

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

Civil Revision No.264 of 2014 (O&M)

Date of decision: 07.08.2015

Jain Dharmarth Netra Chikitsshalya

.... Petitioner

versus

Lakhmi Chand

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Munish Kumar Garg, Advocate,
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The tenant, who took a plea that the property tax was not a component of rent, failed to convince the Rent Controller and in appeal, he was prepared to make a concession and step down to say that he will pay the tax also. The court acted on his concession, affirmed the decision of the Rent Controller and granted time to pay the rent, namely, the component of house tax as rent. The landlord is in revision before this court.

2. The contention is that if the tenant took a plea before the trial court that he was not liable to pay the tax, he was literally denying a portion of rent as not payable. If he was accepting such a liability in an appellate court, it was merely to affirm to what the

Rent Controller had already done and if the eviction was a consequence of non-payment of a portion of rent, his own admission which the appellate court must have been only found as an additional justification for recording the statement and dismissing his appeal. According to the counsel, the appeal could not have been allowed.

3. I decline to make an understanding of the order in the manner canvassed by the counsel. A person that prefers an appeal against a finding has his statutory right to challenge the findings and if, in the course of such an appeal, he is prepared to abide by a demand that the tax will also be a part of the rent, I will take it to be only an issue on a bona fide dispute which at some point of time, he was not prepared to force an adjudication but willing to pay in the manner canvassed by the landlord. Many State legislations make eviction as a necessary consequence to non-payment of rent on the date of filing of the petition. For instance, Tamilnadu Buildings (Lease and Rent Control) Act and Andhra Pradesh Buildings (Lease and Rent Control) Act, in the way, they have interpreted, makes even a day's default in payment of rent within the stipulated time to be treated as willful and the eviction order could be issued without affording to any opportunity to make the payment. There are legislations like what obtains in Punjab and Haryana that gives room for a tenant to save himself from the consequence of eviction if the

contest is made with reference to the quantum and the court determines the provisional rent and gives the time to the tenant to make the payment on the first hearing which is understood by the decision of the Supreme Court in **Rakesh Wadhawan Versus M/s Jagdamba Industrial Corporation-2002(1) RCR (Rent) 514** to be the next day after such an adjudication. This is merely to underscore a point that a default initially is not to be treated in these legislations as an inevitable consequence of eviction. The time granted by the court if it was more than usual, I would take it to be still a matter of discretion which would not require an intervention. If the order was wrong according to the counsel because the tenant was accepting that he was also liable to pay tax, such acceptance after a contest must be taken as a result of a willingness on the part of the tenant to climb down from his initial position. It will be wrong to state that a defiance will have to be perpetually so and if a party litigant is prepared to scale down his defence, he must be punished. On the other hand, lesson for any party must be that he ought not to be dogged in defiance and there should be resilience in approach and that is what the tenant has done in this case and he ought not to be punished. The order is confirmed and the revision petition is dismissed.

(K.KANNAN)
JUDGE

07.08.2015
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