

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 3290 of 2014

Date of Decision: May 13, 2015

Ajay Partap Singh

.....Petitioner

Vs.

Gurdial Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Vikas Bahl, Sr. Advocate with
Mr. Nitish Garg, Advocate
for the petitioner.

Mr. Sunil Chadha, Sr. Advocate with
Ms. Swati Verma, Advocate
for the respondents.

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M.M.S. BEDI, J.

The short question which is required to be determined in the present revision petition is whether the order passed by the Rent Controller regarding assessment of provisional rent could be treated as an order under Section 13(2) (i) of the East Punjab Urban Rent Restriction Act, 1949 as applicable to Chandigarh, for short 'the Act', entitling the aggrieved person to avail the remedy of appeal under Section 15 (1) (b) of the Act or whether

such an order could be impugned by filing a revision petition in the High Court under Section 15 (5) of the Act.

Tenant has preferred this revision petition under Section 15 (5) of the Act, against the order dated April 21, 2014 passed by Rent Controller assessing the provisional rent at different rates w.e.f. July 2004 making the petitioner liable to pay a total sum of Rs.92,15,728/- as arrears with interest and costs.

The apple of discord appears to be a premises wherein the petitioner was inducted as a tenant vide registered lease deed dated November 25, 2002 described as basement of SCO No. 108-109, Sector 22B Chandigarh. The landlord- respondents appear to have issued a notice on May 17, 2005 determining the lease w.e.f. December 31, 2005. The claim of the tenant- petitioner is that on account of frequent interruptions in the peaceful user of the basement for commercial purpose on account of bye-laws by the administration authorities, rent was agreed to be Rs.7500/- per month w.e.f. year 2006. With effect from April 1, 2007, the parties mutually enhanced the rent from Rs.7500/- per month to Rs.10000/- per month. The tenant- petitioner claims that the said amount was being paid through cross-cheques in favour of Gurdial Singh, being attorney for all the landlords. Eviction petition was filed by the landlord- respondents on January 19, 2007 on the ground of non-payment of rent since February 2004. The said ejectment petition was resisted by the tenant – petitioner claiming that the

landlords have received rent upto September 30, 2007, relying upon the payments alleged to have been made through cheques and bank statements.

The Rent Controller in the light of the ratio of the judgment of Supreme Court in **Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation**, (2002) 5 SCC 440 assessed the arrears of rent, interest and cost at Rs.92,15,728/- payable by May 28, 2014, without prejudice to the stand of both the parties to be determined at the final stage of the adjudication of the rent petition.

Counsel for both the parties agree that primary controversy which is required to be resolved in the present revision petition would be the maintainability of a revision petition against an order of Rent Controller making the assessment of provisional rent as per the judgment in **Rakesh Wadhawan's** case (supra).

Mr. Vikas Bahl, learned senior counsel for the petitioner has contended that in view of Division Bench judgment of this Court in **Tirlok Singh Anand Vs. M/s Prem Chand and Sons and others**, 2013 (1) RCR (Civil) 488, in terms of notification dated April 14, 1947, orders passed by the Rent Controller under Sections 4, 10, 12 and 13 of the Act alone are appealable in both the States of Punjab and Haryana and all the orders passed by the Rent Controller are not subject matter of appeal. All the orders which do not fall within the ambit of above said Sections can be disputed only by way of revision petition.

On the other hand, Mr. Sunil Chadha, learned senior counsel for the respondents has placed strong reliance on the judgment of the Supreme Court in **Harjit Singh Uppal Vs. Anup Bansal**, 2011 (3) RCR (Civil) 247 to claim that the Apex Court has held that it is open to the Appellate Authority to determine the correctness of the order of determining provisional rent by the Rent Controller. He argued that such an order passed under the judgment of Supreme Court in **Rakesh Wadhawan's** case (supra) would be deemed to be an order passed by the Rent Controller in the exercise of the powers under Section 13 (2) (i) of the Act. He has argued that the judgment of Apex Court and the decision of Division Bench were considered by other Benches of this Court and it has been held that the order determining provisional rent is an appealable order. In this context he placed reliance on **Taninder Tandon Vs. Dr. Anjan Parkash Kaur**, Civil Revision No. 7629 of 2014, decided on November 14, 2014. In the said case, the Appellate Authority exercising power under Haryana Urban (Control of Rent and Eviction) Act, 1973 had enhanced the provisional rent as determined by the Rent Controller. In the light of **Tirlok Singh Anand's** case (supra) objection was raised before the High Court claiming that the Appellate Authority did not have any jurisdiction to decide the appeal. The single Bench taking into consideration the judgment of the Division Bench in **Tirlok Singh Anand's** case (supra) and judgment in **Harjit Singh Uppal's** case (supra) held that the order of provisional assessment of rent is

