

2024:PHHC:079151



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

314

CR-5395-2023 (O&M)
Reserved on: 10.04.2024
Pronounced on: 31.05.2024

Sahil Singal

...Petitioner

Versus

M/s Goyam Paper Mart and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Sunil Chadha, Sr. Advocate with
Mr. Achin Gupta, Advocate and
Ms. Devyani Sharma, Advocate for the petitioner.

Mr. Ashish Aggarwal, Sr. Advocate with
Ms. Aashna Aggarwal, Advocate and
Mr. Vishal Pundir, Advocate for the respondents.

VIKAS SURI, J.

1. Prayer in the present revision petition, at the instance of the petitioner-landlord, is for setting aside the judgment dated 31.08.2023 (Annexure P-11) passed by learned Appellate Authority, Chandigarh, whereby provisional rent assessed by the learned Rent Controller, Chandigarh, vide order dated 30.05.2023 (Annexure P-9), has been set aside.

2. Briefly stated, the petitioner filed a rent petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for



eviction of the respondents from the tenanted premises, described as ground floor of Industrial Shed No.780, Industrial Area, Phase-2, Chandigarh. It has been pleaded in the rent petition that the respondents were inducted as tenants on the terms and conditions of tenancy, reduced into writing in the form of lease deed dated 18.08.2018 (Annexure P-1). The period of tenancy mentioned therein was w.e.f. 01.09.2018 to 31.08.2021. The initial rate of rent was fixed at Rs.75,000/-. Thereafter, an increase was stipulated every year, for the next 2 ½ years; and for the remaining lease period of six months, the rent was stated to be Rs.1,05,000/- per month, excluding electricity and water charges. Accordingly, the rate of rent for the first year, i.e. for the period 01.09.2018 to 31.08.2019 was Rs.75,000/-; w.e.f. 01.09.2019 to 31.08.2020 was Rs.81,000/- per month; w.e.f. 01.09.2020 to 28.02.2021 was Rs.87,480/- per month; and w.e.f. 01.03.2021 to 31.08.2021 was Rs.1,05,000/- per month. As per the terms and conditions contained in the lease deed, the rent excluding electricity and water charges was payable in advance before 7th of each calendar month. Liability to pay interest on delayed payment was also contemplated therein at the rate of 18% p.a.. As per clause 4 of the lease deed (Annexure P-1), a sum of Rs.1.50 lakh, i.e. an amount equivalent to two months' initial rent, was also deposited by the respondents as interest free refundable security. In the rent petition, it was further alleged that the respondents failed to make payment of rent w.e.f. 01.04.2020 and despite repeated requests



for the same, they failed to pay the rent due. However, in discharge of their liability to pay rent from April, 2020, they had issued cheque dated 07.04.2020, for an amount of Rs.72,900/-, but the said cheque on presentation was dishonoured with the remarks 'funds insufficient'. A criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 has also been filed by the petitioner against the respondents. The respondents had also issued cheques towards discharge of their liability to pay rent for the months of May, June and July, 2020 and on presentation to the Bank for payment, they met the same fate. Hence, through the present rent petition, eviction of the respondents from the demised premises, on account of non-payment of rent, has been sought.

3. Upon notice, the rent petition was contested by the respondents by filing a detailed written statement. The execution of the lease deed dated 18.08.2018 has been admitted but the petition was opposed on the ground that was no cause of action had accrued to the petitioner; there was no relationship of landlord and tenant between the parties; and the petitioner is not the owner of the demised premises. It was further averred that the petitioner did not have any authority letter or power of attorney from the owner of the premises to let out the premises or to receive rent in relation thereto.

4. Rejoinder was filed to the aforesaid written statement, reiterating the averments made in the rent petition and controverting those made in the written statement. It was specifically averred that the



tenant has no locus standi to challenge the title/ownership of the landlord over the demised premises. It was reiterated that the petitioner is the landlord and respondents are tenants under him, vide lease deed dated 18.08.2018, with regard to the demised premises.

5. The Rent Controller vide order dated 25.04.2022, observed that since the relationship of landlord and tenant has been denied, the case was not referred to alternative modes referred under Section 89 of CPC, and instead proceeded to frame the issues. The proceedings were deferred to 31.05.2022 for petitioner's evidence. On two consecutive dates thereafter, learned Rent Controller was on medical leave and the matter was further deferred. On the subsequent hearing thereafter, the matter was transferred to another Rent Controller and as such, no substantial proceedings took place on 19.09.2022 and the case was adjourned to 29.11.2022 for petitioner's evidence.

6. On the aforesaid hearing on 29.11.2022, the petitioner moved an application seeking recalling of the order dated 25.04.2022 and further for posting the matter for consideration on the point of assessment of provisional rent. It was pleaded in the said application that the eviction of the respondent was sought on the ground that the tenants were in arrears of rent w.e.f. 01.04.2020 and were enjoying the commercial property without payment of any rent. Admittedly, the respondents came into possession of the demised premises under the lease deed dated 18.08.2018. The execution of the aforesaid lease deed



has been admitted in the written statement and the rate of rent reflected therein has not been denied. Upon notice of the said application, a short reply was filed thereto, wherein, execution of the lease deed dated 18.08.2018 was again admitted while denying the relationship of landlord and tenant. The learned Rent Controller vide order dated 16.05.2023 (Annexure P-8), noticing the factual aspect and the rival submissions advanced by both the parties, came to the conclusion that denial of landlord and tenant relationship was an evasive denial, keeping in view that execution of lease deed between the parties has been admitted and at that stage of the proceedings, it cannot be said that there is no landlord and tenant relationship between the parties. Further, since eviction was sought on the ground of non-payment of rent, provisional assessment of rent has to be made. Thus, the application was allowed and the proceedings were posted for 18.05.2023 for arguments on provisional assessment of rent.

