. Kamal Sharma, Advocate.

For the Respondent: Mr. O.P. Goyal, Sr. Advocate with
Mr. Sunil Rana, Advocate.

Punjab Pre-emption Act, 1913 (1 of 1913), Section 15 (1) and 15 (2) – Makhmal -- Pre-emption Suit -- When a vendee purchased a share of land joining with him a third person who is not co-sharer in the suit land, such vendee sinks to the level of Makhmal, a stranger to the land in suit, in such situation, the vendee forfeits his right to resist pre-emptors suit.

It was held by the Ld. Lower Appellate Court that though one of the appellant-vendees, namely, Isa alias Hesa had purchased a part of the Khasra number in question vide sale deed dated 16.7.1976 (Ex. D-2) yet it did not enable the said vendee to defeat the superior right of the plaintiff-respondent because he had purchased the land in question by associating with himself one Makhmal (one of the appellant), who was not a co-sharer in the said land. While relying upon another Full Bench decision of this Court in *Garib Singh v. Harnam Singh and another*, 1971 Revenue Law Reporter 706, it was held by