an order which is passed under the provisions of Section 13 of the Act as such it would be an appealable order.

Counsel for the landlord- respondents Mr. Chadha has submitted that though Section 13(2) (i) of the Act deals with the ejectment on the ground of non-payment of rent providing that in case the arrears of rent and interest at the rate of 6% per annum alongwith costs of the application **assessed** by the Rent Controller is tendered on the first date of hearing, he will be deemed to have duly paid or tendered the rent within the period prescribed under Section 13 (2) (i) of the Act. The concept of determination of provisional rent was coined for the first time in judgment of **Rakesh Wadhawan's** case (supra) by interpreting Section 13 (2) (i) of the Act.

I have heard learned counsel for the parties and carefully gone through the judgment in **Tirlok Singh Anand's** case (supra) as well as the judgment in **Harjit Singh Uppal's** case (supra), in order to determine whether an order passed by the Rent Controller determining the provisional rent payable by the tenant in the exercise of powers under Section 13 (2) (i) of the Act can be questioned in an appeal under Section 15 (1) (b) of the Act or it will be a revisable order under Section 15 (5) of the Act. Section 13 of the Act deals with the eviction of the tenant on different grounds. Section 13 (1) and (2) (i) of the Act which are relevant for the purpose of decision of this case, reads as follows:-

- “13. **Eviction of Tenants:**-- (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, (or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended).
- 2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied-
- i) That the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable;

Provided that if the tenant on the first hearing of the application for ejectment after due service pays or

tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid.”

In **Rakesh Wadhawan’s** case (supra), the Apex Court interpreting the above said provisions had held that in Section 13 (2) (i) proviso of the Act, the words “assessed by the Controller” qualify not merely the words ‘the cost of application’ but the entire preceding part of the sentence i.e. the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application. It was observed that when tenant raises a genuine dispute regarding the rate of rent, quantum of rent etc. in such cases it is obligatory on the Rent Controller to make assessment of arrears of rent, interest and cost of litigation and fix provisional rent to be paid by tenant on first date of hearing. It was clarified that the first date of hearing, would mean the date falling after the provisional order of Rent Controller. It had been observed in the said judgment that after payment of provisional rent by tenant, Rent Controller will then finally adjudicate arrears of rent and in case on final adjudication if rent is found more than the provisional rent, then tenant will be given one more opportunity to make up deficiency to escape order of eviction.

In **Harjit Singh Uppal’s** case (supra), the Supreme Court was called upon to determine a controversy whether the order of fixing

provisional rent becomes final and could not be challenged subsequently, in appeal challenging the order of eviction. The question which was required to be determined by the Apex Court in **Harjit Singh Uppal's** case (supra) was as follows:-

“2. The main question for determination in this appeal, by special leave, is: If a tenant does not avail his remedy to challenge the order of the provisional rent fixed under Section 13(2)(i) proviso to the East Punjab Urban Rent Restriction Act, 1949 (for short, '1949 Rent Act') **by filing an appeal under Section 15(1)(b) within 15 days** from date of such order, whether the order fixing provisional rent becomes final and cannot be challenged subsequently, particularly, in the appeal challenging the order of eviction. (emphasis supplied)”

The Hon'ble Supreme Court taking into consideration the provision of Section 13 (2) (i) and Section 15 (1) (b) of the Act and judgment of **Rakesh Wadhawan's** case (supra), provisions of Section 97, 104 and 105 of CPC observed as follows:-

“31. Section 15(1)(b) of 1949 Rent Act provides that a person aggrieved by an order passed by the Rent Controller may prefer appeal to the Appellate Authority within the time prescribed therein; it does not say that if any aggrieved person by an

interlocutory order passed by the Rent Controller from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness. There is no provision in Section 15(1)(b), a provision like Section 105 (2) and Section 97 of the Code.