7. On the subsequent hearings, the matter was considered for assessment of provisional rent in terms of the law laid down by the Apex Court in ***Rakesh Wadhawan vs. Jagdamba Industrial Corporation, (2002) 5 SCC 440***. After considering the submissions advanced by counsel on both sides and perusal of the record, provisional rent was assessed vide order dated 30.05.2023 (Annexure P-9), which was to be tendered on 03.07.2023.

8. In the meanwhile, aggrieved by the aforesaid order, the



respondents preferred an appeal on 13.06.2023, which has been accepted vide judgment dated 31.08.2023 (Annexure P-11) passed by the Appellate Authority, Chandigarh and the order dated 30.05.2023 passed by the Rent Controller, making assessment of provisional rent, stands set aside. Aggrieved by the said judgment dated 31.08.2023, the petitioner-landlord has invoked jurisdiction of this Court by way of the instant revision petition.

9. At the very outset, it has been submitted on behalf of the petitioner that though the instant petition has been filed under Article 227 of the Constitution of India but the revisional jurisdiction sought to be exercised, falls within the ambit and scope of Section 15(5) of the Punjab Urban Rent Restriction Act, 1949 (as applicable to U.T. Chandigarh) (for short 'the Rent Act').

SUBMISSIONS ON BEHALF OF THE PETITIONER

10. Learned senior counsel for the petitioner-landlord has submitted that upon the respondents approaching the petitioner for taking the demised premises on rent, the petitioner agreed to let out the same on a monthly rent starting at Rs.75,000/- per month, on the terms and conditions mutually agreed between the parties and reduced into writing in the form of lease deed dated 18.08.2018 (Annexure P-1). The period of lease regarding the demised premises was fixed at 36 months, i.e. from 01.09.2018 to 31.08.2021. The execution of the lease deed between the parties stands admitted in the written statement, the recitals



whereof establish that the respondents were inducted as tenants by the petitioner and while letting out the demised premises, the possession was handed over by the petitioner. It is further submitted that upon the executing the lease deed, a jural relationship of landlord and tenant came into existence between the parties and the tenant-respondents have also paid the agreed rent upto 31.03.2020. The tenants, thus, cannot challenge the ownership/title of the landlord. Moreover, being owner of the demised premises is neither a pre-requisite nor a relevant factor, for the landlord to seek eviction of the tenant. It is further submitted that the dishonest stand taken by the tenant-respondents that there does not exist any relationship of landlord and tenant between the parties is belied by the admission made in para 2 of the written statement. It is further submitted that the respondents have not denied to have come into possession of the demised premises by virtue of lease deed dated 18.08.2018. It is also not denied that since the inception of the tenancy, upto 31.03.2020, rent was being paid to the petitioner. It is, thus, contended that by virtue of Section 116 of the Indian Evidence Act, 1872, the tenant-respondents are estopped by their own act and conduct to question the title of the landlord. It is further submitted that the respondents have not surrendered the possession and are continuing to remain in possession of the demised premises without payment of any rent/charges for use and occupation w.e.f. 01.04.2020, till date.

11. Shri Sunil Chadha, learned senior counsel for the petitioner,



has further argued that vide order dated 16.05.2023, after appreciating the legal position and the factual aspect of the matter, learned Rent Controller posted the proceedings for assessment of provisional rent, which order has not been challenged by the respondents. Hence, having failed to raise challenge to the said order, which is foundational to the consequential order of assessment of provisional rent, order dated 30.05.2023 ought not to have been interfered with. It has been further argued that the application seeking recalling of the order dated 25.04.2022, is in two parts; first being for recalling and other for listing the matter for assessment of provisional rent. It is submitted that the order dated 25.04.2022 did not decline to assess the provisional rent, however, proceeded to frame omnibus issues. It is apparent from perusal of the record that the aspect, whether provisional rent was to be assessed or not, was not even considered when the issues were struck vide order dated 25.04.2022. Even otherwise, no issue has been framed regarding denial of the relationship of landlord and tenant. It is next contended by learned senior counsel for the petitioner that the authorities under the Rent Act are *persona designata* and they can evolve their own procedure, and the provisions of the Code of Civil Procedure are not strictly applicable to the proceedings under the Rent Act. It is further submitted that in fact there has been no review of the order dated 25.04.2022, inasmuch as it relates to assessment of provisional rent, as in the said order there was no adjudication in that regard. It is lastly



submitted that the Appellate Authority could only set aside order dated 30.05.2023, against which the appeal was preferred and the finding returned in the order dated 16.05.2023 remains unchallenged, till date and as such, the same still stands.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

12. Shri Ashish Aggarwal, learned senior counsel for the respondents, has vehemently argued that the Rent Controller could not have recalled the order dated 25.04.2022 whereby the issues had been framed. Recall of the said order amounts to review, which in proceedings under the Rent Act, being a complete code in itself, is not permissible. It is further argued that in the appeal preferred against the order dated 30.05.2023, a specific ground has been taken that the Rent Controller has no power to recall its order as the same amounts to review of the earlier order and has thus, it erred in making assessment of the provisional rent. It is further contended that having raised the issue in the grounds of appeal, it is deemed that challenge has been made to the order dated 16.05.2023, which is permissible, in terms of Section 105 CPC. Responding to the existence of the relationship of landlord and tenant, learned counsel for the respondents has submitted that the respondents were induced by the petitioner in renting the demised premises. The petitioner is neither the owner nor the landlord of the premises in question nor is he holding any power of attorney, authority letter or any other letter to the effect that he had the legitimate sanction



to let out the demised premises and is authorized to receive rentals thereof. It is further submitted that the respondents have already reserved their right to recover the amount of rent that had been received by the petitioner from 01.09.2018 to 31.03.2020.

