

CONTINGENT CLAUSE IN RENT DEED TO INCREASE RENT EACH YEAR CANNOT BE READ TO MEAN THAT TENANCY WAS FOR MORE THAN A PERIOD OF ONE YEAR

The Apex Court vide its judgment dated 17th June, 2020 passed in the case of *Siri Chand (Deceased) Thr. LRS. v. Surinder Singh [Civil Appeal No. 2617 of 2020]* held that simply because a Rent Deed contains a clause which binds the tenant to pay increased rent by certain percentage each year cannot be considered to mean that tenancy was for a period of more than a year.

FACTS:

In the present case, the Appellant (through legal representatives) had challenged the order passed by the Punjab and Haryana High Court dated 5th September 2009 dismissing the revision filed by the Landlord- Appellant.

The Appellant being the Landlord of a shop admeasuring 14 sq. yds. (“**the premises**”) gave the premises to the Respondent on rent as Tenant. On 27th July, 1993, an Agreement/ Rent Deed Undertaking/ Rent Note was executed between the Appellant and the Respondent whereby the parties agreed upon certain terms as under: 1) That the rent has to be paid by the 5th day in each month to the Appellant; 2) The Respondent undertook to pay the rent with an increase of 10% each year; and 3) In the event, the Respondent failed to pay the rent as agreed, the Appellant shall have the right to vacate the Respondent from the shop. The Respondent further undertook to pay house tax and electricity bills in respect of the premises.

On account of default committed by the Respondent to pay the house tax and rent, the Appellant filed an Application under Section 13 of East Punjab Urban Rent Restriction Act, 1949 for eviction of the Respondent from the premises. The Respondent filed objections to the said application by stating that he had paid the rent at the rate of Rs. 1,000/- per month up to February 2006 as agreed between the

parties, after which the Appellant refused to accept the rent. The Respondent further contended that his signatures were obtained on blank papers by the Appellant as a way of security. The copy of Rent Note dated 27th July 1993 was brought on record and considered by the Rent Controller, who by his order held that although time is not specified, the Rent Note is not a lease deed, hence not a document which is compulsorily registrable. While allowing the Appellant’s application, it was held that the relationship of landlord and tenant existed between the parties, the Respondent was in arrears of rent and house tax and liable to be evicted from the premises.

Being aggrieved by the aforesaid order of the Rent Controller, the Respondent preferred an Appeal. The Appellant Court disagreed with the findings of Rent Controller with regards to the Rent Note, not being document which is not compulsorily registrable, held that the document was required to be registered under Section 17(1)(d) of the Registration Act, 1908 and accordingly set aside the judgment of the Rent Controller and allowed the Appeal.

The Appellant being aggrieved by the order of Appellate Court filed a Revision before the High Court. The High Court by its impugned order dated 5th September 2009 dismissed the revision referring to the findings of the Appellant Court that the Rent Note was compulsorily registrable.

Aggrieved by the aforesaid impugned order of the High Court, the Appellant preferred the present appeal before the Apex Court.

ISSUES:

The Apex Court determined the following questions of law:

- 1) Whether the Rent Note dated 27.07.1993, was a document which required compulsory registration under section 17(1)(d) of the Registration Act, 1908?
- 2) Whether the Appellate Court could have set aside the decree of eviction without recording the finding that there was no default on the part of the tenant/Respondent in payment of rent and house tax, etc. and the amount deposited by the tenant was sufficient to save him from eviction?

JUDGMENT:

As per Section 17(1)(d) of the Registration Act, 1908, leases of immovable property from year to year, or any term exceeding one year or reserving a yearly rent requires to be compulsorily registered. The Apex court was required to determine whether the Rent Deed/ Rent Note can be treated to be lease of immovable property – (i) from year to year, (ii) for any term exceeding one year, (iii) or reserving a yearly rent. On considering the clauses of Rent Note, the Apex Court held that Clause (1) of the Rent Deed suggests towards creation of monthly tenancy as payment was to be made before 5th of each month to the Appellant. Further, the Rent Deed did not reserve yearly rent. It was noted that the Rent Deed is not a lease of immovable property from year to year as there is no mention in the Rent Deed that the lease shall be from year to year.

While considering the question as to whether the Rent Deed was “for any term exceeding one year”, the Apex Court by placing reliance on one of its judgement in *Ram Kumar Das vs Jagdish Chandra Deo, Dhabal and Another, AIR 1952 SC 23* and considering Section 106 of the Transfer of Property Act, 1882 held that when there is no period agreed upon between the parties, the duration has to be determined by referring to the purpose and object with which the tenancy is created.

The Apex Court held that clauses of the Rent Deed/ Rent Note make it clear that the tenancy was a monthly tenancy and rent was to be paid every month by 5th of every month. Clause 9 of the Rent Deed was a contingent clause by which the tenant was required to increase the rent by 10 % each year. The increase in rent was contingent on the tenancy to continue for more than a year. It was held that the clause cannot be read to mean that the tenancy was from year to year or for more than one year.

Inter alia, with the above observations and findings, the Apex Court held that the judgment of the Appellate Court was unsustainable and restored the order of the Rent Controller directing the eviction of the tenant.

Accordingly, the Appeal was allowed.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.