32. We find no impediment for an aggrieved person, on reading Section 15(1)(b) of the 1949 Rent Act, that an interlocutory order which had not been appealed though an appeal lay, could not be challenged in an appeal from the final order. In our opinion, Section 15(1)(b) does not make it imperative upon the person aggrieved to appeal from an interlocutory order and, if he does not do so, his right gets forfeited when he challenges the final order.

33. It is true that an order of eviction follows as a matter of course if there is non-compliance of the order determining the provisional rent but when tenant challenges the order of eviction and therein also challenges the order of fixation of provisional rent - the order of eviction, in its nature, being dependant on the correctness of the order fixing

the provisional rent and there being no indication to the contrary in Section 15(1)(b) - it must be open to the Appellate Authority to go into correctness of such provisional order when put in issue.”

The Apex Court in **Harjit Singh Uppal’s** case (supra) further held as follows:-

“40. The High Court, however, held that as tenant did not avail of his remedy to challenge the order fixing provisional rent during the period between the date of the order and date fixed for payment, the Appellate Authority could not have gone into the merits of such determination and, accordingly, set aside the order of the Appellate Authority. In our view, the High Court fell into grave error in what it held. The legal position, in our opinion, is this: Where a tenant does not challenge the order of the fixation of provisional rent passed under Section 13(2)(i) proviso in appeal under Section 15(1)(b) and also fails to comply with that order, the order of eviction must follow as per the provisions contained in the 1949 Rent Act but when the tenant challenges the order

of eviction in appeal and therein also challenges the order determining the provisional rent, it is not open to the Appellate Authority to refuse to consider the legality and validity of the order determining the provisional rent on the ground that the correctness of such order cannot be examined as no appeal was filed from that order though an appeal lay therefrom.

41. On the facts of the present case, the Appellate Authority did not commit any error in calling upon the Rent Controller to determine the arrears of rent, interest and costs afresh as the tenant's statement of payments towards rent from April, 2007 was not at all referred to and considered by the Rent Controller. If the order of the High Court is allowed to stand, it would occasion in manifest injustice and result in miscarriage of justice inasmuch as the tenant would be thrown out of the leased premises although he may not have been in arrears of rent. In the circumstances, re-determination of arrears of rent, interest and costs by the Rent Controller, as directed by the Appellate Authority, would subserve the ends of

justice. If on re-determination, the tenant is found in arrears of rent and does not deposit/pay the amount as determined by the Rent Controller in time, as may be directed, obviously he would suffer the order of eviction.”

A perusal of the judgment in **Harjit Singh Uppal’s** case clearly indicates that while giving the above said dictum, the Apex Court has placed reliance on Division Bench judgment of Nagpur High Court in **Syed Ishak Syed Farid and another Vs. Kanjbihari Singh Sirdhujasingh Kshatriya**, AIR 1940 Nagpur 104, wherein it was observed that if a right of appeal is once conferred then in the absence of anything curtailing it, full opportunity must be afforded to an aggrieved party to exercise it. If he does exercise it and succeed, then any subsequent proceedings which militate against any rights he obtains in the appeal fall to the ground..... when the law gives a person two remedies he is entitled to avail himself of either of them unless they are inconsistent.

So far as the judgment in **Tirlok Singh Anand’s** case (supra) is concerned, a perusal of the said judgment indicates that the Division Bench had taken into consideration various notifications from April 14, 1947 till April 29, 1976 in order to determine whether the judgment of **Harjit Singh Uppal’s** case (supra) would be applicable in view of the specific notifications having not been taken into consideration. It was observed by the Hon’ble Division Bench that the notifications in respect of orders which

are appealable, were not considered by the Apex Court as such reading in the context of the issues raised and decided, the judgment of **Harjit Singh Uppal's** case (supra) does not lay down any proposition of law that all orders passed by the Rent Controller are appealable. The reference order in Division Bench judgment reads as follows:-