13. I have heard learned counsel for the parties at length and with their able assistance perused the record.

ANALYSIS AND CONSIDERATION:

14. Admittedly, a lease deed was executed between the parties and in the terms thereof, possession of the demised premises was handed over to the tenant/respondents. The term of the lease was for a period of three years, i.e. from 01.09.2018 to 31.08.2021 and the initial rent was Rs. 75,000/- per month. An increase in the rent is stipulated as per the terms and conditions contained in the lease deed, whereby the rent during the lease term was agreed to as under:

- (i) Rent from 01.09.2018 to 31.08.2019 – Rs. 75,000/- p.m.
- (ii) Rent from 01.09.2019 to 31.08.2020 – Rs. 81,000/- p.m.
- (iii) Rent from 01.09.2020 to 28.02.2021 – Rs. 87,480/- p.m.
- (iv) Rent from 01.03.2021 to 31.08.2021 – Rs. 1,05,000/- p.m.

The respondents have also been paying rent to the petitioner at the rate of Rs. 75,000/- per month for the period 01.09.2018 to 31.08.2019; at the rate of Rs. 81,000/- per month for the period 01.09.2019 to 31.03.2020, i.e., for a period of 19 months without any default, whereafter the alleged default in payment of rent is stated to have occurred. It would be apposite to first refer to the aforesaid lease deed dated 18.08.2018



(Annexure P-1), which is an admitted document and is being reproduced hereunder for reference:

“LEASE DEED

18 AUG 2018

This Rent Agreement is made at Chandigarh, on this day ___ of August 2018 between:

1. Sh. Sahil Singal s/o Sh. Sudhir Kumar Singal, resident of House No. 165, Sector 27-A, Chandigarh (hereinafter referred to as the Party No. 1, which terms shall where the context so admits includes his legal heirs, representatives, assignees, executors, successors in interests and administrators) of the one part of this deed:

AND

2. M/s Goyam Paper Mart through Prop. Sh. Kuldeep Sondhi S/o Sh. Kamal Kumar Sondhi, # 1208, (Top Floor) Sector 34-C, Chandigarh, (hereinafter referred to as Party No. 2, which terms shall where the context so admits includes his legal heirs, representatives, assignees, executors, successors and administrators) of the other part of this deed.

Whereas the Party No. 1 has purchased the industrial Shed No. 780, Industrial Area, Phase-I Chandigarh from its owner Smt. Ram Rati and Smt. Swati Mittal through Agreement to Sell and the possession is with Party No. 1 Whereas the Party No. 2 approached the Party No. 1 for taking appx. 2200 Sqft area on rent and the Party No. 1 has agreed to let out the premises area appx 2200 Sqft on the monthly rent of Rs. 75,000/- per month. Both the



parties have agreed on the following terms and conditions:-

Now this deed is further witnessst as under:

1. That the period of lease deed in respect of demised premises is fixed for 36 months (Three years) commencing from 01/09/2018 to 31/08/2021.

2. That the rent has been fixed of Rs. 75,000/- as agreed by both the parties and further the Party No. 2 undertakes to increase the rent as mentioned below for Two & Half year and balance for six months, the rent will be Rs. 1,05,000/- per month excluding electricity & water charges.

- a) Rent from 01.09.2018 to 31.08.2019 Rs. 75,000/-
- b) Rent from 01.09.2019 to 31.08.2020 Rs. 81,000/-
- c) Rent from 01.09.2020 to 28.02.2021 Rs. 87,480/-
- d) Rent from 01.03.2021 to 31.08.2021 Rs. 1,05,000/-

3. That the Party No.2 shall make the payment of rent only by cheque or by demand draft in the name of Party No. 1, in advance after deducting TDS as applicable for the Party No.2 will provide Form 16 to the Party No.1 and the rent should be paid in advance on or before 7th day of each English Calendar month, otherwise interest 18% per annum shall be charged for the delayed period

4. That the Party No.2 has deposited with the Party No.2, interest free refundable security of 2 month rent amounting to Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) through cheque No. 023742 Dt.



15/09/2018 & Cheque No. 023743 dated 25/09/2018 for Rs. 75,000/- each drawn on ICICI Bank, Sector 34-C Chandigarh, which shall be refundable to the Party No. 2 at the time of vacation of the above said premises after deducting dues of lease money, electricity, water charges or other damages etc. if any

5. That after the expiry of the lease period i.e. Three years, the parties can execute fresh lease deed with fresh terms and conditions if so desire at that time, failing which the increase referred above in para No. 2 on the prevailing rent of the previous year as referred above shall continue every year till the vacation of the premises by the Party No.2.

6. That the Party No.2 can run the business in the demise premises in the individual capacity only and he cannot add or change any partner/director in their business. In that case it shall amount to sub-letting.

7. That there is an electric and water meters for the demised premises, therefore the Party No.2 shall pay the electricity/water charges directly to the concerned department. The Party No.2 shall use 70 KW of sanctioned electricity load only and the Party No.2 shall be responsible for over consumption beyond sanctioned load and shall pay, if any penalty imposed by the concerned department for over consumption.

8. That the tenancy premises shall be used for manufacturing of Steel Furniture & Nickle Plating Plant purpose and not for any other purpose and will be used in accordance with the provisions of the Capital of Punjab (Development and Regulation) Act, 1952



and the rules made there-under which are applicable to the site and building of the tenancy premises and in case the Party No 2 violates any of the provisions the Ibid Act or the Rules then they shall be responsible for all the consequences thereof and any loss caused to the Party No.1 shall be reimbursed by the Party No.2. To run the business of manufacturing of Steel Furniture & Nickel Plating, the Party No.2 will have to take the permission/NOC from the Pollution Control Board and from any other Govt. Deptt./Semi-Govt. Deptt./Estate Office, Chandigarh at his own.

