

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 3208 of 2009 (O&M)

Date of decision: 29.04.2015

M/s Guru Granth Sahib Sewa Mission (Regd.) and another
... Petitioners

versus

Dalip Kaur Brar
.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sharan Sethi, Advocate for the petitioners.
Mr. J.S. Mehndiratta, Advocate for the respondent.

K.Kannan, J.

The petition for eviction was filed on the grounds of non-payment of rent and the ground that the tenant had ceased to occupy the premises. That was the dispute regarding the quantum of rent payable and therefore, an occasion to determine the provisional rent payable. The tenant was reported to have defaulted in payment of rent from 01.11.2005 as per the averments in the petition by the landlord. While determining the provisional rent, the Rent Controller directed that the rent should be paid @ ₹ 19,000/- from 31.05.2005 to 01.05.2006 and the rent for the subsequent period, was to be @ ₹ 28,000/-. The Court had determined the amount to be paid before 14.11.2005. The tenant did not pay and the order of eviction was passed on 15.12.2007. It was against this order of eviction on 15.12.2007, that the appeal had been filed and there was also a challenge to the determination inter alia that the landlord had complained of default only from 01.11.2005 and the Rent Controller was therefore, in error in directing the payment to be done from 01.06.2005. It was nobody's case that default existed from 01.06.2005. The Appellate Authority directed the whole of the amount to be paid from 01.06.2005 itself and also observed that he could pay

the whole amount from 01.06.2005 itself and if the amount was found in excess, it could be adjusted against the future arrears. The tenant sought for enlargement of time for paying the said sum and when it was refused the matter was brought in CR No. 1948 of 2008, the Court declined to modify the order passed and dismissed the petition on 31.03.2008. When the amount was not deposited within the time and the prayer for extension was also declined, the stay at the Appellate Authority, which was sought for, was declined. That interim order was the subject of challenge in CR No.3922 of 2008. That was also dismissed on 14.01.2009. Against this order, the SLP was taken to Hon'ble the Supreme Court and Supreme Court had directed the entire arrears of rent to be paid within two months from the date when it passed the order on 27.02.2009. The SLP was taken up subsequently, but, when there was no representation, petition was dismissed. It was later on restored, but, it was summarily dismissed without any discussion.

The Appellate authority had disposed of the appeal subsequently on 25.02.2009, but the Supreme Court was not in any way informed about the disposal, but the Supreme Court was seized of the matter only against the interim order passed in the appeal.

The Appellate Court judgment has assailed before me by the tenant to point out that in terms of the decision of Supreme Court in Harjit Singh Uppal Vs. Anup Bansal, (2011) 11 SCC 672, the tenant was competent to prefer an appeal against the order of eviction and challenge even the interim order of fixation of provisional rent. In such an appeal if it were to be contended that the direction or for determination of provisional rent was not correctly made, the Hon'ble Supreme Court was holding that merely because the interim order determining the provisional rent was not challenged, the tenant cannot be defeated in his right to contend correctness in the regular appeal filed against the order of eviction which was consequential to the non-payment. The contention, therefore, is that when the Appellate Court

was required to examine the correctness of order of eviction, that was passed on 15.12.2007, it was about to examine whether the direction given for payment of rent from 01.06.2005 was correct when the landlord's own plea was that the tenant had defaulted from 01.11.2005. The counsel for the landlord is prepared to admit that the Rent Controller had made a mistake in making a reference that the Rent determined by it namely ₹ 19,000/- to be payable from 01.06.2005 and that it should have been only from 01.11.2005. However, he would submit that the Appellate Court as well as this Court have held that the payment could be made from 01.06.2005 itself and the excess of the payment could be adjusted in future and this observation must be taken as governing the rights of the parties.

I would reject this argument made by the respondent for it must be remembered that a direction for payment from 01.06.2005 itself was not really a final adjudication in the appeal itself, but it was a direction for consideration of grant of stay of the order passed by the Rent Controller on 15.12.2007 directing the ejectment. The direction passed for disposal of the interlocutory application must be taken as final only for the purpose of disposal of the interlocutory application at that stage and cannot govern rights of the parties for determination of rights in appeal on its merits. The tenant no doubt lost out his right to plead for exemption from payment from 01.06.2005 to claim the benefit of stay at the Appellate Court and he failed before this Court to obtain enlargement of time which the Appellate Court denied. The Supreme Court allowed the deposit but ultimately dismissed the SLP but by that time the Supreme Court was deciding the case, the Appellate court had already disposed of the appeal reiterating its order that the interim direction of payment of the rent from 01.06.2005 had not been complied within time. There precisely was the mistake which the Appellate Authority had done. While the Appellate Authority could have declined stay for not paying the rent from 01.06.2005 itself, and had also a discretion to deny him the exemption from 01.06.2005 for

the limited purpose of considering the stay of the order of the Rent Controller, it would not have reiterated the reassuming for disposing of the appeal. I have already observed that the landlord's counsel does not deny before me that the direction to pay rent from 01.06.2005 was a mistake. The determination of provisional rent could not be merely with reference to the rate of rent but also the quantum of rent. The quantum of rent by its reference to a period when there was no default, was therefore, in error and the correctness of such finding was surely susceptible for a challenge to Appellate Forum. The Appellate Authority ought to have seen that if it was admitted that the tenant was in default only from 01.11.2005, the payment of arrears for 30 months was mistake, it was liable to be set aside. That had the consequential relevance for also setting aside the order of ejectment that was passed for alleged non-compliance of the order which was erroneous. If the first order of determination of provisional rent was erroneous and liable to be set aside, the consequential order of ejectment for non-compliance was also bound to be set aside.

The ejectment ordered on 15.11.2005 is set aside and the matter is remitted to the Court below for consideration of the other ground of petition for eviction that still survives for consideration.

Parties to appear before the Court below on 29.05.2015.

29.04.2015
kv

(K.KANNAN)
JUDGE