- “(a) If the notification dated 14.04.1947 is still holding the field by which only an order passed under Sections 4, 10, 12 & 13 is made appealable, then whether all orders passed by the Rent Controller have become appealable in terms of the notification No.4137/2-CII-76/17354 dated 29.04.1976 issued by the Government of Punjab?
- (b) Whether the observation of the Supreme Court in para No.25 of the Harjit Singh Uppal Vs. Anup Bansal (Supra) i.e. (2011) 11 SCC 672, xxx xxx while referring to Section 15(1)(b) of the East Punjab Urban Rent Restriction Act, 1949 only, is an observation in context of the facts of that case as there was no issue of maintainability of appeal or revision arising out of interlocutory orders before it and there is no reference to Section 15(5) of the Act or Section 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973?

(c) Whether the orders passed by the Rent Controller during the proceedings exercising its inherent powers like in the case of amendment of pleadings, impleadment of parties, setting aside of ex parte proceedings, restoration of petition etc. etc. are revisable under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949?”

Finding of the Division Bench is as follows:-

“27. The above delineated principles of law are required to be kept in view before any reliance is placed upon a judgment of the Hon'ble Supreme Court. In Harjit Singh Uppal's case (supra), no question was raised or debated that all orders passed by the Rent Controller are appealable or not. The notifications in respect of orders which are appealable were not brought to the notice of the Hon'ble Court. The findings recorded have to be read in the context of the issues raised and decided. The order under challenge was an order of fixation of provisional rent passed during pendency of the eviction petition. Such order was challenged in an appeal against the final order of eviction. In terms of the notification dated

14.04.1947, an order of eviction is appealable. The court has held that the order of fixation of provisional rent could be challenged in appeal against the order of eviction. It was not a case, where only an order of fixation of provisional rent was subject matter of challenge. The Hon'ble Supreme Court has restored the order passed by the Appellate Authority while setting aside the order passed by this Court in a revision petition. The observations that the interlocutory order of fixation of rent is appealable is an obiter, as in the aforesaid case, an appeal was filed against the final order of eviction, wherein challenge was made to an interlocutory order passed during the pendency of the proceedings. Therefore, the judgment in Harjit Singh Uppal's case (supra) does not lay down any proposition of law that all orders passed by the Rent Controller are appealable.....

29. Therefore, we answer the questions framed by holding that in terms of the notification dated 14.04.1947, orders passed by the Rent Controller under Sections 4, 10, 12 & 13 alone are appealable in both the States of Punjab and Haryana and that

all other orders passed by the Rent Controller are not subject matter of appeal. Orders other than the orders which are appealable, can be disputed only by way of a revision petition before this Court.”

The Division Bench has thus held that the order of fixation of provisional rent, an interlocutory order, held to be appealable by the Apex Court, is only obiter.

The judgment in **Tirlok Singh Anand’s** case (supra) indicates that any order passed under Sections 4, 10, 12 and 13 of the Act is an appealable order both in States of Punjab and Haryana and that all other orders passed by the Rent Controller are not subject matter of appeal. So far as the order determining provisional rent is concerned, it is an order passed by the Rent Controller in the exercise of powers under Section 13 (2) (i) proviso of the Act. The said order may be termed as an interlocutory order but Section 15 (1) (b) of the Act enables any person to file an appeal against such order within 15 days from the date of the order before the Appellate Authority. The reference order in **Harjit Singh Uppal’s** case (supra) which has been reproduced hereinabove clearly indicates that the Supreme Court has considered the provisions of Section 13 (2) (i) and Sections 15 (1) (b) of the Act with a legal statutory presumption that the order determining the provisional rent fixed under Section 13 (2) (i) proviso of the Act is an appealable order under Section 15 (1)(b) of the Act.