9. That the Party No. 2 shall bear and pay all Property Taxes/GST levied presently and any enhancements in such taxes in future shall also be borne by the Party No. 2, and any other such taxes if any levied in future shall also be paid in respect of the scheduled premises to the concerned Local Authorities/Body by the above said Party No.2. The Party No. 2 shall also be bound by the laws and rules made by the Central Govt./State Govt./Municipal Corpn./Estate Office, Chandigarh in future of any kind. The Party No.2 shall be liable to pay proportionate property tax as per the area occupied of the building. The Party No.2 shall also be liable to pay GST if the same is applicable and shall also be liable to pay all the taxes, if any, imposed by the government at any later stage

10. That the Party No.2 shall not sublet or underlet and part of the tenancy premises to any other person/s without written consent of the Party No.1, and the Party No.2 will not make any temporary or permanent structural alterations.



11. That the Party No.2 shall not make any addition and alteration in the building nor shall change the structure in any manner without the written consent of the Party No.1.

12 That the Party No. 1 can inspect the demised premises during the day hours on any day.

13. That the demised premises shall be maintained by the Party No.2 at his own costs. The white washing shall also be done by the tenant at his own expenses.

14. To avoid by and comply with at its own costs, all the Bye Laws Rules and conditions of the Chandigarh Govt. or any subsequent government etc. and all other orders, direction and notifications issued by the said authorities or by any other body of government or authority, in so far as they are required to be observed by the Party No.2.

15. That the Party No.1 shall not hold responsible for any damages that may be caused to the property of the Party No.1 due to obligation of the Chandigarh Administration or by accidental fire, riots, rains earthquake dampness, leakage, breakage or bursting of water pipes or by the accident. Giving way the portion to the flooring/wall or roof or for any other accidents whatsoever. The Party No.1 shall not be liable to the Party No.2 for any damage to the person or property to the Party No.2 provided always the Party No.2 shall be obliged to file such claims on behalf of in the name and at the cost of the lessee to ensure that adequate remedy is available to the Party No.2 from the Chandigarh Administration/defaulting party or parties.”



15. A perusal of the aforesaid lease deed reveals that the petitioner/landlord had candidly described his title and manner of acquiring possession of the demised premises in the opening paragraph of the lease deed. It is only after having accepted the terms of the lease agreement executed between the parties that the tenant/respondent entered into possession of the demised premises. It would be appropriate to refer to the definition of 'landlord' and 'tenant' under the Rent Act, which reads as thus:-

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context:—

* * * *

(c) "Landlord" means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit, of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorised, and, every person from time to time deriving title under a landlord;

* * * *

(i) "tenant" means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the



consent in writing of the landlord, or a person to whom the collection of rent or fees in a public market, cart-stand or slaughter-house or of rents for shops has been farmed out or leased by a municipal, town or notified area committee; and

16. A perusal of the aforesaid definition would show that it is not the requirement of law that a landlord should be the owner of the demised premises. The definition of landlord under the Rent Act is very wide and also covers a tenant who sublets any building or rented land in the manner authorized under the Rent Act. Meaning thereby, that even a tenant can be a landlord *qua* the sub-tenant. Likewise, the definition of tenant under the Rent Act includes a tenant continuing possession after the termination of the tenancy in his favour. In the case at hand, by one of the parties claiming to be and described as 'lessor' (landlord) and the other as 'lessee' (tenant), a *prima facie* jural relationship of landlord and tenant came into existence between the parties.

17. It is the conceded case that the tenant/respondents came into possession of the demised premises on the commencement of the lease term w.e.f. 01.09.2018 and they continued to pay the agreed rent to the petitioner/landlord upto 31.03.2020. Thereafter, when the petitioner/landlord instituted the present rent petition seeking eviction of the tenant/respondents for non payment of rent, the relationship of landlord and tenant was denied. The proposition that the landlord may or may not be owner of the tenanted premises is no longer *res integra*. Reference



may be made to the decision of the Apex Court in ***K.D. Dewan vs. Harbhajan Singh Parihar***, AIR 2002 SC 67, which has been consistently followed by coordinate benches of this Court. A few are reported as ***Raghubir Chand Mahajan vs. Indian Bank***, 2015 (2) Rent Control Reporter 270; ***Jagjit Singh Kohli and another vs. City Mission Hospital***, 2016 (1) Rent Control Reporter 250 and ***Meena Arora vs. Sudarshan Singh***, 2024 (1) Rent Control Reporter 552. Even otherwise, on the tenant/respondents having periodically tendered rent to the petitioner/landlord, in terms of the lease deed, there was attornment of tenancy. In ***Raghubir Chand Mahajan's case*** (supra), it was held as under:-

“IV. Manner of how principle of attornment of tenancy will operate.

6. While understanding the whole controversy, it must be remembered that the bank was not the original landlord of the tenant. The bank was claiming right to the property as transferee through a compromise decree. It is perhaps a moot point whether a compromise decree could transfer right in the immovable property without registration, but this is not a case for declaration of title and I, therefore, refrain from commenting about the validity of a claim by the bank that it obtained ownership of the property. A landlord's status does not require proof of ownership but merely a jural relationship that may exist between the two persons, one claiming as landlord and another as tenant. If this is a case of assignment, even if invalid, if the tenant attorns the tenancy to the assignee that will create the relationship. * * * *”



18. A coordinate Bench in a recent decision rendered on 13.02.2024 passed in CR-327-2024 titled as ***Lucky Malik @ Bangali vs. Akali Times Trust***, held that simple denial of landlord-tenant relationship is not sufficient to prevent assessment of provisional rent. The relevant portion of the said decision reads as thus:

“10. When it has been specifically alleged by the respondent trust that the revision petitioner is tenant in the demised premises and when it has been denied by the revision petitioner, then it was for the revision petitioner to disclose that how he had come into possession over the demised premises. When the revision petitioner has failed to disclose the same then simple denial of relationship is not sufficient to stop the Court from assessing the provisional rent, when as per the scheme of Rent Act, Court is bound to assess the provisional rent. Under the garb of denial of tenancy the tenant cannot be allowed to enjoy the property. In this context, reliance can be placed upon the judgment of Hon'ble Supreme Court in ***Asha Rani Gupta Vs. Sri Vineet Kumar, 2022(3) R.C.R. (Civil) 540.***”

