

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.1224 of 2015
Date of decision: 20.02.2015

Raman Kumar Nanda

....Petitioner

Versus

Kanwal Nain

...Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Divanshu Jain, Advocate for the petitioner.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition filed by the petitioner-tenant is to the order dated 27.1.2015 (Annexure P/7) whereby the application for permission to deposit ₹ 26,656/- as per order dated 3.2.2012(Annexure P/3) was declined and prayer for extension of time for the compliance of order under Section 148 CPC was rejected by the Executing Court, Pathankot. Challenge is also laid to the order passed of even date (Annexure P/8) whereby warrants of possession have been issued for 7.3.2015 by holding that the Rent Controller, Pathankot has no jurisdiction to extend the time once the ejectment order was passed especially since no appeal or revision has been filed against the main order.

It is not disputed that conditional ejectment order was passed against the petitioner-tenant on 3.3.2012 by the Rent Controller, Pathankot. The petitioner-tenant was held to be in arrears of rent of ₹ 26,656/- for the period 1.4.1996 to 21.2.2004 which was to be paid within two months from the said date. The operative part of the order reads as under:-

“19. From the above said detailed discussion on various issues, particularly on issue no.1, the application for ejectment of the respondent is allowed with costs on ground of non-payment of rent. The respondent will vacate the demised premises within a period of two months from today, failing which the applicant has right to get this order executed by following due procedure of law. It is held

that the respondent is in arrears of rent of Rs. 26,656/- and the respondent shall pay this amount within two months from today and if the respondent pays this amount within two months from today, then there will be no eviction order on ground of non payment of rent. Memo of costs be prepared and file complete in all respect be consigned to the Record Room.”

The said order was not complied with and an application dated 19.4.2012 (Annexure P/4) was filed on the ground that time may be given to deposit the amount on account of illness of the petitioner as he was suffering from Typhoid. The medical certificate was also appended along with the said application in support. The same was contested on the ground by filing reply on the ground that the Court has become functuous officio and valuable right had accrued to the landlord. The factum of the medical treatment was also denied. After a period of more than almost 2-1/2 years, an application was filed before the Executing Court for permission to deposit the said amount on 5.9.2014 which was allowed and the rent was deposited on 5.9.2014 vide challan Annexure P/5 (colly). The Addl. Civil Judge (Senior Division), Pathankot keeping in view the judgments of this Court in **Sudhir Kumar Vs. Kuldip Singh Malhotra 2011(3) RCR (Civil) 758** and **Prem Singh Vs. Joginder Kaur 2012 (2) RCR (Civil) 110** dismissed the application on the ground that the Rent Controller has no jurisdiction to extend the time once the ejectment order had been passed. As noticed, the warrants of possession were also issued in the execution petition filed by the respondent-landlord on the same reasoning.

Counsel for the petitioner has argued that the Court has power to extend the time and the judgments pertained to the non payment of the provisional rent assessed and thus have wrongly been applied by the Executing Court. He further submits that the rent was deposited on 5.9.2014, therefore, bonafides of the petitioner-tenant cannot be disputed.

After hearing counsel for the petitioner, this Court is of the opinion that though the judgments which have been applied are pertaining to the issue of

non payment of provisional rent assessed but the principles in **Rakesh Wadhawan and others Vs. Jagdamba Industrial Corporation and others** (2002) 5 Supreme Court Cases 440 have been laid down wherein it has been clearly held that after final adjudication if there is an outstanding, the tenant can only save his eviction by compliance. The relevant principles read as under:-

“5. If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If, on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount, failing which alone he shall be liable to be evicted. Compliance shall save him from eviction.

6. While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings.”

In the present case, as noticed the conditional order was passed and compliance was to be made within two months. Even in case the tenant was ill or suffering from alleged ailment, the rent was still not deposited till 5.9.2014 whereas the last date to deposit the same was 2.4.2012 and extension application was filed on 19.4.2012. Therefore, it is apparent that the bonafide of the tenant was missing from day one. In order to save ejectment, he was required to show that he was willing to pay the amount which was outstanding.

Another aspect which has to be taken into consideration is the principle in Clause 6 laid down in **Rakesh Wadhawan's** case (supra) whereby the subsequent rent also has to be tendered with substantial regularity. The tenant has thus continued for years after ejectment order and it could not be

demonstrated that he had regularly paid the rent during the ejectment proceedings or even thereafter even though it a paltry amount of ₹ 500/-per month. In such circumstances, the principle of justice and equity do not tilt in favour of the tenant. The Court below has thus justified in declining the application for extension. Resultantly, there is no scope of interference with the well reasoned orders passed by the Court below.

Accordingly, the present revision petition is dismissed.

20.02.2015
Pka

(G.S.SANDHAWALIA)
JUDGE