The question which was determined in that case was whether any such order fixing provisional rent would be final, not challengeable in appeal while challenging the final order of eviction. The reference order is again reproduced hereunder indicating that the order of assessment of provisional rent is appealable order under the Statute as Section 15 (1) (b) of the Act does not make a distinction between an order passed under Section 13, final and interlocutory:-

“2. The main question for determination in this appeal, by special leave, is: If a tenant does not avail his remedy to challenge the order of the provisional rent fixed under Section 13(2)(i) proviso to the East Punjab Urban Rent Restriction Act, 1949 (for short, '1949 Rent Act') **by filing an appeal under Section 15(1)(b) within 15 days** from date of such order, whether the order fixing provisional rent becomes final and cannot be challenged subsequently, particularly, in the appeal challenging the order of eviction. (emphasis supplied)”

A perusal of the above said point of determination and the conclusion arrived at in **Harjit Singh Uppal's** case (supra) indicates that the observation of the Apex Court pertaining to the maintainability of appeal under Section 15 (1) (b) of the Act is not absolutely limited for the decision

pronounced. The observation in **Harjit Singh Uppal's** case (supra) cannot be considered to be a mere stray observation, to ignore it by observing that certain notifications relating to appeals under Section 15 (1) (a) of the Act were not considered by the Apex Court. The Apex Court in **Director of Settlement AP and others Vs. M.R. Apparao and another**, AIR 2002 SC 1598 held that the decision in judgment of Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court.

As the Apex Court in **Harjit Singh Uppal's** case (supra) has taken into consideration all aspects of the law including the Statute and case law, the decision of the Supreme Court cannot be held to be obiter dicta. It is, therefore, held that the judgment of the Supreme Court in **Harjit Singh Uppal's** case (supra) is binding upon this Court under the provisions of Article 141 of the Constitution of India being a precedent. Even if it is presumed that any observation regarding maintainability of an appeal is an *obiter dicta* still it will have substantial force if the entire judgment in **Harjit Singh Uppal's** case (supra) is taken into consideration. The High Court cannot take the view that it does not bind it. The term 'law declared' means not only the *ratio decidendi* of a decision but it includes an *obiter dictum* also provided it is upon a point raised and argued. In this context reference can be made to **Bimla Devi Vs. Chaturvedi**, AIR 1953 Allahabad 613, **Kishore Lal Vs. Devi Pd.**, AIR 1950 Pat. 50, **Ram Surat Singh Vs. Ram Murat Singh**, AIR 1955 All. 543, **Babu Nandan Vs. Msl. Sumitra**, AIR

1961 All. 872, **Sadhu Singh Vs. State**, AIR 1962 All. 193, **Wasudeo Vs. State**, AIR 1976 Bombay 94 and **Sarwan Singh Lamba Vs. Union of India**, AIR 1995 SC 1729. It was made clear by Supreme Court in **M/s Raval and Co. Vs. K.G. Ram Chandran and ors.**, AIR 1974 SC 818 that any general observation cannot apply in interpreting the provisions of an Act unless the Supreme Court has applied its mind to and analyzed the provisions of that particular Act.

In the present case, the provisions of Sections 13 (1) (a) and 15 (i) (b) in context to the **Rakesh Wadhawan's** case (supra) having been specifically taken into consideration and decided, it cannot be said that Supreme Court did not apply mind in interpreting the provisions of law. It cannot be said that the permissibility of an appeal against order under Section 13 (2) (i) of the Act being appealable, is only an obiter dictum.

In view of the above circumstances, finding myself bound by the judgment in **Harjit Singh Uppal's** case (supra), it has to be held that this revision petition is not maintainable.

The revision petition is dismissed. It is held that in view of the judgment in **Harjit Singh Uppal's** case (supra), the interim order determining the provisional rent is an order appealable under Section 15 (1) (b) of the Act. Revision petition against the said order is not maintainable under Section 15 (5) of the Act. The petitioner is thus relegated to the alternative remedy of filing appeal before the Appellate Authority. In the interest of justice, it is ordered that the interim order dated May 26, 2014

will remain operative till the filing of the appeal. After appeal having been filed, it will be the discretion of Appellate Authority to pass any order in accordance with law. It is made clear that in case appeal is not filed within a period of 15 days of the receipt of the certified copy of the order, interim relief granted vide order dated May 26, 2014 will cease to operate.

Nothing mentioned in this order or in the interim order, will however, prejudice the adjudication of the rights of the parties by the Appellate Authority in the exercise of powers under Section 15 (1) (b) of the Act.

May 13, 2015
sanjay

(M.M.S.BEDI)
JUDGE