19. Another coordinate Bench had the occasion to examine the aforesaid aspect in the case of misuse by the tenant in ***Harvinder Singh vs. Harvinder Kaur***, reported in **2021(1) Rent Control Reporter 362**. It was held that the tenant cannot be permitted to blow hot and cold at the same time and cannot continue to occupy the tenanted premises without payment of rent by denying the relationship of landlord-tenant. In the said case, the rent notes already stood proved in civil proceedings and yet the tenant denied the relationship of landlord-tenant, ostensibly only to avoid payment of rent. The relevant portion of the said judgment



is reproduced hereunder:

“13. Similar issue also arose before the Division Bench of this Court in ***Rajan @ Raj Kumar Vs. Rakesh Kumar*** 2010 (2) PLR 201, wherein reference had been made on account of two different views taken by the Single Benches of this Court, keeping in view the observations of Rakesh Wadhawan's case (supra) wherein it was noticed that on account of unscrupulous landlords making highly inflated claim of rent, provision for interim order of assessment of rent had to be made to solve the problem. It was noticed that the matter was further taken up by the Three Judges Bench of the Apex Court in ***Vinod Kumar Vs. Prem Lata*** 2003 (2) RCR (Rent) 329, wherein the earlier view in Rakesh Wadhawan's case (supra) was reiterated. Resultantly, it was held that the view taken in ***Madan Lal & another Vs. Baldev Raj*** 2004 (2) PLR 834 was the correct view that if the tenant fails to make the payment of rent, the order of ejectment has to follow and nothing more is required to be done. Thus, it was held in the facts of the said case that the plea taken by the tenant was that the rent deed had been secured by fraud under police pressure @ Rs.2800/- per month. It was held that the plea of the tenant did not have any merit as no contemporaneous complaint to that effect had been made and the argument of the counsel for the tenant was rejected that the provisional assessment had wrongly been made and thus, on non-deposit of the same, only eviction had to follow.

14. In the present case also, the situation is similar. The rent notes have already been proved in the Civil proceedings not only by examining the witness of the rent note but also the handwriting expert. The conduct of the tenant has been noticed and that he has admitted that the property was owned by the present respondent but he had chosen to litigate against the son without impleading her also in order to create



multiplicity of litigation. Thus, the effort of the tenant is only to avoid the payment of rent which had rightly been assessed by the Rent Controller wayback on 13.03.2015 for both the premises in question. In Vinod Kumar (supra) while reiterating the judgment in Rakesh Wadhawan (supra), it was also noticed by the Apex Court that the balance has to be struck between the tenant and the landlord but at the same time, the landlord is not to be deprived of his legitimate expectations to be paid regularly for the use and occupation of the premises. Thus, in the opinion of this Court, it is the tenant who has deliberately taken a wrong plea and had entailed the consequential order of eviction. The judgment of M/s Chopra Jewellers (supra) would not come to the help of the petitioner since in the said case, the relationship of landlord-tenant had been denied and the tenancy was of a stranger, as such and in such circumstances, the order of assessment of provisional rent had been set aside.

15. In the present case, as noticed, the tenant has been mischievously setting up a wrong plea of tenancy with the son of the landlady and thus, trying to avoid the payment of rent and thus, can be called a unscrupulous tenant in the words of the Apex Court as the landlord has been deprived of the legitimate expectations of payment of rent. The relevant part of the judgment in Vinod Kumar (supra) reads as under:

“8. Rajinder Kumar Joshi's case is under the Punjab Act. There also the Court had noticed a lacuna in the legislative drafting raising a contention worthy of serious consideration and the hardship to which a tenant may be put where the landlord makes a demand on the tenant for rent which is not due from him, as was found to have been done in that case. The Court was faced with a dilemma in adopting either interpretation. If the provisions of Section 13(2)(i) of the Act were to be so



interpreted as to require the tenant to tender the rent as demanded (though the demand is exaggerated by reference to the rate of rent or the period of default) or to face the consequences of eviction from the rented premises, the provision would result in causing hardship to the tenant. On the other hand, to hold the requirement of the proviso to Section 13(2)(i) to tender the rent as meaning the tender of the rent as the tenant thinks he is in arrears of, would render nugatory the requirements of the said proviso. The Court felt the need for striking a balance between the two situations so as not to render the protection given by the Act to the tenant illusory, and at the same time not to deprive the landlord of his minimum legitimate expectation to be paid regularly the rent for the use and occupation of his premises. The solution which the Court provided was in the background of the facts of that case, and is hence a limited one. The Court said that if the rate of rent is not fixed or becomes the subject matter of dispute, the tenant may have resort to Section 4 of the Act and apply to the Controller to fix the fair rent failing which he must deposit the rent at the rate as demanded by the landlord. If there is any dispute as to the period of default, the tenant may deposit the rent which he thinks to be in arrears, but he must take the risk for doing so. If it is proved ultimately that the rent paid or tendered by him was less than what was due, he must face eviction. Such an interpretation gives an uncertainty to the litigation and does not take care of several situations which may emerge in a litigation other than the one as arose in that case before the Court.”

The position in the present case is no better. The tenant/respondents have



admitted execution of the lease deed dated 18.08.2018 (Annexure P-1) and have not denied that they came into possession of the demised premises through the petitioner landlord. Payment of rent since the inception of the tenancy upto the 19th month is a conceded position between the parties. It is apparent that the denial of landlord-tenant relationship is not bona fide and is with the sinister design to remain in possession of the demised premises without payment of any rent.

20. On an application moved by the petitioner/landlord, the Rent Controller having realised that the assessment of provisional rent had escaped its attention earlier, in the peculiar facts and circumstances of the present case, was duty bound to pass an appropriate order determining the same. Thus, the order dated 16.05.2023 came to be passed, the operative part of which reads as thus:

“3 I have heard the arguments advanced by both the counsels and perused the case file carefully. Perusal of the petition reveals that the petitioner has relied upon the lease deed Annexure P1 to contend that the respondent is in arrears of rent since 01.4.2020 at the rate of Rs.81,000/- per month. A perusal of the written statement filed by respondent reveals that in para No.1 of preliminary objections the respondent specifically contended that the petitioner is neither the landlord nor owner of the premises as he has never been able to prove the transfer of ownership in his favour. However, perusal of para No.2 of the reply on merits reveals that execution of lease deed between the



parties has been admitted by the respondent but the relationship between the parties has been denied. However, the respondent has not specified that who is the landlord and at the same time the respondent reserved the right to reclaim the entire arrears of rent which he has paid to the petitioner. In such circumstance, the denial of landlord tenant relationship by the respondent is an evasive denial and at this stage it cannot be said that there is no landlord and relationship between the parties. Therefore, as per law since eviction has been sought on the ground of non-payment of rent, provisional assessment of rent has to be made. Accordingly, the application is allowed. Now to come upon 18.5.2023 for arguments on provisional assessment of rent.”

It is not disputed that at no point of time prior thereto, the matter of assessment of provisional rent was ever dealt with by the learned Rent Controller and nothing to the contrary, has been pointed out from the record.

21. Now coming to the issue upon which lengthy arguments have been advanced on both sides.

22. Learned senior counsel for the petitioner has laid much stress that the order dated 16.05.2023 has not been challenged by the tenant/respondents. On the contrary, learned counsel for the tenant/respondents has emphatically argued that a specific ground has been raised in the grounds of appeal (Annexure P-10). To appreciate the



above controversy, reference has to be made to the head note, prayer clause of the memorandum of appeal impugning order dated 30.05.2023 as well as to para 5 thereof, which are extracted hereunder:-

"Appeal 15 (1 (b) of East Punjab Urban Rent Restriction Act, against the order dated 30.05.2023 passed by the court of Sh. Chetesh Gupta, Rent Controller Chandigarh, whereby UT., the provisional rent has been wrongly assessed.

Claim in appeal For setting aside the impugned order by accepting the present appeal.

It is, therefore respectfully prayed that the present appeal may kindly be accepted and the impugned order dated 30.05.2023, passed by the Court of Sh. Chetesh Gupta Rent Controller, Chandigarh may kindly be set-aside."

Para 5:

"5 That the Ld. Trial Court has no power to recall its order dated 25.04.2022 as it amounts to review of the order and the Ld. Rent Controller erred in assessing the rent and reviewing his own order dated 25.04.2022 which is against the facts and law."

23. A plain reading of the memorandum of appeal and the relevant portion thereof, extracted hereinabove, would show that the appeal has been preferred against order dated 30.05.2023 only and not order dated 16.05.2023 as well. Learned counsel for the tenant/respondents has vehemently argued that the order dated 16.05.2023 could have been challenged in appeal along with the order



dated 30.05.2023, which has been challenged, as it would be evident from para 5 of the memorandum of appeal. This Court would not go into the said aspect for the following reason. It is trite that appeal is a creature of a statute and is not an inherent jurisdiction. Under the Rent Act, an appeal lies against an order passed by the Rent Controller to the Appellate Authority, established under Section 15 (1) (a) of the Rent Act and the appeal has to be preferred under Section 15 (1) (b) within a period of 15 days from the date of the impugned order. The revisional jurisdiction rests with the High Court under Section 15 (5) of Act *ibid*. Section 15 of the Rent Act is extracted hereunder for ready reference:-

“15. Vesting of appellate authority on officers by State Government.—

- (1)(a) The State Government may, by a general or special order, by notification confer on such officers and authorities as they think fit, the powers of appellate authorities for the purposes of this Act, in such area in such classes of cases as may be specified in the order.
 - (b) Any person aggrieved by an order passed by the Controller may, within fifteen days from the date of such order or such longer period as the appellate authority may allow for reasons to be recorded in writing, prefer an appeal in writing to the appellate authority having jurisdiction. In computing the period of fifteen days the time taken to obtain a certified copy of the order appealed against shall be excluded.
- (2) On such appeal being preferred, the appellate



authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The appellate authority shall decide the appeal after sending for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either personally or through the Controller.

(4) The decision of the appellate authority and subject only to such decision, an order of the controller shall be final and shall not be liable to be called in question in any Court of Law except as provided in sub-Section(5) of this Section.

(5) The High Court may, at any time on the application of any aggrieved party or on its own motion, call for and examine the records relating to any order passed or proceeding taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit.”

24. A perusal of the aforesaid provisions would show that the Appellate Authority can exercise its appellate jurisdiction only in such area, in such classes of cases, as may be specified by a general or special order to be notified by the State Government. A Division Bench of this Court in *Tirlok Singh Anand vs. M/s Prem Chand sons and others*, 2012(2) Rent Control Reporter 472, held that the orders passed by the Rent Controller under Sections 4, 10, 12 and 13 alone are appealable. It has also been held therein that it was not the intention of the legislature of a State Government to make every order of the Rent Controller as appealable.



25. Learned counsel for the parties do not dispute that it is well settled that the order directing payment of provisional rent is a foundational order to the judgment that may be passed in the Section 13 petition and as such, the same is also appealable. Reference may be made to the authoritative decision rendered by the Apex Court in ***Harjit Singh Uppal vs. Anup Bansal***, (2011) 11 SCC 672. However, the said reasoning cannot be extended to the order dated 16.05.2023 whereby the learned Rent Controller had granted the prayer for listing the matter for consideration on assessment of provisional rent. In view of the reference answered by the Hon'ble Division Bench of this Court in ***Tirlok Singh Anand's case*** (supra), the order dated 16.05.2023 could be challenged only by way of a revision before this Court. Hence, whether the said order was appealed against before the Appellate Authority or not would pale into insignificance. Though the aforesaid application has a two part prayer, however, the learned Rent Controller has very cautiously worded his order dated 16.05.2023, so as not to specifically state that the order dated 25.04.2022 whereby the issues were framed, stood recalled. It is not contested that the authorities under the Rent Act cannot review their own order. However, in the peculiar facts and circumstances of the present case, the learned Rent Controller not having assessed the provisional rent before striking the issues, was not estopped from thereafter making an order regarding assessment of provisional rent. Thus, there was indeed no requirement of recalling the order dated



25.04.2022 and the application ought to have been allowed only in part. In exercise of revisional jurisdiction conferred under Section 15 (5) of the Rent Act, the said error apparent on the record can be set right. Accordingly, the order dated 25.04.2022 is restored to the extent that the under extracted issues can only be recast under the relevant provisions of the procedural law.

1. Whether the respondent is liable to be evicted from the demised premises? OPP
2. Whether the petition filed by petitioner is not maintainable in the present form ? OPR
3. Whether the no cause of action ever accrued to the petitioner to file the present petition against the respondents? OPR.
4. Relief.

Moreover, there being no challenge to the order dated 16.05.2023 and the same having attained finality, the learned Appellate Authority has erred in allowing the appeal against the order dated 30.05.2023 whereby assessment of provisional rent was made. Hence, the impugned order dated 30.05.2023 (Annexure P-11) cannot be sustained in law.

26. The next issue for consideration is that wherever the tenant denies the tenancy or relationship of landlord and tenant, whether provisional rent has to be assessed or not. Leaned counsel for the respondent has relied upon the judgments in ***Hukma Devi vs. Bhagwan Dass***, 2003(1) Rent Control Reporter 533, ***Ramanand Shastri vs. Gian Singh***, 2003(1) Rent Control Reporter 735, ***Yashpal Singla vs.***



***Vijay Kumar*, 2004(1) Rent Control Reporter 718, *Jagdish Singh vs. Mohan Lal*, 2004(2) Rent Control Reporter 114, *Narinder Singh vs. Sarabjit Singh*, 2006(2) Rent Control Reporter 226 and *Mrs. Preeti vs. Manmohan Singh and another*, 2008(1) Rent Control Reporter 307.**

A perusal of the aforesaid precedents shows that in none of the said cases, the tenant had been inducted by the same person (landlord), whose status was being disputed. In the instant case, the tenant/respondents have not only admitted the lease deed (Annexure P-1) but are also not in a position to dispute that they had been regularly tendering rent to the petitioner/landlord for 19 months since inception of tenancy, i.e. from 01.09.2018 to 31.03.2020. Not only that, the respondents had also issued a cheque dated 07.04.2020, for an amount of Rs.72,900/- towards rent for the month of April 2020, which upon presentation was dishonoured by the Bank owing to insufficient funds. A criminal complaint under Section 138 of the Negotiable Instruments Act, 1881, instituted by the petitioner/landlord is still pending. Further, the tenant/respondents had also issued cheques to discharge their liability to pay rent for the months of May, June and July, 2020 and on presentation to the Bank for payment, they were also dishonoured.

27. Learned counsel for the respondent has emphatically argued that in the light of the law laid down in ***Sheela v. Firm Prahlad Rai Prem Prakash***, reported as **2002 (3) SCC 375**, denial of title of the landlord could be raised as a defence by the tenant. A perusal of the said judgment reveals



that their Lordships of the Hon'ble Supreme Court were examining the provisions of M.P. Accommodation Control Act, 1961 (for short, 'Act of 1961'), which are not *pari materia* to those under the Rent Act. In the former statute, section 12(1)(f) contemplates a claim for eviction being maintained by an owner-landlord and not a landlord merely. The relevant discussion from the said judgment is extracted hereunder for reference:

“10. While seeking an ejectment on the ground of bona fide requirement under clause (f) abovesaid the landlord is required to allege and prove not only that he is a “landlord” but also that he is the “owner” of the premises. The definitions of “landlord” and “tenant” as given in clauses (b) and (i) of Section 2 of the Act make it clear that under the Act the concept of landlordship is different from that of ownership. A person may be a “landlord” though not an “owner” of the premises. The factor determinative of landlordship is the factum of his receiving or his entitlement to receive the rent of any accommodation. Such receiving or right to receive the rent may be on the own account of the landlord or on account of or for the benefit of any other person. A trustee, a guardian and a receiver are also included in the definition of landlord. Such landlord would be entitled to seek an eviction of the tenant on one or more of such grounds falling within the ambit of Section 12(1) of the Act which do not require the landlord to be an owner also so as to be entitled to successfully maintain a claim for eviction. Clause (f) contemplates a claim for eviction being maintained by an owner-landlord and not a landlord merely. Though of course, we may hasten to add, that the concept of



ownership in a landlord-tenant litigation governed by rent control law has to be distinguished from the one in a title suit. Ownership is a relative term, the import whereof depends on the context in which it is used. In rent control legislation, the landlord can be said to be the owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else, to evict the tenant and then to retain, control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in a landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit. In *M.M. Quasim v. Manohar Lal Sharma* [(1981) 3 SCC 36] it was held that an “owner-landlord” who can seek eviction on the ground of his personal requirement is one who has a right against the whole world to occupy the building in his own right and exclude anyone holding a title lesser than his own. In *Dilbagrai Punjabi v. Sharad Chandra* [1988 Supp SCC 710] this Court held that it was essential to sustain a claim of eviction under Section 12(1)(f) of the Act to establish that the plaintiff was the owner of the premises. However, the Court upheld the ownership of the landlord having been proved on the basis of an admission of the ownership of the plaintiff made by the defendant in reply to the notice given before the institution of the suit and the recital of the name of the plaintiff as the owner of the property contained in the receipts issued by the landlord to the tenant over a period of time. Thus, the burden of proving ownership in a suit between landlord and tenant where the landlord-tenant relationship is either admitted or proved is not so heavy as in a title suit and lesser quantum of proof may suffice than what would be needed in a suit based on title against a person setting up a contending title while disputing the title



of the plaintiff. Nevertheless, pleading and proving ownership, in the sense as it carries in rent control law, is one of the ingredients of the ground under Section 12(1)(f) of the Act.”

The aforesaid judgment was also considered and distinguished by a coordinate Bench of this Court in ***Raghubir Chand Mahajan’s case*** (supra), wherein it was held that in rent control proceedings, denial of title does not automatically determine tenancy, if there is no such provision in the rent legislation, The relevant portion of the said judgment reads as thus:-

“VI. In rent control proceedings, denial of title will not automatically forfeit tenancy, if there is no such provision in the State legislation; determination of bonafides of defence is still relevant.

8. The learned counsel appearing on behalf of the respondent has relied on decisions which I have already been referred to above, where our courts have held that it is unnecessary to decide on the rent payable and give an opportunity to tenant, if the tenant was denying the title of the landlord. In this case, if it is merely a case of tenant who having taken the property from the landlord was denying the tenancy, it could be stated that such a denial was not bonafide and it would attract the principle of forfeiture as enunciated under Section 111 of the Act and would be estopped by taking such contention by virtue of Section 117 of the Evidence Act. Neither of these provisions would apply in a situation where the denial could be stated to be even bonafide. The Supreme Court was actually holding that forfeiture will not entail in



situation where Rent Control Act would intervene. The Supreme court in *Sheela v. Firm Prahlad Rai Prem Parkash* 2002 (3) SCC 375, making a reference to its own earlier judgment rendered in *Raja Mohammad Amir Ahmad Khan v. Municipal Board of Sitapur* was holding "the principle of determination of tenancy by forfeiture consequent upon denial of lessor's title may not be applicable where rent control legislation intervenes and such legislation while extending protection to tenants from eviction, does not recognise such denial or disclaimer as a ground for termination of tenancy and eviction of tenant". The Supreme Court judgment which this court was relying on was actually dealing with the case of Madhya Pradesh Accommodation Control Act, 1961. There are several State Rent Control legislation which recognise denial of title as a ground of eviction. The Punjab Rent Restriction Act does not make it a ground. That in my view will make all the difference. The court which considers whether a direction of deposit should be made would still be required to find whether the denial is bonafide or not. The four decisions of this court, referred to above, ought to contain a qualification which it did not have an occasion to consider that a Rent Controller would still be required to give an opportunity on the basis of the decision in *Rakesh Wadhawan's case* (supra) in a situation where the denial of title is bonafide.

9. The four decisions were confronting the situation where tenant was found to be unjustified in denying the title. In some of the cases, the tenant was setting up title in themselves. In such situations, it is obvious that there would be no purpose served by determining a rent and directing the amount to be paid. A person who sets up title himself, says that he is not liable to pay any rent, the issue



of determination of rent simply does not arise in such a situation. On the contrary, if a tenant says that a particular rent is payable but it is not the amount which the landlord claims and that too rent is paid to a person other than the person who is applying the court, the Rent Controller has two duties: One, he is required to find that there existed jural relationship of landlord and tenant. If he finds that no such relationship exist, the petition must be dismissed summarily. If he finds that such relationship exists he shall proceed to follow the second duty, namely, the quantum of rent payable. If the quantum is determined then in terms of decision in ***Rakesh Wadhawan's case*** (supra), he is bound to calculate the amount and direct the amounts to be paid on the next date of hearing. The Court cannot characterise the defence questioning the quantum as malafide and direct eviction. The issue of malafides is irrelevant, while the court determines the quantum of rent. The conduct will be seen only if there is a failure to comply with the directions, even after letting the order become final.”

28. Learned counsel for the petitioner before resting his case submitted that as the tenant/respondents have not deposited the provisional rent, no further opportunity of tendering the same deserves to be allowed to them. He, thus, prayed that the learned Rent Controller be directed to pass an order of eviction in favour of the landlord, for the tenant/respondents have defaulted in tendering the rent due. On the other hand, learned counsel for the respondents has contended that upon the aforesaid order being restored, the respondents would be deprived of a valuable right to avoid their eviction from the demised premises, by



tendering the rent assessed vide order dated 30.05.2023. As such, an opportunity deserves to be granted to them to tender the rent as assessed.

29. I have given my thoughtful consideration to the aforesaid. It is notable that the learned Rent Controller had granted time for payment of the provisional rent assessed upto 03.07.2023. Before the expiry of the said period, the tenant/respondents had preferred an appeal before the learned Appellate Authority on 13.06.2023. It is brought to the notice of this Court that during the pendency of the said appeal as the stipulated date of 03.07.2023 was nearing, a request was made before the learned Appellate Authority to dispose of the main rent appeal itself instead of consideration on the application for interim stay. Accordingly, vide order dated 01.07.2023, operation of the order dated 30.05.2023 was stayed till the next date of hearing, which interim stay continued till the final disposal of the appeal. In the aforesaid given circumstances, the tenant/respondents deserve to be afforded an opportunity to tender the rent due. It is only thereafter that their conduct could be seen whether they make the deposit or default, whereafter the necessary orders for eviction are liable to be passed.

30. On a conspectus of the aforesaid, the present revision petition is partly allowed. The order dated 31.08.2023 passed by the learned Appellate Authority, is set aside, thereby restoring the order dated 30.05.2023. The Rent Controller would proceed to notify a date for tendering the upto date rent due at the rate of provisional rent



assessed in terms of the aforesaid order. It is, however, made clear that the order dated 16.05.2023, in exercise of revisional jurisdiction, is modified to the extent that the order dated 25.04.2022 whereby the issues were cast stands restored. However, it is made clear that further proceedings on merits would commence only after the tenant/respondents are afforded an opportunity to tender the upto date provisional rent due, as aforesaid.

- 31. Revision petition is disposed of accordingly.
- 32. No order as to costs.

May 31, 2024
sumit.k

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No
Whether Reportable : Yes / No